

Same-Sex Marriage and Civil Law Consequences: A Comparative Study of Indonesia and Thailand

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Abstract

This study aims to analyze and compare the legal regulation of same-sex marriage in Indonesia and Thailand and to examine its juridical implications for civil status and civil law consequences. The issue has become increasingly significant due to divergent national legal frameworks within ASEAN and growing cross-border mobility, which creates potential legal uncertainty regarding marital status recognition and the protection of civil rights. This research employs normative legal methods using statutory and comparative law approaches, based on the analysis of legislation, constitutional provisions, and relevant legal doctrines. The results show that Indonesia does not recognize same-sex marriage because marital validity is fundamentally based on religious law, resulting in the absence of civil law consequences, including marital status recognition, joint property rights, inheritance rights, and parental authority. Conversely, Thailand legally recognizes same-sex marriage through amendments to its Civil and Commercial Code, granting same-sex couples full civil rights and legal protection equivalent to heterosexual spouses. This difference reflects contrasting legal paradigms, where Indonesia emphasizes religious legitimacy as the foundation of marriage, while Thailand prioritizes civil equality and legal certainty. The novelty of this study lies in its comparative analysis of civil law consequences within ASEAN's plural legal systems. This research contributes to comparative family law scholarship and highlights the potential for transnational legal conflicts arising from inconsistent marital recognition across jurisdictions.

Keywords: Comparative Law; Civil Law Implications; Same-Sex Marriage

1. INTRODUCTION

Marriage is a legal institution that plays a fundamental role in shaping family structures and regulating civil relationships among individuals in society.¹ The existence of marriage functions not only as a social bond but also as a legal relationship that gives rise to civil rights and obligations, such as the personal status of husband and wife, the regulation of marital property, legal relations between parents and children, and inheritance rights. Therefore, the regulation of marriage always occupies a central position in the family law system of every country and is strongly influenced by religious values, morality, and the national legal policies adopted.²

The regulation of marriage in Indonesia is expressly governed by Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019. Article 1 of this law defines marriage as a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on the belief in the One and Only God. This provision normatively affirms that the Indonesian legal system recognizes marriage only

¹ Muhamad Nazar, Muhammad Sjaiful, and Zahrowati, "Legalization of Same-Sex Marriage in Terms of Islamic Law: A Comparative Study of Indonesia and Germany," *Jambura Law Review* 6, no. 1 (2024): 124–45, <https://doi.org/10.33756/jlr.v6i1.16957>.

² W. Adihartono and Ellisiah Uy Jocson, "A Comparative Analysis of the Status of Homosexual Men in Indonesia and the Philippines," *Journal of Southeast Asian Human Rights* 4, no. 1 (2020): 271–305, <https://doi.org/10.19184/jseahr.v4i1.12810>.

between a man and a woman. Furthermore, Article 2, paragraph (1), of the Marriage Law states that a marriage is valid if it is conducted in accordance with the laws of each religion and belief. Thus, the validity of marriage in Indonesia is determined not only by administrative aspects but also by religious norms, which, in principle, do not recognize or justify same-sex marriage.³

The rejection of same-sex marriage is also reflected in the 1945 Constitution of the Republic of Indonesia. Article 28B, paragraph (1), of the Constitution provides that every person has the right to form a family and to continue their lineage through a lawful marriage. The phrase “lawful marriage” in this constitutional norm is interpreted as a marriage that complies with statutory provisions and religious values applicable in Indonesia. In addition, Constitutional Court Decision Number 46/PUU-XIV/2016 implicitly affirms that the state has no constitutional obligation to recognize same-sex marriage because it contradicts the religious and cultural values of the Indonesian nation.⁴

In contrast to Indonesia, Thailand demonstrates progressive legal developments in the regulation of family law. In 2024, Thailand enacted regulations granting legal recognition to same-sex marriage through amendments to the Civil and Commercial Code of Thailand, which previously recognized marriage only between a man and a woman. Under the latest regulation, the terms “husband and wife” were replaced with the gender-neutral term “spouses,” thereby opening the possibility for same-sex couples to obtain a marital legal status equal to that of heterosexual couples. This recognition results in legal consequences in the form of equal civil rights and obligations, including marital property, inheritance rights, adoption rights, and legal protection for partners.⁵

In a broader Asian context, Thailand’s legal reform on same-sex marriage does not stand in isolation but forms part of an emerging regional trend in the development of family law. Several Asian jurisdictions have shown varying degrees of legal accommodation toward same-sex relationships, such as Taiwan, which has formally legalized same-sex marriage through constitutional interpretation and legislative enactment, Japan, which recognizes same-sex partnerships through local government initiatives, and Vietnam, which has decriminalized and partially accommodated same-sex unions within its legal framework. These developments indicate a gradual transformation of family law in parts of Asia, driven by social change, constitutional interpretation, and evolving human rights discourse, although with differing legal outcomes and intensities across jurisdictions.

³ Wan Amir Azlan Wan Haniff et al., “Transgender Rights in Accordance with Civil & Sharia Law: Malaysia and Asean Perspectives,” *International Journal of Academic Research in Business and Social Sciences* 11, no. 3 (2021): 1305–20, <https://doi.org/10.6007/ijarbss/v11-i3/8862>.

⁴ Glora Meliana Sitohang, Jinner Sidauruk, and Sovia Simamora, “Legal Analysis of the Legal Force of Mediation Results as a Dispute Resolution Method in Business Contracts (Based on Law Number 30 of 1999 Concerning Alternative Dispute Resolution),” *Journal of Legal and Cultural Analytics* 4, no. 1 (2025): 235–46, <https://doi.org/10.55927/jlca.v4i1.13878>.

⁵ Tinuk Dwi Cahyani and Fauzan Saputra, “Enhancing Mediation Skills through Legal Counseling for Indonesian Citizens in Thailand: A Case Study of PCIM Thailand” 5, no. 1 (2025): 49–60, <https://doi.org/https://doi.org/10.22219/jdh.v5i1.39222>.

The recognition of same-sex marriage in Thailand is also inseparable from a policy-driven legal reform process. The legislative amendments to the Civil and Commercial Code were preceded by extensive parliamentary debates, public consultations, and sustained advocacy by civil society organizations promoting equality and non-discrimination. Furthermore, the reform reflects the influence of constitutional discourse on equality before the law and human dignity, which increasingly shapes Thai legislative policy. This demonstrates that Thailand's recognition of same-sex marriage represents not merely a symbolic legal shift but a substantive transformation of civil law that responds to social realities and democratic participation.

Legal recognition of same-sex marriage in Thailand is based on the principle of equality before the law and the protection of human rights, as regulated in the Constitution of the Kingdom of Thailand, particularly in provisions guaranteeing the equal standing of citizens before the law without discrimination. Accordingly, the Thai state normatively places sexual orientation as part of the private rights of citizens that deserve legal protection.⁶

The fundamental differences between Indonesia and Thailand in regulating same-sex marriage give rise to significant juridical implications, particularly in the field of civil law. In Indonesia, the practice of same-sex marriage does not produce civil legal consequences; therefore, couples do not receive recognition of marital status, do not acquire joint property as regulated in Article 35 of the Marriage Law, and do not possess legal rights and obligations as husband and wife. Conversely, in Thailand, the legal recognition of same-sex marriage provides legal certainty and civil protection equivalent to that enjoyed by heterosexual couples.⁷

These implications become increasingly complex in the context of cross-border relationships, particularly when a same-sex marriage involves Indonesian and Thai nationals. Differences in legal systems may give rise to transnational legal issues, such as the recognition of marital status, conflicts of law, and the enforcement of civil legal consequences in countries that do not recognize same-sex marriage. Therefore, a comparative study is essential to understand how each country constructs its legal framework regarding same-sex marriage and the juridical implications for the protection of the parties' civil rights.⁸

From a regional perspective, the divergent regulation of same-sex marriage between Indonesia and Thailand illustrates the reality of legal pluralism within ASEAN. While ASEAN member states share geographical proximity and increasing socio-economic

⁶ Wiwin Dwi Ratna Febriyanti and Shinta Maharani Azis Putri, "Review of Transsexual Marriage Under Indonesian Civil Law," *Jambura Journal Civic Education* 4, no. 2 (2024): 490–504, <https://doi.org/https://doi.org/10.37905/jacedu.v4i2.28543>.

⁷ Ismail Marzuki and Rhama Wisnu Wardhana, "Keabsahan Perkawinan Sesama Jenis Sebagai Gejala Sosial Dalam Perspektif Hukum Alam," n.d., 299–309, <https://doi.org/https://doi.org/10.26740/jsh.v4n2.p299-309>.

⁸ Adhi Pramesti and Diah Ratna Sari Hariyanto, "Pandangan Hukum Pidana Terhadap Hubungan Sesama Jenis Di Indonesia," *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 1, no. 3 (2024): 82–91, <https://doi.org/10.62383/presidensial.v1i3.80>.

integration, family law remains deeply rooted in national legal traditions, religious values, and constitutional frameworks. This study contributes to the growing scholarly discussion on ASEAN legal pluralism by highlighting how differing normative foundations produce contrasting legal consequences for similar social phenomena. By examining Indonesia and Thailand comparatively, this article enriches the understanding of how plural legal systems within ASEAN coexist and interact in the face of transnational family relations and cross-border mobility.

Based on the foregoing, this study focuses on addressing two main issues: first, how legal provisions concerning same-sex marriage are regulated in Indonesia and Thailand; and second, what the juridical implications of same-sex marriage practices are for the recognition of legal status and civil law consequences in both countries. This research is expected to contribute to the academic development of family law and comparative law studies, as well as to serve as a reference for scholars and policymakers in understanding the dynamics of regulating same-sex marriage at the national and regional levels.

2. METHOD

This study employs normative legal research with a descriptive-analytical specification, focusing on the examination of written legal norms governing same-sex marriage and its juridical implications within the legal systems of Indonesia and Thailand. The research applies a statutory approach and a comparative law approach. The comparative analysis in this study is not intended to assess or rank which legal system is superior, but rather to understand how different legal traditions respond to similar social phenomena related to same-sex marriage. The statutory approach is used to analyze positive legal norms in Indonesia, particularly Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, relevant provisions of the 1945 Constitution of the Republic of Indonesia, and Constitutional Court decisions, as well as the Civil and Commercial Code of Thailand and related regulations that recognize same-sex marriage. The comparative law approach is employed to identify similarities and differences in legal regulation, legal status recognition, and civil law consequences of same-sex marriage in both countries. The legal materials consist of primary, secondary, and tertiary sources, where primary legal materials include legislation and court decisions, secondary materials comprise legal textbooks, scholarly journals, and previous research, and tertiary materials include legal dictionaries and encyclopedias. Data collection is conducted through library research using documentation techniques, while data analysis is carried out qualitatively through descriptive and comparative analysis based on legal reasoning, resulting in deductive conclusions that address the formulated research problems.⁹

⁹ Aziz Rahmaningsih, Kiki Amelia, And Riski Aulia Ahmad, "Perbandingan Sistem Hukum Indonesia Dengan Thailand Terkait Lgbt Dalam Perspektif Hukum Positif" 2, No. 1 (2022): 31–38, <https://doi.org/https://doi.org/10.32332/Siyasah.V2i1.5117>.

3. RESULTS AND DISCUSSION

3.1 The Concept of Marriage in the Indonesian Legal System

Marriage in the Indonesian legal system is a legal institution with juridical, religious, and sociological dimensions. This multidimensional character reflects the integration of state law and religious values within the national legal framework. Article 1 of Law Number 1 of 1974 on Marriage expressly defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and everlasting family based on the belief in the One and Only God. This formulation clearly limits the subjects of marriage to a man and a woman, leaving no interpretative space for the recognition of same-sex marriage. The wording of this provision demonstrates that Indonesian marriage law is not merely administrative but fundamentally normative and ideological, as it is grounded in the principle of belief in God (Ketuhanan Yang Maha Esa), which constitutes the first principle of Pancasila as the philosophical foundation of the state.

The validity of marriage in Indonesia is further regulated in Article 2, paragraph (1), of Law Number 1 of 1974, which provides that a marriage is valid if it is conducted in accordance with the laws of each religion and belief. Religious norms, therefore, constitute the primary requirement for marital validity. Since none of the officially recognized religions in Indonesia-Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism- recognize same-sex marriage, such unions fail to meet the substantive validity requirement. Article 2, paragraph (2), further requires registration; however, registration is merely an administrative confirmation of a substantively valid marriage. Because same-sex marriage does not fulfill the religious requirement, it cannot be registered and therefore lacks legal force within the Indonesian legal system.

Constitutionally, Article 28B, paragraph (1), of the 1945 Constitution guarantees the right to form a family through a lawful marriage. However, this right is not absolute. Article 28J, paragraph (2), allows statutory limitations based on morality, religious values, security, and public order. Within this constitutional structure, the state possesses the legitimacy not to recognize same-sex marriage. This position is reinforced by Constitutional Court Decision Number 46/PUU-XIV/2016, in which the Court emphasized that matters of morality and decency fall within the legislature's open legal policy. The Court affirmed that the Constitution does not obligate the state to recognize practices that contradict religious and cultural values. Thus, the non-recognition of same-sex marriage is structurally embedded within Indonesia's constitutional and legislative framework.

From a civil law perspective, the juridical consequences are clear. Same-sex unions do not generate the reciprocal rights and obligations of husband and wife under Articles 30–34 of the Marriage Law. The regime of joint marital property under Article 35 cannot apply, as it presupposes a legally valid heterosexual marriage. Same-sex partners do not qualify as statutory heirs under either the Civil Code or Islamic inheritance law. Nor can they be recognized jointly as lawful parents under adoption regulations. Consequently,

same-sex relationships in Indonesia produce no civil legal consequences and remain outside the protection of formal family law.

In contrast, Thailand demonstrates a reform-oriented evolution of family law. Historically, the Civil and Commercial Code recognized marriage only between a man and a woman. However, in 2024, Thailand enacted legislative amendments granting formal recognition to same-sex marriage. The reform replaced gender-specific terminology such as “husband and wife” with the gender-neutral term “spouses,” thereby restructuring the normative foundation of marriage under Thai civil law. Unlike Indonesia’s religion-centered framework, Thai marriage regulation is grounded primarily in civil law codification rather than in religious doctrine, allowing greater legislative flexibility in responding to social change.

Constitutionally, the Thai legal system places strong emphasis on equality before the law and non-discrimination. Provisions within the Constitution of the Kingdom of Thailand guarantee equal legal protection and prohibit unjust discrimination. The recognition of same-sex marriage reflects the interpretation of these equality principles within the legislative domain. Rather than positioning religion as a determining factor in marital validity, Thai law conceptualizes marriage as a civil contract regulated by statutory law. This constitutional and structural orientation has created normative space for legislative reform.

The enactment of same-sex marriage legislation in Thailand was preceded by parliamentary deliberations, public consultations, and sustained advocacy by civil society organizations. The reform, therefore, represents a policy-driven legislative process shaped by equality discourse, democratic participation, and evolving social realities. It illustrates a gradual transformation of Thai civil law, demonstrating responsiveness to human rights developments without requiring a constitutional amendment. In this respect, Thailand’s reform constitutes a significant legal milestone within Southeast Asia.

From the standpoint of civil law consequences, same-sex marriage in Thailand produces full legal effects equivalent to those of heterosexual marriage. Recognized spouses obtain rights and obligations concerning marital property, inheritance, maintenance, parental authority, and adoption in accordance with the Civil and Commercial Code. Legal certainty is ensured through registration mechanisms that confer official marital status. Thus, unlike Indonesia, Thailand fully integrates same-sex marriage into its civil law system, granting equal legal protection and enforceable rights.

The comparison between Indonesia and Thailand does not aim to determine which legal system is superior but rather to understand how different legal traditions respond to similar social phenomena. Indonesia’s framework reflects a model of religion-integrated constitutionalism in which family law is inseparable from moral and theological principles. Thailand, by contrast, reflects a civil law-oriented constitutional structure emphasizing equality and legislative adaptability. These divergent foundations produce contrasting juridical implications, particularly in the sphere of civil law rights and status recognition.

The differences become increasingly complex in cross-border contexts involving Indonesian and Thai nationals. Questions may arise concerning the recognition of marital status, conflict of laws, inheritance rights, and the enforcement of civil consequences in jurisdictions that do not recognize same-sex marriage. These issues highlight the broader reality of legal pluralism within ASEAN, where geographically integrated states maintain deeply distinct normative foundations in family law.

Accordingly, this comparative analysis demonstrates that the regulation of same-sex marriage is shaped by each country's constitutional identity, legislative policy, and socio-legal values. While Indonesia maintains a religion-centered and restrictive model, Thailand has adopted an equality-based reform model within its civil law system. The juridical implications of these divergent approaches significantly affect the recognition of legal status and the protection of civil rights within each jurisdiction.

Marriage in the Indonesian legal system is a legal institution with juridical, religious, and sociological dimensions. This is explicitly reflected in Article 1 of Law Number 1 of 1974 on Marriage, which states that marriage is a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and everlasting family based on the belief in the One and Only God. This formulation clearly limits the subjects of marriage to a man and a woman, leaving no room for interpretation that would recognize same-sex marriage. This limitation demonstrates that Indonesian marriage law is not merely administrative in nature, but also normative and ideological, as it is grounded in the principle of belief in God.

Consequently, the validity of a marriage is determined not only by the consent of the parties but also by its conformity with the religious norms and beliefs adhered to by the parties. The validity of marriage in Indonesia is expressly regulated in Article 2, paragraph (1), of Law Number 1 of 1974, which states that a marriage is valid if it is conducted in accordance with the laws of each religion and belief. This provision affirms that religious law is the primary requirement for the validity of a marriage. From the perspective of all religions officially recognized in Indonesia—Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism—none recognizes or permits same-sex marriage. Therefore, juridically, same-sex marriage cannot be considered valid because it does not fulfill the requirement of validity under religious law as mandated by statute. Furthermore, Article 2, paragraph (2), of the Marriage Law requires that every marriage be registered in accordance with applicable laws and regulations. Since same-sex marriage is not valid under religious law, it cannot be administratively registered by the state. As a result, same-sex marriage has no legal force and produces no civil legal consequences.¹⁰

Constitutionally, Article 28B, paragraph (1), of the 1945 Constitution of the Republic of Indonesia guarantees that every person has the right to form a family and to continue their lineage through a lawful marriage. This right forms part of constitutionally protected human

¹⁰ Mutiara Gita Cahyani and Muhammad Azil Maskur, "Same-Sex Marriage in the National Criminal Code" 3, no. 3 (2025): 475–89, <https://doi.org/https://doi.org/10.47268/pamali.v5i3.3276>.

rights.¹¹ However, the phrase “lawful marriage” indicates that this right is not absolute, but subject to existing statutory provisions. Limitations on human rights are further regulated in Article 28J, paragraph (2), of the Constitution, which states that, in exercising their rights and freedoms, every person must submit to limitations established by law for the purpose of ensuring recognition and respect for the rights of others and to meet moral considerations, religious values, security, and public order. Based on this provision, the state has constitutional legitimacy not to recognize same-sex marriage because it is considered contrary to religious values and public order.¹²

The rejection of same-sex marriage recognition is also affirmed through the decisions of the Constitutional Court. In Constitutional Court Decision Number 46/PUU-XIV/2016, the Court emphasized that the formation of legal norms related to morality and decency falls within the authority of the legislature as an open legal policy. The Court held that the state has no constitutional obligation to accommodate practices that contradict religious values and national culture. This decision reinforces the legal position that the regulation of same-sex marriage cannot be imposed through the interpretation of human rights, as the Indonesian legal system places religion and morality as the primary foundations of family law norms.¹³

The non-recognition of same-sex marriage in Indonesian law gives rise to significant juridical consequences in the field of civil law. Because it is not considered a valid marriage, such a relationship does not give rise to rights and obligations as regulated in Articles 30 to 34 of the Marriage Law concerning the rights and obligations of husband and wife. In addition, the provisions on joint marital property under Article 35 of the Marriage Law cannot be applied, meaning that there is no concept of community property in same-sex relationships. In terms of inheritance, same-sex partners do not have the legal status of heirs under either the Civil Code or Islamic inheritance law.¹⁴ Similarly, in matters of child adoption, same-sex couples do not meet the requirements to be recognized as lawful parents under Indonesian law. Thus, juridically, same-sex marriage practices in Indonesia are not only unrecognized but also produce no civil legal consequences. The state consistently

¹¹ Zein Nurhilmayah, m, ““Perlindungan Hukum Terhadap Nasabah Gadai Atas Barang Gadai Yang Rusak,” *Universitas Muhammadiyah Sumatera Utara Medan* 2, no. 31 (2022): 31–39, <http://repository.umsu.ac.id/handle/123456789/18412>.

¹² Aidatul Fitriyah and Muhammad Badat Alauddin, “Comparison of Islamic Law and Human Rights; Navigating Consensus of LGBT in Thailand,” *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 1 (2024): 22–37, <https://doi.org/10.35719/ijlil.v6i2.406>.

¹³ Timbo Mangaranap Sirait et al., “Menilik Akseptabilitas Perkawinan Sesama Jenis Di Dalam Konstitusi Indonesia Divine the Acceptability of Same Sex Marriage in the Constitution,” 2017, <https://doi.org/https://doi.org/10.5281/zenodo.7970102>.

¹⁴ Sonia Nahda, Emy Hajar Abra, and Pristika Handayani, “Pelaksanaan Mediasi Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi” *Jurnal USM Law Review* 8, no. 3 (2025): 7–9, <https://doi.org/10.26623/julr.v8i2.12696>.

positions marriage as a legal institution that can only be entered into by opposite-sex couples, in accordance with religious values, morality, and public order.¹⁵

3.2 Juridical Implications of Same-Sex Marriage Practices in Indonesia and Thailand

The juridical implications of same-sex marriage practices in Indonesia and Thailand cannot be understood merely as differences in statutory formulation. They reflect deeper normative orientations, constitutional philosophies, and legal traditions that shape how each state conceptualizes marriage, family, and the relationship between law, morality, and social change. A comparative examination of both jurisdictions reveals that the recognition or non-recognition of same-sex marriage generates comprehensive consequences across the domains of personal status, property relations, inheritance, parental authority, and legal certainty, including implications that extend into transnational contexts.

Within the Indonesian legal system, marriage is constructed as a religiously grounded legal institution. Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, establishes that the validity of marriage depends on its conformity with the laws of the respective religions of the parties. This formulation places religious doctrine not merely as a cultural consideration but as a constitutive legal requirement. The state does not independently define marriage in purely civil terms; instead, it adopts a model in which religious legitimacy determines legal validity. In such a framework, the absence of religious recognition automatically entails the absence of legal recognition.

Since no officially recognized religion in Indonesia permits same-sex marriage, such unions cannot fulfill the substantive requirement of validity under Article 2, paragraph (1), of the Marriage Law. The consequence is not limited to administrative non-registration. Rather, the relationship lacks juridical existence as a marriage within the Indonesian legal order. Article 2, paragraph (2), which requires the registration of marriages, operates only after substantive validity has been established. Where validity is absent, registration cannot cure the defect. The non-recognition of same-sex marriage is therefore grounded in both the substantive and procedural dimensions of the legal framework.

The implications of this non-recognition extend comprehensively into the sphere of marital rights and obligations. Indonesian marriage law regulates reciprocal duties between spouses, including mutual respect, support, fidelity, and responsibility for the household. These rights and obligations are premised on the existence of a lawful marital bond. In the absence of such a bond, same-sex partners cannot invoke statutory protections relating to maintenance, financial support, or claims arising from marital misconduct. The law does not conceptualize their relationship as a family unit deserving specific protection; instead, it is treated as a private association without family law status.

This legal positioning produces significant consequences in the domain of property relations. Indonesian law recognizes the concept of joint marital property, whereby assets

¹⁵ Muhammad Ridho Rahman, "Same-Sex Marriage: A Comparative Study of Indonesian, Netherlands, And American Legal Regulations and Their Socio-Legal Implications Muhammad" 32, no. 3 (2021): 167–86, <https://doi.org/https://doi.org/10.18592/jils.v9i2.17826>.

acquired during marriage become common property unless otherwise agreed upon through a prenuptial arrangement. The regime of community property is designed to ensure fairness and legal certainty between spouses. However, because same-sex unions are not recognized as marriages, the automatic presumption of joint property does not arise. Property acquired during the relationship remains individually owned, subject only to general civil law principles governing co-ownership or contractual agreements.

The absence of a marital property regime exposes same-sex partners to legal vulnerability. In the event of separation, there is no statutory framework governing equitable distribution. Claims must be based on proof of contribution, contractual arrangements, or general tort principles. This creates evidentiary burdens and uncertainty that do not apply to legally married couples. The structural exclusion from marital property protections underscores how non-recognition affects not merely symbolic status but also tangible economic rights.

Inheritance law further illustrates the far-reaching consequences of non-recognition. Under the Indonesian Civil Code, lawful spouses occupy a recognized position among statutory heirs. Islamic inheritance law similarly presupposes the existence of a valid marriage as a condition for spousal succession rights. Because same-sex marriage lacks validity, partners cannot inherit as spouses. They may only inherit through testamentary dispositions, subject to limitations imposed by mandatory heirship rules. In practice, this significantly weakens the economic security for surviving partners and may result in property passing to biological relatives rather than to the person with whom the deceased shared a long-term relationship.

Parental status and child-related rights are likewise affected. Indonesian law defines a legitimate child as one born within a valid marriage. The legal structure presupposes a father and a mother linked by lawful matrimony. Same-sex couples cannot jointly acquire parental status through marriage. Adoption regulations also reflect assumptions regarding heterosexual marital units. As a consequence, same-sex partners are unable to obtain full legal recognition as joint parents. The absence of parental recognition affects custody rights, guardianship authority, inheritance rights, and the legal identity of children within the family framework.

The cumulative effect of these exclusions is that same-sex relationships in Indonesia remain entirely outside the protective architecture of family law. The state's approach reflects a normative commitment to a religiously informed conception of marriage, reinforced by constitutional interpretations emphasizing belief in God and moral order. Constitutional discourse in Indonesia has consistently upheld the existing definition of marriage, framing it as aligned with religious values and societal norms. In this paradigm, marriage functions not only as a civil contract but also as a moral and religious institution integral to the national identity.

In contrast, Thailand has undergone a legislative transformation that integrates same-sex marriage into its civil law system. Amendments to the Civil and Commercial Code

replace gender-specific terminology with gender-neutral language, thereby redefining marriage as a union between two persons rather than between a man and a woman. This reform reflects a legal philosophy grounded in civil equality and non-discrimination. Marriage in Thailand is conceptualized primarily as a civil institution regulated by statutory law rather than as a religiously dependent status.

The recognition of same-sex marriage in Thailand produces comprehensive juridical consequences equivalent to those applicable to heterosexual couples. Upon registration, same-sex spouses acquire full legal status as married persons. This status carries reciprocal rights and obligations concerning cohabitation, mutual assistance, and fidelity. The law provides mechanisms for maintenance, divorce, and protection against domestic harm, applicable without distinction based on gender composition. The civil law framework treats marriage as a source of enforceable legal rights rather than as a religiously conditioned privilege.

Property relations within Thai marriage law are governed by a structured regime distinguishing between personal property and marital property. Assets acquired during marriage are presumed to constitute joint marital property unless otherwise specified in a prenuptial agreement. The recognition of same-sex marriage automatically activates this regime. Legal certainty in cases of dissolution or death is thereby ensured through clear statutory guidelines. The inclusion of same-sex couples within this regime eliminates the disparities that would otherwise arise from contractual uncertainty.

Inheritance law in Thailand reflects the integration of same-sex spouses into the statutory succession system. A lawful spouse occupies a defined position among the heirs and is entitled to inherit alongside descendants and other relatives. Recognition of same-sex marriage ensures that surviving spouses are protected from economic marginalization. The legal standing of same-sex spouses as heirs embodies the principle that marital status, once lawfully established, carries uniform consequences irrespective of gender configuration.

Parental and adoption rights have likewise been extended to same-sex couples in Thailand. The law permits joint adoption by married couples without gender restriction. Legal recognition as parents provides certainty regarding guardianship, custody, and inheritance rights for children. This approach reflects a policy orientation that prioritizes equality and child welfare within a civil law framework. By integrating same-sex couples into existing family law institutions rather than creating parallel structures, Thailand reinforces the principle of equal treatment.

The divergence between Indonesia and Thailand is therefore not merely technical but paradigmatic. Indonesia adheres to a model in which religious legitimacy constitutes the foundation of marital validity. Thailand embraces a civil equality model in which legislative reform responds to evolving understandings of human rights and social diversity. Each model reflects distinct constitutional cultures and socio-legal contexts.

These differing paradigms generate complex implications in cross-border situations. A marriage validly registered in Thailand may involve Indonesian nationals or produce legal

consequences affecting property located in Indonesia. However, Indonesian law does not recognize the marital status of same-sex spouses, leading to potential conflicts of law. Questions may arise regarding the recognition of marital status for inheritance, property division, or parental rights. The absence of harmonization within ASEAN regarding family law intensifies these uncertainties.

The comparative analysis demonstrates that recognition or non-recognition of same-sex marriage influences not only domestic family law but also regional legal interaction. Within ASEAN, legal pluralism manifests in diverse approaches to marriage regulation. Thailand's reform aligns it with jurisdictions that recognize marriage equality, while Indonesia maintains a religiously anchored framework. This diversity reflects the broader phenomenon of legal pluralism in Southeast Asia, where civil law, religious law, and customary norms coexist within national systems.

The purpose of this comparative examination is not to evaluate which legal system is superior. Rather, it seeks to understand how different legal traditions respond to similar social phenomena through distinct normative lenses. Indonesia's approach emphasizes continuity with religious and moral foundations. Thailand's approach emphasizes equality and civil rights within a secular legislative structure. Both systems aim to maintain social order and legal coherence in accordance with their respective constitutional identities.

The juridical implications of same-sex marriage practices thus illuminate broader questions concerning the role of law in mediating social change. In Indonesia, the law functions as a guardian of religiously informed norms. In Thailand, the law functions as an instrument for promoting equality and for adapting to evolving conceptions of rights. These orientations shape the scope of civil protection, the allocation of economic rights, and the recognition of family status.

Legal certainty emerges as a central theme in this comparison. In Indonesia, certainty derives from adherence to established religious norms embedded in statutory law. In Thailand, certainty derives from inclusive statutory definitions that ensure uniform application. For individuals whose relationships fall within the recognized category, each system provides internal coherence. However, divergence between systems generates uncertainty in transnational contexts.

Ultimately, the juridical implications of same-sex marriage practices in Indonesia and Thailand reveal the intersection of law, morality, religion, and human rights in contemporary Southeast Asia. The comparison underscores how legal systems grounded in different normative foundations can produce markedly different civil consequences in response to the same social reality. Such analysis contributes to a deeper understanding of comparative family law and highlights the significance of constitutional culture in shaping the evolution of marriage regulation within ASEAN.

Within the Indonesian legal system, same-sex marriage practices do not receive legal recognition because they conflict with prevailing normative provisions. The non-recognition of same-sex marriage directly results in the absence of civil legal consequences that

ordinarily attach to a valid marriage. Under Article 2, paragraph (1), of the Marriage Law, the validity of marriage depends on religious law. Since no religion recognizes same-sex marriage, such relationships are legally invalid. Consequently, the state cannot register such marriages as required under Article 2, paragraph (2), of the Marriage Law, and no legal status as husband and wife is created.¹⁶

The structure of Indonesian marriage regulation demonstrates that religious legitimacy constitutes the substantive foundation of marital validity. The state does not independently construct a purely civil definition of marriage detached from religious doctrine. Rather, the legal system integrates religious norms into statutory law, making conformity with religious teachings a prerequisite for legal recognition. In this framework, the absence of religious approval not only affect ceremonial aspects of marriage but also determines its juridical existence. A union that does not comply with religious law is considered void in the eyes of the state, and administrative registration cannot remedy this substantive defect.

A further implication of this invalidity is the inapplicability of the provisions on the rights and obligations of spouses under Articles 30 to 34 of the Marriage Law. Parties in same-sex relationships have no legally recognized obligations of maintenance, protection, loyalty, or shared household responsibility. Indonesian family law conceptualizes marriage as a legally structured partnership between a husband and a wife, with clearly defined reciprocal duties. Because same-sex unions do not qualify as marriages under statutory law, the protective framework governing spousal relations cannot be invoked. Such relationships are therefore treated as private interpersonal arrangements without formal family law protection.

The absence of legal recognition also produces significant consequences in the sphere of property law. Article 35 of the Marriage Law establishes that property acquired during the marriage becomes joint marital property unless otherwise stipulated in a prenuptial agreement. This regime is designed to ensure fairness, economic balance, and legal certainty between spouses. However, because same-sex marriage is not recognized, the provisions on joint marital property do not apply. Any property acquired during the relationship remains the personal property of each party, unless proven otherwise through a separate civil agreement, such as a cooperation or partnership agreement under the Civil Code. In practice, this creates evidentiary burdens and potential disputes, because the law does not presume shared ownership.

In inheritance law, the consequences are equally significant. Article 832 of the Civil Code defines heirs as blood relatives and lawful spouses. Because same-sex marriage is legally invalid, no inheritance rights arise between the parties. A surviving partner cannot claim inheritance status as a spouse and may only receive property through testamentary disposition, subject to limitations imposed by forced heirship rules. Under Islamic

¹⁶ Cinta Annata Nurhan et al., "An International Civil Law Approach to the Legal Certainty of Same-Sex Marriage with Differences in Citizenship (Case Study of Ragil Mahardika and Fred Vollert Frederik)," *Journal of Legal and Cultural Analytics* 2, no. 4 (2023): 263–70, <https://doi.org/10.55927/jlca.v2i4.6919>.

inheritance law, heir status is likewise impossible because the requirement of a valid marriage is not fulfilled. The absence of automatic inheritance rights underscores how non-recognition affects not only symbolic status but also economic security and long-term protection.

Same-sex couples also cannot be recognized as lawful parents within the Indonesian legal system. Article 42 of the Marriage Law requires a valid marriage between a father and a mother for parental status. The statutory language presupposes heterosexual marriage as the foundation of legitimate parentage. Consequently, same-sex partners cannot jointly obtain parental recognition based on marriage. This affects guardianship rights, the legal representation of children, and inheritance relationships. Adoption regulations similarly reflect assumptions regarding heterosexual marital units, further limiting the possibility of joint parental recognition. Therefore, same-sex marriage practices in Indonesia are not only unrecognized but also receive no form of civil legal protection within the framework of family law.

The Indonesian approach reflects a religious-normative paradigm that places moral and theological considerations at the core of marriage regulation. Marriage is regarded not merely as a civil contract but as a sacred institution embedded in religious doctrine and national ideology. Constitutional interpretations have reinforced this understanding by emphasizing belief in God and the preservation of moral order as foundational principles of the state. In this paradigm, the law functions as a guardian of established religious values. Legal certainty is achieved through consistency with religious norms, even if such consistency results in the exclusion of certain forms of relationships from legal recognition.¹⁷

In fundamental contrast to Indonesia, Thailand provides legal recognition of same-sex marriage through regulatory amendments to the Civil and Commercial Code of Thailand. This recognition gives rise to juridical implications in the form of equal legal status and civil consequences for same-sex couples and heterosexual couples. With the recognition of same-sex marriage, couples obtain legal status as lawful spouses. This status gives rise to equal civil rights and obligations, including mutual support obligations, household responsibilities, and legal protection within family relationships as regulated under Thai civil law.¹⁸

The Thai reform should not be interpreted solely as a normative shift grounded in abstract equality or non-discrimination principles. Although equality before the law constitutes an essential constitutional foundation, Thai legislative policy and legal

¹⁷ Sabrina Salsabila, "Implikasi Prinsip Non Diskriminasi Terhadap Kelompok LGBT Perspektif Hukum Positif Dan Hukum Islam Di Indonesia" 4, no. 1 (2023): 38–40; Yiu Tung Suen, "Same-Sex Marriage in Asia: Understanding Intra-Regional Differences in Development," *Journal of Family Theory and Review* 17, no. 2 (2025): 265–83, <https://doi.org/10.1111/jftr.12628>.

¹⁸ Difa Fibra Aisyah, "Rewang Rencang : Jurnal Hukum Lex Generalis. Vol.4. No.6 (2023) Tema/Edisi : Hukum Keluarga (Bulan Keenam) <https://Jhlg.Rewangrencang.Com/>" 4, no. 6 (2023): 1–16, <https://doi.org/10.4337/jclsj.2024.00012>.

scholarship also emphasize the objectives of legal certainty, institutional coherence, and social stability as central rationales for recognition. This reform responds to longstanding legal ambiguities that previously placed same-sex couples in a position of juridical uncertainty, particularly in relation to marital property regimes, inheritance rights, medical decision-making authority, and family responsibility. By formally incorporating same-sex couples into the existing civil marriage framework rather than creating a separate legal category, Thai law strengthens the coherence of family law regulation and eliminates fragmentation in legal status. Consequently, the reform not only affirms equal legal recognition but also functions as a structural mechanism to enhance predictability, prevent disputes arising from uncertain legal standing, and reinforce the stability of civil law relations within the broader framework of family and property law.

In terms of property, the recognition of same-sex marriage activates the application of marital property regimes under Thai law. Property acquired during the marriage is considered joint marital property unless otherwise stipulated in a prenuptial agreement. This provides legal certainty in the division of property in the event of divorce or the death of one spouse. Before recognition, same-sex couples often relied on contractual arrangements that lacked the comprehensive protections afforded by marital property law. The reform eliminates this gap by ensuring that the presumption of joint ownership applies equally. This pragmatic dimension of the reform enhances predictability and reduces litigation risks.

In the field of inheritance law, same-sex spouses in a valid marriage have legal standing as heirs under Thai law. Such recognition ensures economic protection for the surviving spouse and prevents disputes among family members regarding succession rights. The inclusion of same-sex spouses within statutory heir categories reflects a legislative effort to prevent legal ambiguity and social instability that could arise from contested inheritance claims. Rather than creating a separate or limited status, Thai law integrates same-sex marriage into the existing inheritance structure, thereby promoting coherence and administrative efficiency.

Moreover, in matters of adoption and child care, same-sex couples in Thailand have equal rights to adopt children and are recognized as lawful parents. This recognition provides certainty regarding the legal status of children and the protection of children's rights within the family. The reform acknowledges that legal ambiguity in parental status can undermine child welfare and create instability. By granting full parental recognition, Thai law prioritizes clarity and responsibility in family relationships.

The Thai approach also reflects an effort to harmonize traditional social values with modern legal equality. Thailand's legal culture is influenced by Buddhist principles and longstanding social norms that emphasize family harmony and social order. The reform does not seek to eradicate cultural traditions but rather to adapt civil law to contemporary realities while maintaining social cohesion. Legislative discourse has framed recognition as a means of strengthening families by ensuring responsibility, accountability, and protection in legally

recognized unions. In this sense, the reform is context-sensitive rather than purely ideological.

The paradigm adopted by Thailand may therefore be characterized as legally pragmatic. The recognition of same-sex marriage functions as a mechanism to prevent legal uncertainty in property relations, inheritance disputes, hospital visitation rights, financial decision-making, and family obligations. By clarifying status, the law reduces administrative complexity and enhances public confidence in the legal system. Social stability is reinforced when individuals understand their rights and responsibilities within a coherent legal framework.¹⁹

A comparison between Indonesia and Thailand reveals a significant difference in legal paradigms. Indonesia adheres to a religious-normative paradigm that places religious and moral values as the primary foundation of marriage regulation. As a consequence, same-sex marriage is not recognized and produces no civil legal effects. Thailand adopts a civil law paradigm oriented toward equality, legal certainty, and pragmatic governance. Such recognition produces comprehensive legal protection in all aspects of civil law while seeking to maintain social harmony.

These differences have direct implications for legal certainty, particularly in cross-border contexts. Same-sex marriages that are legally valid in Thailand have no legal force in Indonesia. This divergence may generate conflicts of norms in cases involving mixed-nationality couples, cross-border property ownership, the inheritance of assets located in different jurisdictions, or parental rights affecting children residing across borders. The absence of harmonized family law standards within ASEAN intensifies these complexities and illustrates the broader phenomenon of legal pluralism in the region.²⁰

A comparison between Indonesia and Thailand reveals a significant difference in legal paradigms. Indonesia adheres to a religious-normative paradigm that places religious and moral values as the primary foundation of marriage regulation. As a consequence, same-sex marriage is not recognized and produces no civil legal effects.²¹ In contrast, Thailand adopts a civil rights and legal equality paradigm that places the principle of non-discrimination as the basis for recognizing same-sex marriage.²² This paradigm results in comprehensive legal protection for same-sex couples in all aspects of civil law. These differences have direct implications for legal certainty, particularly in cross-border contexts. Same-sex marriages that are legally valid in Thailand have no legal force in Indonesia, thereby giving rise to conflicts of norms and potential legal uncertainty for the parties involved.

¹⁹ Zaida Hayati et al., “Legal Theory Pengakuan Perkawinan Sesama Jenis: Komparasi,” 2025, 1496–1507, <https://doi.org/10.1080/20507828.2025.0000004>.

²⁰ Minh Trang Nguyen and Nhat Hieu Mai, “Legalization of LGBT Marriage: Case Study from Vietnam,” *Social Science and Humanities Journal* 8, no. 10 (2024): 5247–58, <https://doi.org/10.18535/sshj.v8i10.1388>.

²¹ Douglas Sanders, “Sex and Gender Diversity in Southeast Asia,” *Journal of Southeast Asian Human Rights* 4, no. 2 (2020): 357–405, <https://doi.org/10.19184/jseahr.v4i2.17281>.

²² Nazar, Sjaiful, and Zahrowati, “Legalization of Same-Sex Marriage in Terms of Islamic Law: A Comparative Study of Indonesia and Germany.”

4. CONCLUSION

Based on the comparative analysis, this study concludes that the legal regulation and civil law implications of same-sex marriage in Indonesia and Thailand reflect fundamentally different legal paradigms rooted in their respective constitutional, religious, and legislative frameworks. In Indonesia, marriage is constructed as a religiously based legal institution, where its validity depends on conformity with religious law as stipulated in Law Number 1 of 1974 on Marriage. Consequently, same-sex marriage is legally invalid and produces no civil law consequences, including marital status recognition, joint property rights, inheritance rights, or parental status. In contrast, Thailand recognizes same-sex marriage through amendments to its Civil and Commercial Code, redefining marriage as a gender-neutral civil institution. This recognition grants same-sex couples full civil rights and obligations equivalent to heterosexual spouses, including legal protection in property, inheritance, and family relations. These differences not only demonstrate the influence of constitutional identity and socio-legal values in shaping family law but also create potential legal uncertainty in cross-border contexts, particularly regarding the recognition of marital status and civil rights. This study contributes to comparative family law discourse by highlighting how divergent legal systems respond to similar social phenomena and underscores the importance of understanding constitutional culture in addressing transnational legal issues within the ASEAN region.

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