



**SUMMARY OF THESE**

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

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## Abstract

Family law has become, to an unexpected extent, at the core of comparative law studies aimed at achieving legal unity. By examining convergence and harmonization ideas in Vietnam to law and development programs around the world, comparative family law studies are diverse and crucial. Matrimonial law in Vietnam witnessed dramatic changes under the influence from east to west by the historical Chinese (178 BC-939) and French (1858-1954) conquests. Northern Vietnam was occupied by the Communist Party in 1945 and has since advanced toward a socialist vision. Following its reunification in 1975, Vietnam implemented a variety of civil codes that were heavily influenced by those of France, Germany, and Switzerland. This demonstrates that European civil and family law has had a substantial influence on Vietnamese law, both historically and currently. Studying European laws is very beneficial because the continental European legal system is regarded as the world's largest. As a result, the overall goal of this research was to compare the development of matrimonial property law in Vietnam to Chinese, French, Soviet, European, and Hungarian family laws. The dissertation is divided into five chapters that discuss marital property in Vietnam in comparison to Chinese, French, Soviet, EU, and Hungarian family laws. Chapter 1 provides insight into the historical history of marital property in Vietnam, from traditional society to feudalism to colonialism to independence and communist growth. Chapter 1 not only examines and studies Vietnamese marital property law, but also compares it to the laws of other countries having ties to Vietnam's history at the time, such as China, France, and the Soviet Union. In Chapter 2, the dissertation examines contemporary marital property legislation, covering basic concepts and foundations for the development of various categories of marital property. Chapter 3 focuses on the legal implications for marital property when the spouses separate or one party dies, or when the marriage is annulled. The property relationship between cohabiting couples is also a problem that arises in practice and necessitates suitable legal structures, thus Chapter 4 explores this subject. Finally, Chapter 5 concisely summarizes the entire thesis work, offering remedies to existing difficulties in Vietnam through the inclusion of EU and Hungarian laws into domestic legislation or amendments to present matrimonial property law.

**Key Words:** Comparative matrimonial property law; Vietnam v. EU; Hungarian family law; Vietnamese family law; women's property rights in Vietnam.

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## 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, and 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. However, there are two basic types of “statutory property systems” as follows: 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 follows: 1/ The whole-property community system (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 the 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.<sup>1</sup>

Regarding the provisions of Vietnamese law<sup>2</sup>, the legal matrimonial regime is organized according to the type of community of acquisitions system. All property that the husband and wife

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<sup>1</sup> Ngo Thi Huong, Chế độ hôn nhân pháp định: Một số bất cập và kiến nghị hoàn thiện 25-30.

<sup>2</sup> Vietnam's legal normative document system is complicated. This system is built on a foundation of multiple legal normative papers produced by various responsible bodies. For example, after the National Assembly has promulgated the Code/Law, the Government may issue a Decree to guide the Code/Law; then the relevant Ministry(s) may continue to issue Circulars to guide the Decree; and, during the implementation process, if several provisions are unclear, additional official letter(s) may be issued to guide each specific case. As a result, in practice, a legal matter will almost

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 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. This property regime is regulated as a very progressive new point in the 2014 Law on Marriage and Family.<sup>3</sup>

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 Article 3 (7) as the couple living together and treating each other as husband and wife. Cohabitation, however, is not recognized in Vietnam;

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certainly be controlled multiple times in the Code/Law, Decree, Circular, Official Letter, and so on. Despite governing the same subject, the contents provided in these documents may sometimes contradict them other.

<sup>3</sup> Law 52/2014/QH13, dated June 19, 2014, of The National Assembly on Marriage and Family, Gazette. 52/2014/QH13. This law came into force on 1st January 2015 in Vietnam. The legal value of legal documents in Vietnam are different. In the Vietnamese legal system, the Constitution is the most effective document, while the Decision of the Commune People's Committee is the least effective. The National Assembly issues both the Code and the Law, which serve comparable purposes. The major distinction between Code and Law is that Code normally has a greater controlling scope. As a result, the Code encompasses the entirety of legal norms governing social relations in one or more domains, such as the Civil Code, Maritime Code, Labor Code, and so on.

The Code/Law must go through a rigorous process (outlined in the Law on Legal Document Promulgation); typically, this process entails formulating a law-making program, drafting laws, verifying the law project, public consultation, discussing, internalizing, revising, and approving the law program, and publishing the law.

there are also no regulations on civil union or registration of cohabitation like in other countries in the world. It is true in the case of Hungary that partners 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<sup>4</sup> 01/2016<sup>5</sup> still provides the concept and grounds for settlement for cohabitation including the settlement of property relations between the partners. In addition, cohabitation established before January 3, 1987 is recognized as a registered marriage as an exception due to the influence of the economic and social difficulties of this historical period in Vietnam. 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, EU and Hungarian family laws. Marriage is the most common 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. 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 for the study of 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

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<sup>4</sup> Ministers and heads of ministerial-level agencies typically issue circulars to spell out articles, clauses, and measures in the Code, Laws, and Decrees, as well as to execute the State management function of Ministers and heads of ministerial-level agencies (such as detailed regulations on procedures, forms).

<sup>5</sup> The Supreme People's Procuracy, Ministry of Justice, Supreme People's Court issued Joint Circular 01/2016/TTLT-TANDTC-VKSNDTC-BTP to guide the execution of a number of sections of the Marriage and Family Law on 6th January, 2016.

property regime prescribed in the state's laws, one can recognize the level of development of the economic and social conditions and the will of the state.

The husband and wife's property regime is 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. 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 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 research questions**

### **2.1 Objectives of the study**

Vietnam is a Southeast Asian country that has been affected by imperial countries such as China (178 BC-939), France (1858-1954), and the United States (1954-1975). To maintain the colonial system, the empire countries used rules and administrative models from their own countries. As a result, the laws of the imperialists conquering Vietnam influenced Vietnamese law during these historical periods.<sup>6</sup> The North was liberated and earned independence following the triumph of the August Revolution in 1945. Under the leadership of Ho Chi Minh, who also founded the Democratic Republic of Vietnam on September 2nd, 1945, the Northern area became independent in 1945. Northern Vietnam was placed under the Communist Party's control and has subsequently progressed toward a socialist perspective. Following the 1975 reunification, Vietnam enacted a number of civil codes that substantially borrowed from the civil codes of France,

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<sup>6</sup> Linh, Nguyen Thi My, *The Development of Matrimonial Property Law in Vietnam* 66–74.

Germany, and Switzerland. The first chapter of the Vietnamese Civil Code 2015,<sup>7</sup> for example, governs broad provisions similar to those found in the German Civil Code. Similar to the French Civil Code, the Vietnamese Civil Code still has rules on civil relations containing foreign elements. These documents demonstrate that European civil and family law has had a significant impact on Vietnamese law, not only in the past but also in the present.<sup>8</sup>

Furthermore, understanding Hungarian family law is vital because it is a part of continental European law.<sup>9</sup> Since the continental European legal system is regarded as the world's largest, studying European and Hungarian laws is particularly useful. Hungary's historical history is similar to that of Vietnam in that it went through a period of socialist development from 1949 to 1989. Vietnam and Hungary also signed an agreement on mutual legal assistance in civil, family, and criminal situations on January 18, 1985.<sup>10</sup>

Thus, the general objective of this study was to investigate the development of matrimonial property law in Vietnam compared to Chinese, French, Soviet, European and Hungarian family laws. However, during the period when the United States dominated South Vietnam from 1954 to 1975, the thesis does not examine the impact of American law on Vietnam. In actuality, the legal impacts of the United States in Vietnam are minimal due to its short existence and limited impact on South Vietnam. During the historical period, the US issued few regulations in South Vietnam, and most continued to follow the regulations established by France. The study was guided by the following specific objectives:

- (1) To examine the role of 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, French, Soviet countries, EU, and Hungarian family laws.
- (3) To find out the shortcomings and limitations and make suggestions for improving the matrimonial property law in Vietnam.

## **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?

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<sup>7</sup> Civil Code 91/2015/QH13 was issued by the 13th Vietnamese National Assembly on November 24, 2015.

<sup>8</sup> Ibid.

<sup>9</sup> The studies below demonstrate the tight connection between Hungarian civil law and European private law as follows: Benke, József, *The Fundamentals of Hungarian Private Law* 484-489; Hamza, Gábor, "Codification of Hungarian Private (Civil) Law in a Domestic and International Comparison" 443-450.

<sup>10</sup> The full text of the Mutual Legal Assistance Agreement can be accessed on the following site: <https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Hiep-dinh-tuong-tro-tu-phap-van-de-dan-su-gia-dinh-hinh-su-Viet-Nam-Hunggari-153643.aspx>.



(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 characteristics of the wife's property status? And how is gender equality protected?

(5) How does the family law ensure the protection of the weaker party in marital property relations?

(6) What are the differences in regulations on matrimonial property in Vietnam and China, France, Soviet countries, EU and Hungary? What can Vietnam learn from regulations in these countries for the relevant issue?

(7) Are there any regulations that protect creditors' and third parties' interests toward transactions with spouses?

(8) In which cases is the interest of the spouses protected against the creditor, the third parties?

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.

### **2.3 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, including China, France, Hungary and other European Member States can determine the comprehensive theoretical framework of marital property.

This study has also collected data, legal history resources, cases about the matrimonial property law in Vietnam since September 2018. These activities have been taking much time and faced 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, which encountered many difficulties because this was classified as a document group before 1975, the reunification of the country. Since the reunification, these materials have been classified as limited readings and only have been accessible 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 differences 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 the Oxford language definition. The comparative method is also used to analyse the differences 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 on the 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](http://www.congbobanan.toaan.gov.vn), which is the official website of the Supreme People's Court. Regarding judgments before 1975, which are difficult to collect, I received support to provide documents from Court officials in some provinces such as Can Tho, 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 the necessary information. This is true in the case of the data about marriage and family disputes at the first instance settled by The Can Tho City Court from 2017 to 2020, which was provided by the administrative staff of this court and is not shown to the public.

The comparative approach in this dissertation faces some challenges in family law terminology due to unparalleled upheaval in the family law systems between nations. Vietnamese law has witnessed the introduction of family legal terms from East to West in Vietnamese law, it can be difficult for the author to locate the correct term to explain when using the comparative technique, especially prior to the year 1954.

### **3. Research findings and recommendations**

#### **3.1 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 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 big 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 that related to marital property. Therefore, the marriage and civil law sets 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 it and the provisions protect the third party's interest in good faith. 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 that 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 financial support to ensure the child's all-round 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 the influence of China (178 BC–1858), 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 Soviet Union (1940s). However, the law in force of marital property law in Vietnam is a learning from the legislative experience of many private regulatory agencies in other countries such as EU family laws, not only those mentioned above, which I have mentioned in chapters 2, 3, and 4 respectively of the study.

As regards to Chinese law in comparison, generally speaking, China has undergone several changes in family law throughout its development. For example, The Great Qing Legal Code also known as the Qing Code (Ching Code) which was the legal code of the Qing empire (1644–1912). This code had a great influence not only in China but also in Vietnam. This is true in the case of the Gia Long Code of Vietnam which was nearly identical to the Qing Code. The 1950 Law on Marriage was adopted by The People's Republic of China as evidence on the new formation of the State from the feudal marriage system to socialist development.<sup>11</sup> Thirty years later, the 1980 Law on Marriage was replaced by the previous one that mentioned marriage being a contract between

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<sup>11</sup> Cheng, Yang, Family Law in China 248–258.

individuals rather than families. It also abolished concubine and polygamy from the previous one that protected better the equality among spouses and other family members.<sup>12</sup> The 1980 Law expired and was replaced to the new Civil Code by the National People's Congress of China, which entered into force on 1st January 2021.<sup>13</sup> Family regulations are mentioned in Book V of The Chinese Civil Code, which rule marriage, family, and adoption. Spouses can come to an agreement on whether the property gained during the existence of the marriage and before the marriage, which are called pre-nuptial and post-nuptial agreements. The agreement must be in writing and can consist of properties that are owned separately, jointly or both. If there is no agreement, the statutory matrimonial property regime will apply, which includes separate and common property. Similarly, Chinese Family Law is a part of the Civil Code and consists of two matrimonial property regimes, including statutory and marital property agreement compared to Hungarian Family Law and Vietnam's Civil Codes from 1858 to 1954.<sup>14</sup>

When the French colonialists invaded Vietnam from 1858 to 1954, in the field of marriage and family, the application of legal regulations focused mainly on documents such as the Gia Long Code (1812), the Southern Civil Code (1883), the Northern Civil Code (1931) and the Central Civil Code (1936). At the beginning of the invasion, France temporarily applied the Nguyen Dynasty's law (mainly Gia Long Code) and indigenous Vietnamese customs. Since 1883, France had gradually changed the traditional lifestyle by Europeanization trends. Typically, France copied almost all the provisions in the First Book of the French Civil Code – Napoleon Code in 1804 to Vietnam to build the Civil Code in the South. However, the Southern Civil Code only referred the general provisions in the French Civil Code, so many important contents had not been mentioned. Therefore, the Southern Civil Code had not yet acknowledged the existence of the matrimonial community property. In contrast, France colonists stipulated in detail about the matrimonial community property in both the Northern and Central Civil Codes. *“The Northern Civil Code and the Central Civil Code were referred several contents of the French Civil Code.”*<sup>15</sup> Finally, the historical context of Vietnam during French conquest greatly affected the Vietnamese legal system and the matrimonial property law. Legislation on property was an interplay between feudal regulations (Gia Long Code) and Western-style ones. Therefore, the French influence on the legal system of marital property in Vietnam is clearly demonstrated by comparing these Civil Codes.

In conclusion, it is evident that the French greatly influenced the Vietnamese legal system from 1858 to 1954 after Chinese domination. Vietnamese Family Law has some similarities to other nations which both prescribe two types of matrimonial property regimes, including the

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<sup>12</sup> Engel, John W., “Marriage in the People's Republic of China: Analysis of a New Law” 955.

<sup>13</sup> Rödl & Partner, “China's Civil Code” accessed 14 December 2021.

<sup>14</sup> V & T Law Firm Ningning Zhao, “Family Law in China: Overview Practical Law” accessed 14 December 2021.

<sup>15</sup> Mau, Vu van, Dân Luật Khái Luận 76.

default and marital property agreement. From 1945, the North of Vietnam regained independence under the leadership of the Communist Party. This region built a civil and family law system that differed significantly from codes drawn up during the French colonial period. In 1959, North Vietnam promulgated the Act on Marriage and Family. These new laws were entirely independent of the pre-existing Civil Code. Besides, socialist countries often called the Act on Marriage and Family instead of “Family Law” as in French and German Civil Codes.<sup>16</sup> Following the reunification of 1975, however, Vietnam enacted several Civil Codes (1995, 2005 and 2015) that drew heavily on the Civil Codes of France, Germany, and Switzerland. For example, the first chapter of the Vietnamese Civil Code 2015 governs general provisions like the German Civil Code. Vietnam Civil Code still contains the rules on civil relations involving foreign elements which are similar to the French Civil Code. These prove that the European civil and family law has a profound influence on Vietnamese law not only in the past but also in present time.<sup>17</sup>

**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 follows: “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 (see Conclusion and Recommendation).

**What are the characteristic of the wife’s property status? And how is gender equality 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 State, while the feudal time witnessed great changes in the role of the wife. This society recognized them just as a part of

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<sup>16</sup> There are some similarities in codification among socialist states in comparison to Chinese and Vietnamese practices. X. Feng, Review of the Development of Marriage Law 331–398.

<sup>17</sup> Linh, Nguyen Thi My, The Development of Matrimonial Property Law in Vietnam 309–316.

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

**The extent to which creditor's protection extends 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 are 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, such a 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 is 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 it has 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.

## 3.2 Conclusion

### 3.2.1 Strengthening propaganda to raise awareness of property rights for women to contribute to ensuring gender equality

Basically, Vietnam has been better and better 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%<sup>18</sup>, 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. showed<sup>19</sup> that land use right held by men accounted for 68%, while it was just 16 % for women in 2004. This study demonstrated that the husband is the one who usually represents for the common property ownership. The authors also found only 15% land use right held by both men and women in 2004 which did not change much in 2008 with 20%. The inequality had been existed in land use right certificated held by genders.

Despite the fact that several laws, including the Civil Code, the Law on Marriage and Family, and the Land Law, guarantee equal land rights for men and women, poor enforcement has failed to protect women's land rights in the face of traditional practices such as son preference, patrilineal kinship, and patrilocal residence. As a result, women have been effectively excluded from family land succession in many areas, and have been discouraged or even prevented from seeking legal assistance to assert their land rights. Women have even claimed that they don't have a piece of their biological family's land because they feel inferior to their male brothers and/or that they have become outsiders once married. Women from patrilineal families, as well as those from rural and mountainous locations, have been identified as facing significant challenges in exercising their land rights. Customary law tends to overrule state law in controlling property and inheritance rights at the local level, the dualistic legal system in Viet Nam is also recognized as constraining women's property rights. The local practice of reconciliation, which focuses on settling a couple's problems in order to maintain harmony, is another barrier that prevents women from using their land rights.

Women's land and property rights obtained via marriage in Vietnam are only valid as long as the marriage is intact. As a result, women's rights must be protected in the context of marital

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<sup>18</sup> General Statistics Office, *Cấu Trúc Tuổi- Giới Tính và Tình Trạng* 10-30.

<sup>19</sup> Menon, van der Meulen Rodgers, and Nguyen, "Women's Land Rights and Children's Human Capital in Vietnam" 18-31.

dissolution, particularly to reduce their danger of falling into poverty. In 2015 research conducted in Long An province<sup>20</sup>, it was determined that 38% of men and 46%<sup>21</sup> of women agreed that widows would lose ownership of their deceased husband's land/house if they remarried. Given the inherent benefits of preserving women's land rights during marriage and divorce, enhancing women's land rights has immense potential for boosting women's and children's well-being, as evidenced by studies on gender-sensitive land policy change in Vietnam.

To raise such awareness for women, the government should offer much more propagating policies and laws on the exchange of new certificates having both party's title on common land use right to be 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.

However, to evaluate the feasibility of law dissemination is a job that takes a long time to verify. In fact, the Government of Vietnam has issued decisions to establish a Council for Propaganda and Dissemination of the Law. The Prime Minister signed and proclaimed Decision 21/2021<sup>22</sup> which established the composition, tasks, and powers of the Council for Propaganda and Dissemination of the Law. This decision contains key provisions to increase the quality and effectiveness of the Council's actions in law dissemination and education at all levels, including practical execution of law dissemination and education, the resolution of current challenges and inadequacies in the Council's actual functioning at all levels. Later, the Vietnamese Ministry of Justice issued Official Letter 2232<sup>23</sup> stipulating instructions for departments, ministries, branches, and localities to implement Decision 21/2021. The work of law enforcement has been raised in the awareness of all levels of Party committees, party organizations, and the entire political system.

### **3.2.2 Prenuptial and antenuptial agreement property: the need for acknowledgement**

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.

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<sup>20</sup> Long An is a province in southern Vietnam's Mekong Delta region.

<sup>21</sup> CGEP Management Team et al., "Country Gender Equality Profile Vietnam 2021" accessed March 27, 2022.

<sup>22</sup> Decision 21/2021/QD-TTg was issued by The Prime Minister to establish a Council for Propaganda and Dissemination of the Law on June 21, 2021.

<sup>23</sup> Official Letter 2232/BTP-PBGDPL was issued by the Vietnamese Ministry of Justice on July 8, 2021,



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 regime. Compared with the Hungarian legislation 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). 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 are established agreements. This means the couples can make both prenuptial and postnuptial agreement in Hungary, while they just allow to have prenuptial one 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 under Vietnamese law limits the will to establish the ownership of the couple. This is the regulation that Vietnam law should learn from Hungarian law.

### **3.2.3 The need to register a registered partnership for cohabitation in order to secure the rights and obligations arising between the partners**

Cohabitation including heterosexual and homosexual ones is not recognized in Vietnam, so the property relationship between the parties, 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 a civil union or a 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 Labour 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, bisexual and transgender community, as well as the gradual approach to the principle of equality in Vietnamese law.

### **3.2.4 The need to recognize the legal separation regime in Vietnamese law to ensure transparency in the ownership of spouses during separation**

Lawmakers all acknowledge the fact that separation is a social phenomenon that exists in many Vietnamese families. However, there are conflicting views 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, 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, it 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.*<sup>24</sup>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 is 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 beforehand 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 common children before, when the divorce happens, the disputes will almost no longer exist, the parties can easily reach a consensus and then the matter of the Court will merely recognize the consent of the parties to the divorce. 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

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<sup>24</sup> Doan Thi Ngoc Hai, "Sự Cần Thiết Luật Hóa Chế Định Ly Thân Trong Luật Hôn Nhân và Gia Đình" accessed 10 October 2021.

the parties in the marriage relationship, lays a legal basis to solve existing problems in practice, and orients the formed marriage relationship to the positive side within the legal framework.

### **3.3 Recommendation**

The legislative of Vietnamese responsibility rests with the National Assembly and the enforcement of 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, shortcomings of the matrimonial property law are being considered for possible 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 Vietnam Women's Union,<sup>25</sup> the People's Committee,<sup>26</sup> the Youth Union to support women and children helping them to be more aware of their equal roles and rights in society. The government is currently working on a variety of draft legal papers. Following the Prime Minister's directive, the Government Portal has made the complete text of these drafts available for public feedback from agencies, organizations, and businesses, as well as civilians both inside and outside of Vietnam, via the website as follows: <https://chinhphu.vn/du-thao-vbqpl>. As a result, it is currently easier to bring personal thoughts on revising the law closer to the legislature.

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 lower than that of the male spouses. Regarding the 2014 Law on Marriage and Family, if the land use right certificate belongs to the common property of husband and wife

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<sup>25</sup> The Vietnam Women's Union is a socio-political group that advocates for Vietnamese women's legal and legitimate rights and interests at all levels. The Vietnam Women's Union is dedicated to the advancement of women and gender equality. Information on the Vietnam Women's Union can be found in the following site: <http://vwu.vn/introduction>.

<sup>26</sup> The people's Committee of the people's elected Council is the executive organ of the people's Council, the State administrative organs at local, responsible to the same level people's councils and State agencies. The people's Committee is responsible for observance of the Constitution, the law, the text of the State bodies and the resolution of the Assembly of the people of the same level to ensure implementation, measures for socio-economic development, strengthen national defense, security and other policies implemented on the area.

The people's Committee to implement state management functionality locally, helping to ensure the consistent management of the State administrative apparatus from central to the base. The people's Council to decide the important measures and guidelines to promote the potential of the local, local development and construction of social-economic, strengthened defense, security, constantly improve the material and spiritual life of the local people, rounding up local's obligation for the country. The people's Council made the right monitor for activity of the people's Council, the people's Committee, the people's courts, the people's Procuratorate at the same level; monitoring of the implementation of the resolutions of the Council; monitoring the compliance with the laws of the State bodies, organizations, social organizations, people's armed units and of the local citizens.

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. Thus, I think these recommendations should be implemented to improve women's land rights as follow : 1/To keep track on and evaluate the implementation of women's land rights. Successful land access projects have proved the importance of communication in raising citizen expectations, allowing women to profit from joint titling, and reducing the risk of financial loss in the event of inheritance or divorce. To improve communication of women's land rights, a community-based approach should be used, with communes and villages participating. This is especially important in rural and remote areas. 2/ Prioritize and take a more active approach to encouraging the conversion and issue of jointly titled so that women can benefit from the Land Law's rights in practice. 3/ To run efforts to create awareness about the procedures involved in altering a land use rights certificates' status, as well as to sensitize stakeholders so that the conversion to jointly titled ones is not stigmatized. Local governments should support families that want to go through this process. 4/ To give financial assistance and programs to assist impoverished households and those living in ethnic minority areas in applying for reissued LURCs that are jointly named. 5/ To ensure that sex-disaggregated, land-related data and official statistics are up to date and accurate.

The Court, without a doubt, plays a vital role in resolving property disputes between spouses in order to protect the parties' interests. As a result, it is vital to establish a Family Court and improve judges' adjudicating abilities. The Family and Juvenile Court in Vietnam was first established in 2014 by the Law on Court Organization. This is a court organized in the model of a specialized court and is a part of the organizational structure in Vietnam, including People's Courts of districts, People's Courts of provinces, and Superior People's Courts. At the present time, two local courts are piloting the Family and Juvenile Court models in People's Courts of provinces and districts (Ho Chi Minh City and Dong Thap province).<sup>27</sup> The Family and Juvenile Court's operations contribute to assuring its specialization, accord with international norms, and focus on the subjects immediately affected by the Court's decisions, namely minors and adolescents. In the current period, it is critical to continue to deploy and replicate the Family and Juvenile Court model.

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<sup>27</sup> Lu Thi Hang, "Mô Hình Tòa Gia Đình và Người Chưa Thành Niên ở Việt Nam và Hàn Quốc - Nhìn Từ Góc Độ Luật so Sánh," accessed March 27, 2022.

## 4. List of publications relating to the research topic

### 4.1 Publications in English

1. “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>]
2. “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>
3. “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)
4. “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](https://jura.ajk.pte.hu/JURA_2020_4.pdf)
5. “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.
6. “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.

### 4.2 Publications in Vietnamese

7. “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.
8. “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.