

**Same-Sex Marriage Across Cultures:
Contrasting Perspectives Between Proponent and Opponent Countries**

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ABSTRACT

This study examines the intricate social dynamics surrounding the legalization and rejection of same-sex marriage across various countries, particularly through the interplay of moral and ethical values, social norms, and formal state laws. Methodologically, this study adopts normative juridical research and relies on secondary sources of data, including primary, secondary, and tertiary legal materials. A comparative method is employed to contrast and contextualize diverse legal and socio-political perspectives. The data, collected through extensive library research, are analysed using a qualitative analytical framework. This study identifies two central points of focus. First, the factors that distinguish the perspectives of proponent and opponent countries regarding same-sex marriage. Second, the variables influencing the strengthening or weakening of support for same-sex marriage within different national and cultural contexts. Generally, proponent countries emphasize adherence to universal human rights instruments, including the recognition of same-sex marriage, while opponent countries often rely on contextual interpretations shaped by cultural and religious values. The findings of this study reveal five key factors that account for the differing perspectives on same-sex marriage: the enduring debate between universality versus relativity of human rights, differing ideological orientations, contrasting conceptions of the relationship between state and religion, varied constructions of moral benchmarks upheld by states, and the distinctive national legal frameworks adopted. In addition, five further determinants are identified as shaping the intensity of public and legal support: prevailing societal values (individualistic or communal), judicial decisions, the presence of civil society movements, the influence of public figures, and the broader national objectives pursued.

Penelitian ini mengkaji suatu dinamika di masyarakat yang tergolong rumit, yaitu seputar legalisasi dan penolakan perkawinan sesama jenis di berbagai negara, khususnya dilihat dari sudut pandang nilai-nilai moral dan etika, norma sosial, dan hukum formal negara. Penelitian ini merupakan penelitian yuridis normatif yang menggunakan data sekunder mulai dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Pendekatan yang digunakan adalah pendekatan komparatif. Data yang dikumpulkan secara studi pustaka kemudian diolah dengan analisis kualitatif. Penelitian ini mengidentifikasi dua fokus utama, yaitu faktor-faktor yang membedakan perspektif negara-negara pendukung dan negara-negara penentang terkait perkawinan sesama jenis, dan faktor-faktor yang memberi pengaruh atas menguat atau melemahnya semangat yang mendukung perkawinan sesama jenis. Negara-negara pendukung umumnya setuju dan menjunjung tinggi implementasi universal instrumen hak asasi manusia internasional, termasuk legalisasi perkawinan sesama jenis,

sementara negara-negara penentang memiliki persepsi lain dengan menerapkan pendekatan kontekstual berdasarkan nilai-nilai budaya dan agama. Dari hasil penelitian diungkapkan lima faktor kunci yang menjelaskan perbedaan perspektif tentang perkawinan sesama jenis, yang terdiri dari bertahannya konsep universalitas versus relativitas hak asasi manusia, adanya perbedaan terkait orientasi ideologis, berbedanya pandangan terkait posisi negara terhadap agama, adanya perbedaan konstruksi berkaitan dengan tolok ukur moral yang dipegang negara, dan kerangka hukum nasional yang dirumuskan negara. Selain itu, diungkapkan juga mengenai lima faktor yang diidentifikasi memengaruhi intensitas dukungan publik dan hukum dalam perkawinan sesama jenis, di antaranya terkait nilai-nilai masyarakat yang berlaku (individualistis atau komunal), hadirnya keputusan pengadilan, eksistensi gerakan masyarakat sipil, pengaruh dari tokoh-tokoh terkenal, dan rumusan tujuan yang lebih luas yang dikejar oleh negara.

Keywords: *Same-Sex Marriage, Cross-Cultural, Countries Supporting, Countries Opposing.*

A. INTRODUCTION

The phenomenon of same-sex marriage has gained increasing global recognition across multiple regions. The Netherlands pioneered this development when it became the first nation to legalize same-sex marriage at the national level on April 1, 2001. In subsequent years, numerous countries have followed by enacting similar legislation. Sumaila et al. (2024) highlight that related activities have grown steadily, as reflected in the proliferation of media campaigns promoting awareness and acceptance. Likewise, Abidin et al. (2024) observe that since the Netherlands' legalization, more than thirty jurisdictions have adopted comparable laws permitting same-sex couples to marry. By 2025, approximately 39 countries across Europe, North America, South America, Africa, Asia, and Oceania had formally recognized same-sex marriage. This expansion, whether occurring incrementally or rapidly, underscores a broader global trend toward legal acknowledgment and social inclusion.

Nonetheless, the majority of states worldwide have yet to extend such recognition, illustrating the persistence of cultural and ideological resistance. For instance, Baldwin (2024) notes that among the G7 countries, Japan remains the sole state that has not legalized same-sex marriage or civil unions. This divergence reflects an emerging polarization between advocates and opponents of reform. Proponents are represented by states that have formally recognized same-sex marriage, as evidenced by Pew Research Center (2025), which lists the Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, France, Brazil, Uruguay, the United Kingdom, New Zealand, Luxembourg, Ireland, the United States, Colombia, Finland, Malta, Germany, Australia, Austria, Taiwan, Ecuador, Costa Rica, Chile, Switzerland, Slovenia, Mexico, Cuba, Andorra, Estonia, Greece, Nepal, Liechtenstein,

and Thailand. In contrast, resistance remains entrenched in states that continue to withhold legal recognition.

In examining the phenomenon of same-sex marriage, it is essential to first consider the foundational concept of marriage itself. Popoola et al. (2024) identify marriage as the world's oldest institution. According to Haviland et al. (2010), marriage—also referred to as matrimony or wedlock—is a socially or ritually recognized union or legal contract between spouses that establishes a set of rights and obligations between the partners themselves, their children, and their extended families. As a cultural universal, marriage is present across all societies, historically depicted as a union between a man (husband) and a woman (wife), both socially and legally. This understanding of marriage is commonly referred to as the traditional model of marriage.

From a religious perspective, within Christianity, the Bible (Genesis 2:18, King James Version) holds that God instituted marriage, while Leviticus 18:22 explicitly condemns same-sex relations as immoral. In Islam, Muhammad Abu Zahrah, as cited in Syed (2022), emphasizes that marriage is divinely ordained by Allah, constituting a lawful union between a man and a woman, founded on mutual consent and encompassing mutual rights and responsibilities. Ibn Uthaimen, also cited in Syed (2022), further explains that the objectives of marriage include mutual enjoyment, the formation of a pious family, and the establishment of a morally sound society.

Similarly, Stone & Stone (1939) define marriage as a personal association between a man and a woman rooted in biological complementarity for mating and reproduction. But marriage is not merely a sexual relationship, but a parental association. It is the union of a male and a female for the production and care of offspring and reproduction. Consequently, the legal concept of marriage has historically been framed as a heterosexual institution, recognizing only unions between opposite-sex partners. As a result, homosexual conduct—including same-sex partnerships—was criminalized in many countries for centuries. This perspective has also been upheld in legal decisions, such as *Juliet Joslin et al. v. New Zealand*, Communication No. 902/1999, Doc. A/57/40 at 214 (2002) and *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), where same-sex relationships were rejected and deemed immoral by the courts.

In response to the fragmentation between the two groups of states, as previously discussed, this study adopts an analytical framework that compares the divergent perspectives of countries that have embraced same-sex marriage with those that continue to reject its legalization. This study aims to investigate the fundamental foundations that shape their divergent views and policy positions—particularly about human rights, which is closely linked to this phenomenon—even extending the inquiry to the level of philosophical reflection. Accordingly, this study aims to examine the factors that differentiate the perspectives of countries that have legalized same-sex

marriage from those that have not. It will also explore the driving forces behind, as well as the diminishing influences on, the spirit of same-sex marriage recognition.

With its well-defined objectives, this study aspires to contribute to the academic body of knowledge by offering broad insights that foster critical and reflective thinking. In addition, the findings are expected to have practical applications in responding to the phenomenon of same-sex marriage as it appears across diverse societies. This aspiration is rooted in the broader goal of enhancing human intellectual and moral capacity, encouraging individuals to exercise reason and discernment so as not to fall prey to misleading constructs or self-deception.

In the work of Hayati et al. (2025), a comparative analysis is presented regarding the recognition of same-sex marriage in the Netherlands and Indonesia, specifically highlighting the differing stances of the two countries in responding to the phenomenon of same-sex unions. This study employs the triangular concept within the framework of legal pluralism theory as its analytical framework. Legal pluralism emerges as a critique of the globalist assumption that the world will eventually conform to a single, unified system of rules, culture, or law, despite the evident reality that globalization has not erased the deep-rooted historical and cultural traditions that shape diverse legal orders. Law, therefore, should not be understood merely as the diversity of formal state laws, but also as the legal practices and behaviours of various social groups across different nations. Law is a global phenomenon that exhibits similarities across jurisdictions, yet remains culturally specific. According to the theory of legal pluralism, law is composed of three key elements: moral values, social norms, and formal legal norms. Each of these is subject to cultural variation, often influenced by religious beliefs and customary practices, thus reinforcing the inherently plural nature of law. Consequently, it is a significant conceptual error to analyse legal phenomena within pluralistic societies from a singular, monolithic perspective.

This issue is further complicated by the persistent absence of consensus among jurists and human rights scholars concerning the definition of “human rights,” which remains shaped by specific ideological and cultural frameworks. As Perry (2020) asserts, the term “human rights” lacks a canonical or universally accepted meaning. Despite extensive discourse in the fields of law, politics, philosophy, and international relations, no single definition or formulation has been collectively endorsed. Consequently, the concept of human rights is often constructed by the epistemological assumptions of particular worldviews.

B. METHOD

This study employs a normative juridical method, as defined by Soekanto & Mamuji (2015), which involves legal inquiry conducted exclusively through the examination of library materials and secondary sources. Such inquiry encompasses the

study of legal principles, legal systematics, the degree of vertical and horizontal synchronization of norms, comparative law, and legal history. The secondary data employed comprises primary, secondary, and tertiary legal materials, including statutory provisions, prior research, scholarly books, peer-reviewed journals, legal dictionaries, and reliable internet resources relevant to the subject matter of this article. The study employs a comparative approach, investigating ideological, cultural, sociological, and legal distinctions between states that endorse same-sex marriage and those that oppose it, with a particular focus on the extent of implementation of international human rights instruments related to same-sex marriage. To enrich its analytical framework, the research further integrates philosophical, political, and cultural perspectives. Data collection was conducted through literature review and documentary analysis. The materials gathered were subsequently examined using a qualitative analytical method, as described by Salim & Nurbani (2016), which involves the systematic study of legal and documentary sources to synthesize findings and provide answers to the formulated research questions.

C. RESULTS AND DISCUSSION

1. Perspectives on the Recognition and Rejection of Same-Sex Marriage

From a historical standpoint, Katz (2021) observes that the term “homosexual” was first articulated in 1868 by Karl Maria Kertbeny in a private letter addressed to Karl Heinrich Ulrichs. The term was deliberately coined as part of Kertbeny’s opposition to the Prussian Sodomy Law, which criminalized same-sex relations and reflected the stigmatization of non-heteronormative identities during that period. By introducing new terminology, Kertbeny sought to shift the discourse from moral condemnation to a more neutral, descriptive, and ultimately scientific framing. In subsequent decades, the term gradually entered scholarly, medical, and legal vocabularies, thereby influencing debates on sexuality. Oetomo (2001) further defines a homosexual as an individual who experiences enduring sexual attraction toward persons of the same sex, highlighting both the personal and social dimensions of the concept. Within this context, the contemporary controversy surrounding same-sex marriage fundamentally stems from the challenge of integrating homosexual relationships into the institution of marriage, an institution that has traditionally been embedded in a heteronormative framework emphasizing heterosexual unions.

The concept of marriage as articulated in Article 16 of the Universal Declaration of Human Rights (UDHR) affirms that: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution; (2) Marriage shall be entered into only with the free and full consent of the intending spouses; (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State (UDHR, 1948).

Some interpretations argue that this provision does not explicitly define marriage as a union between a man and a woman. Instead, it merely asserts that men and women of full age possess the right to marry and establish a family, without further specification regarding the gender composition of the couple. As such, this ambiguity is viewed by some as inclusive of both heterosexual and same-sex unions. Consequently, it is claimed that states prohibiting same-sex marriage violate Article 16, as such prohibitions constitute discrimination based on sexual orientation.

Furthermore, Article 7 of the UDHR states that all individuals are equal before the law and are entitled without any discrimination to equal protection of the law. This article reinforces the idea that legal protection should be extended equally, without exclusion or incitement to discrimination. Similarly, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) obligates state parties to guarantee the rights enshrined in the Covenant to all individuals without distinction of any kind, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Article 26 of the ICCPR further reinforces this by stating that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law (ICCPR, 1966).

Neither the UDHR nor the ICCPR explicitly limits the institution of marriage to heterosexual couples. There are no definitive legal characteristics within these documents that can be invoked to justify the exclusion of same-sex couples from marriage rights. Article 23 of the ICCPR outlines the following principles: (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State; (2) The right of men and women of marriageable age to marry and to found a family shall be recognized; (3) No marriage shall be entered into without the free and full consent of the intending spouses; (4) States Parties must take appropriate measures to ensure equality of rights and responsibilities between spouses during marriage and upon its dissolution, including provisions for the protection of any children in the event of dissolution. While the article refers to “men and women,” it does not explicitly preclude the recognition of same-sex marriage, leaving room for broader interpretations in line with evolving understandings of human rights and non-discrimination.

One of the primary factors underlying divergent perspectives on same-sex marriage is the debate surrounding the universality versus the relativity of human rights. The roots of this enduring issue can be traced to the establishment of the United Nations (UN) in 1945, which was founded on a collective commitment to the recognition and advancement of fundamental human rights—an idea heavily influenced by the modern concept of human rights, articulated initially by Britain, France, and the United States, emphasizing their inherent, universal, and inalienable nature as widely embraced by Western nations. From the outset, it was noted that all

member states—regardless of their size or historical record in upholding human rights—were expected to respect and advance the Organization’s objectives of ensuring universal respect for and observance of human rights and fundamental freedoms for all, without discrimination based on race, sex, language, or religion. Member states solemnly pledged to undertake both joint and individual efforts in cooperation with the UN to realize this commitment.

Through its various instruments, the UN has established itself as a central authority in the development of international human rights law. It has introduced normative standards intended to be applied across nations, thereby positioning itself as a global reference point for human rights protection. The UN has played a crucial role in shaping the conceptual and legal substance of “human rights” and “fundamental freedoms,” laying the groundwork for their progressive interpretation and application in international discourse.

Although the discourse on the universality and relativism of human rights is frequently presented through a binary lens opposing Western and non-Western (mainly Asian and African) nations, this study consciously avoids endorsing such a rigid geographical dichotomy, while acknowledging that it cannot be entirely disregarded. It avoids assuming that universalist views are exclusive to Western nations or that cultural relativism is inherent to Asian and African states. This distinction becomes increasingly blurred because several Asian and African countries have legalized same-sex marriage, while some Western countries continue to oppose its legalization. Such developments suggest that the conventional binary framing of the issue is not entirely accurate or universally applicable.

An examination of states that have legalized same-sex marriage reveals that the most significant proportion is concentrated in Europe (22 countries) and the Americas (11 countries), alongside two jurisdictions in Oceania. In contrast, legal recognition has been extended in only one African state and three Asian states. On this basis, the study categorizes countries that endorse same-sex marriage as exemplifying a universalist orientation toward human rights. In contrast, those that reject such recognition are interpreted as adhering to either culturally relativist positions or considerations shaped by domestic political contexts.

Proponent countries tend to adopt an expansive and unrestricted approach to implementing human rights. According to Cassese (2005), human rights are inherent to individuals and constitute an essential element of what defines human dignity. As such, these rights are understood to precede state authority and must be upheld unconditionally by governments. In this context, countries that support same-sex marriage generally embrace the view that all human beings are equal before the law, irrespective of gender. They affirm that legal recognition should not be denied to consensual relationships—whether between two men or two women—based on sexual orientation. This stance is grounded in a commitment to the principle of

equality and non-discrimination, which is reflected in Article 26 of the ICCPR. For these states, the recognition of same-sex marriage is seen as a moral and legal imperative aligned with fundamental human rights.

The opponents' position is primarily influenced by a strong sense of cultural identity and their assertion of national sovereignty. As a result, many of these states reject the universality of human rights as articulated in international legal instruments. From this perspective, human rights are regarded as relative rather than universal, rooted in the specific cultural, historical, and social contexts of each nation. Opponent countries argue that the validity of human rights norms must be grounded in local cultural frameworks, thereby positioning culture as the primary source of legitimacy for rights and moral principles. This culturally relativist approach contends that human rights cannot be imposed uniformly across all societies; instead, they must be interpreted through the lens of each nation's unique values and traditions.

For instance, as noted by Boll (2001), several countries opposing the universality of human rights have constructed a form of ideological resistance through what they term "Asian values." These values are presented as more appropriate and culturally relevant for advancing development in the Western Pacific Basin region, as opposed to adopting so-called "Western values." This position stems from the perception that the concept of universal human rights has its origins in, and is predominantly upheld by, Western nations. Advocates of this cultural relativist stance argue that Asia has no obligation to conform to Western-defined human rights norms, asserting instead that human rights, as conceived in the West, are neither urgent nor inherently applicable to the sociocultural realities of Asian societies.

A second factor that may be analysed is the ideological divergence between countries in their moral evaluation of same-sex marriage. Proponents and opponents operate within distinct ideological frameworks. Proponent countries generally adhere to an individualist ideology, which emphasizes personal autonomy, self-expression, and the primacy of individual rights. This worldview—prevalent in Western thought—can be likened, as noted by Yirka (2013), to the behaviour of spiders, which scientists have found to exhibit individual personalities. The Proceedings B Editor-in-Chief (2021) writing reflects Grinsted's reasoning, which indicates that spiders typically live solitary lives, separate from others; their webs are exclusive spaces, and the presence of another spider or organism is perceived as a threat or prey to be rejected or attacked.

In the context of individualist ideology, proponent countries conceptualize human beings as inherently individualistic. Accordingly, they place a high value on individual freedom, personal uniqueness, and the right to self-determination. From this perspective, the recognition of same-sex marriage is grounded in the protection of personal liberty and human dignity. Such a view affirms that the preservation of

individual freedom is essential for enabling individuals to develop their full potential—intellectually, morally, and socially.

This ideological framework prioritizes individual rights, often minimizing or rejecting the naturalness of collective or communal ties. Activities such as participation in society, collaboration within the state, or engagement with other individuals are not viewed as inherent to human nature, but rather as artificial constructs—products of human design and interaction. Within this view, social relationships are founded upon agreements, commonly referred to as the social contract, through which individuals voluntarily enter into arrangements with the state to establish political communities, organize associations, and engage in collective action. The only legitimate limitation on individual liberty is the equal right of others.

A radical shift in the traditional concept of marriage emerged at the turn of the 21st century, driven by the increasing emphasis on individual autonomy within proponent states. Fueled by a continuous pursuit of progress and innovation, these societies have expanded the scope of rights to include protections for previously unrecognized identities and relationships. At its core, the ideology of individualism rests upon the notion of personal freedom, which evolved into the broader political philosophy of liberalism. Liberalism promotes the idea that each day should mark an improvement over the last, and that every individual possesses the right—and the obligation—to cultivate their potential to the fullest extent.

In contrast to the individualist orientation of Western ideology, Eastern thought—particularly as expressed through collectivist perspectives—places a greater emphasis on communal welfare and prioritizes group interests over individual autonomy. Within this framework, cooperation is regarded as essential, as the individual is not seen as self-sufficient but rather as inherently embedded within the social fabric.

This collectivist ideology can be metaphorically illustrated by the behaviour of ants, which support one another in forming bridges across tree branches. The fall of a single ant is inconsequential as long as the collective remains intact, emphasizing the subordination of the individual to the group. Human beings, in this view, are perceived as functional components of a larger system, comparable to screws within a machine: if one becomes defective, it is replaced, as its value lies in its utility to the whole. Nonetheless, this ideological orientation also fosters several positive social values, including strong kinship ties, tolerance, consensus-based decision-making, social responsibility, and a form of communal democracy. These traits reflect an ethical commitment to the collective well-being and the interdependence of individuals within society.

The discussion of ideology, as previously outlined, is closely linked to a third factor: how a state's ideological orientation shapes its treatment of religion about

public policy. It is particularly evident in countries such as Indonesia adheres to its philosophical foundation known as Pancasila, which comprises five core principles: (1) Belief in the One and Only God; (2) A just and civilized humanity; (3) The unity of Indonesia; (4) Democracy guided by the inner wisdom of deliberation among representatives; and (5) Social justice for all the people of Indonesia. Similarly, Malaysia upholds its national ideology, Rukun Negara, which also consists of foundational principles: (1) Belief in God; (2) Loyalty to King and Country; (3) Supremacy of the Constitution; (4) Rule of Law; and (5) Courtesy and Morality.

The primary distinction, however, lies in the legal foundations of Indonesia and Malaysia. Indonesia does not explicitly base its legal system on religious law, maintaining a formal separation between religion and state law. In contrast, Malaysia explicitly incorporates religious principles—particularly Islamic law—as a foundational element of its national legal framework. Malaysia officially recognizes Islam as the state religion, and the country's national ideology—Rukun Negara—reflects this foundation, particularly through its first principle: belief in God. As such, issues like same-sex marriage are assessed predominantly through an Islamic framework. Within this context, the phenomenon of same-sex marriage is interpreted by religious doctrine.

As cited by Muthmainnah (2020), Iwuagwu notes that although religion and morality are conceptually distinct—morality being grounded in reason, and religion in faith—morality has historically been treated as inseparable from religious teachings, often perceived as a derivative of religious ethics. In a society where religious values are central, ethical and legal issues are frequently revisited in light of spiritual considerations. Accordingly, the legitimacy of same-sex marriage must be evaluated not only in terms of permissibility but also through a deeper inquiry into the broader meaning and purpose of marriage itself. As Soble (2005) argues, such reflection includes considerations of whom one marries, the appropriate timing of marriage, its objectives, the nature of bodily relations involved, and the duration and boundaries of such a union.

Zuhdi (1991) asserts that, under Islamic criminal law, homosexual acts (*liwāt* in Arabic) are classified as major sins because they contravene religious and moral norms, divine law (*sunnatullah*), and the natural human disposition (*fitrah*). Oetomo (2001) further explains that homosexuality refers to an emotional and/or erotic attraction—either predominantly or exclusively—toward individuals of the same sex, with or without physical intimacy. In the context of opposing countries, such behavior is frequently interpreted as indicative of psychological and moral deviation.

The opponent countries, especially the countries who has Malaysia's position, are also shaped by a longstanding adherence to Islamic teachings, including those on the historical understanding of homosexuality. The story of Prophet Lot (*Lūṭ*), as recorded in the Quran (Surah Hūd: 82–83), serves as a key religious reference. This

narrative depicts homosexual conduct as a deviant act that warranted divine punishment, which, in some interpretations, may include the death penalty. The account is considered both a moral lesson and a theological warning.

Citing the observations of Adihartono & Jocson (2020), in Southeast Asia, same-sex relationships are criminalized in several countries, including Malaysia, Singapore, Brunei Darussalam, and Indonesia (specifically in the Aceh province). In Brunei, such acts are even punishable by death under specific interpretations of Islamic law. This divergence illustrates a fundamental difference in interpretive perspectives. Opponent countries tend to regard the historical narrative—particularly the account of Prophet Lot (Lūṭ)—as evidence that homosexual behaviour, deemed “immoral,” has long existed and must be continuously opposed in the name of upholding religious and moral principles. Conversely, proponent countries reinterpret the same narrative as a historical marker of the longstanding struggle for individual autonomy and sexual freedom, placing less emphasis on religious or moral prohibitions and more on the assertion of personal rights.

The next factor pertains to the divergence in defining moral standards. The proponent countries have undergone a shift in moral orientation, transitioning from interpreting human rights through the lens of religious values to progressively detaching, or in some cases, abandoning religion as an ethical reference. As articulated by Ronald Dworkin, marriage holds spiritual significance in Western and many other cultural contexts. However, defining marriage legally based on religious doctrine does not necessarily violate the Constitution’s Establishment Clause, provided it does not enforce adherence to any specific faith. Nonetheless, in a liberal democratic state, religion alone cannot serve as the sole basis for legislation. This distinction reflects the contrasting approaches taken by the opposing countries and the proponents in addressing same-sex marriage.

In the opponent countries, same-sex marriage is regarded as morally reprehensible, given the country’s reliance on religion—particularly Islam—as a primary source of legal and ethical guidance. In contrast, the proponent countries frame the legalization of same-sex marriage as a moral imperative grounded in the protection of individual happiness and fundamental rights. The proponent countries adopt a broader national identity that integrates diverse perspectives—religious, political, and social—into their policymaking. Where religious norms are perceived as barriers to national progress, proponents may choose to reinterpret or diminish the influence of religious doctrine in governance.

The opponent countries, on the other hand, do not embrace an unrestricted interpretation of individual rights as seen in the proponent countries. While it upholds certain personal freedoms, those rights are constrained by respect for communal responsibilities and the collective moral order. The government

emphasizes the primacy of cultural, religious, and ethical values to ensure that individual actions do not undermine the broader societal fabric.

In opponent countries, nearly all aspects of governance—whether explicitly derived from religious doctrines or implicitly guided by them—are deeply infused with a sense of religious or cultural integrity. Religion functions not only as a marker of national identity but also as a cohesive force that shapes public consciousness around faith, traditional values, rural life, and familial structures in an integrated manner. It also serves as a primary source of legitimacy for governmental authority, leadership, education, and societal norms. In such contexts, there is typically a unified moral framework that delineates what is permissible and what is not. As a result, the legal systems of opponent countries tend to exhibit clarity of purpose, often oriented toward preserving religious or cultural principles. By contrast, proponent countries usually lack fixed boundaries or definitive goals, as their legal and social structures are shaped by a continuous pursuit of progress and improvement, driven by the ethos of “being better and better” without necessarily being anchored in specific moral or cultural foundations.

It is essential to acknowledge that the universal concept of human rights evolved as a response to the traumatic experiences and injustices endured by humanity. This framework was developed to prevent such atrocities from recurring. However, this universalist perspective often diverges from the interpretations embraced by many of the opponent countries. In these contexts, the notion of human rights is typically understood within the boundaries of pre-existing cultural, moral, and religious values. For instance, in shaping its marriage laws, the opponent countries emphasize the belief that human beings were created in pairs—specifically, as male and female—reflecting a foundational principle rooted in both religious doctrine and cultural tradition.

The final identifiable factor is the formulation of state-enforced laws. One of the most critical factors influencing the recognition or rejection of same-sex marriage lies in the formulation of national legal systems, particularly in the extent to which these systems separate or integrate religious principles. In some countries, legal frameworks are established through a secular lens, maintaining a formal division between religion and state governance. Conversely, other states adopt a legal structure that explicitly derives its laws from religious doctrines, often codifying moral and ethical values based on sacred texts into national legislation. This integration can significantly shape public policy and legal decisions, especially concerning sensitive issues like same-sex marriage, where religious interpretations directly inform the boundaries of lawful conduct. In such contexts, the legitimacy of same-sex unions is often evaluated not only through civil norms but also through the moral standards upheld by religious belief systems, thereby reinforcing the state’s ideological stance on the matter.

For instance, countries such as the Netherlands, Canada, and France exemplify states that uphold a clear separation between religion and the state. These countries formulate laws based on secular constitutional principles, emphasizing individual rights, equality, and non-discrimination—foundations that have enabled the legalization and protection of same-sex marriage. In these legal systems, religious doctrines may influence personal belief, but they do not serve as a source of binding legal authority. In contrast, countries like Iran, Saudi Arabia, and Malaysia represent legal systems where national laws are directly derived from religious texts and jurisprudence, particularly Islamic Sharia law. In such settings, same-sex relationships are often criminalized, and legal frameworks reflect the prevailing religious morality of the state. The incorporation of religion into national law in these countries results in the rejection of same-sex marriage on theological and cultural grounds, reinforcing a normative legal order that prioritizes communal values over individual liberties.

Secular countries that reject the legalization of same-sex marriage—such as Poland, Slovakia, Latvia, and several nations in Africa and East Asia—demonstrate that such rejection is not always grounded in religious doctrine. Despite the formal separation between religion and the state, these countries often uphold traditional cultural, historical, and political values that strongly shape public policy. In these contexts, moral norms and national identity play a significant role in shaping legal positions on marriage. For instance, Poland, while constitutionally a secular state, has relied heavily on nationalist-conservative narratives and the protection of “traditional family values” to justify its refusal to recognize same-sex unions. The government argues that preserving the conventional family structure is essential to national cohesion. Similarly, in Russia, the legal rejection of same-sex marriage is often defended by appeals to public morality and social stability rather than explicit religious teachings. Thus, in secular states that oppose same-sex marriage, sociological considerations—such as dominant cultural norms, the preservation of national identity, and resistance to Western liberal values—often take precedence over theological arguments in the legal and political discourse.

How law is enforced is inherently tied to a state’s underlying objectives. The legalization of same-sex marriage in the proponent countries represents an affirmation of human rights principles as articulated in the Universal Declaration of Human Rights (UDHR), albeit interpreted through a liberal lens. Within this framework, the concept of human rights does not interrogate culturally specific notions of what it means to be human; instead, it assumes a universal sameness and applies the idea of freedom uniformly, irrespective of cultural or societal context. This liberal interpretation of human rights—particularly about the legalization of same-sex marriage—is deeply influenced by the prevailing social and cultural dynamics of liberal democracies, as well as by advancements in technology and increasingly open attitudes toward diverse sexual orientations. Moreover, the digital

age has significantly accelerated the dissemination of LGBT discourses, extending their reach even into traditionally conservative regions such as Asia, where cultural and religious values remain deeply entrenched.

The distinctions outlined above can be illustrated in the diagram below:

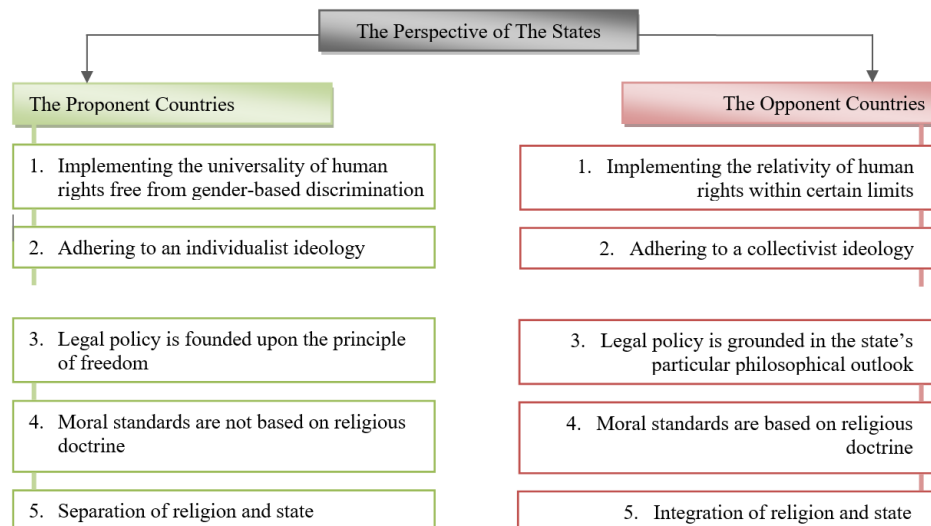


Figure 1. The perspectives on the recognition and rejection of same-sex marriage

2. Determinants of the Endurance and Decline of Support for Same-Sex Marriage

Several elements may be identified as contributing either to the strengthening or weakening of the momentum behind same-sex marriage. It is related to the influence of the society's legal culture and sociological perspectives. The first factor pertains to the contrast between individualistic and communal perspectives that shape societal values and behaviours. One helpful way to conceptualize culture is to regard it as playing a role in society akin to that of memory in individuals. Gutterman (2024) perspective reveals that culture can be defined as a system that encompasses shared standard operating procedures, implicit assumptions, tools, norms, values, habits, and psychological tendencies. These elements significantly influence the formation of personality within a given society. As Funder (1997) explains, personality is "an individual's characteristic patterns of thought, emotion, and behaviour, along with the psychological mechanisms—whether visible or hidden—that underlie those patterns." For example, individuals from individualistic cultures often express their identity through self-referential statements, such as "I am kind." In contrast, individuals from collectivist cultures tend to define themselves through the perspective of their social group, as in "my family thinks I am kind."

This cultural distinction has significant implications for how societies respond to phenomena such as same-sex marriage. In individualistic societies, where personal autonomy and individual rights are highly valued, there is generally greater support for legal recognition of same-sex marriage. Conversely, collectivist cultures, which

emphasize social harmony, familial approval, and traditional moral values, may demonstrate stronger resistance to such changes, viewing them as disruptive to social cohesion and cultural norms.

Triandis further explains that in individualist societies, individuals tend to be autonomous and independent from their in-groups. They prioritize personal goals over collective objectives and base their behaviour primarily on personal attitudes rather than group norms. Social interactions in such contexts are often guided by exchange theory, which emphasizes mutual benefit. In contrast, collectivist societies are characterized by strong interdependence within in-groups such as families, tribes, or nations. Individuals in these cultures prioritize group goals over personal interests, align their behaviour closely with group norms, and act communally and cooperatively. Maintaining interpersonal relationships and social harmony is a central concern in collectivist cultures.

The second factor involves judicial rulings that have significantly shaped the legal stance on the issue. For instance, the United States can be regarded as a representative case that illustrates this development. According to Haviland et al. (2010), American law initially did not recognize same-sex marriage because the term “spouse” was traditionally interpreted to refer exclusively to an opposite-sex partner. Historically, the United States classified same-sex relationships and marriages as psychological disorders and criminalized such unions. Initially, marriage in North America was defined as a legal union strictly between a man and a woman. This historical denial is deeply rooted in the broader sociopolitical and religious context of the nation. Hecla in *The Robinson Professors* (2004) further asserts that for centuries, the United States identified itself as a spiritual nation, and in 1892, the United States Supreme Court even declared America to be a “Christian nation” grounded in Christian moral values. Despite the presence of same-sex couples, the state long refused to formally acknowledge or legalize such relationships, viewing them as immoral and inconsistent with societal norms.

This judicial rejection is evident in several court rulings where same-sex marriages were denied recognition. For example, Sergius and Bacchus—Roman soldiers from the fourth century who were reportedly male lovers—faced persecution for both their Christian beliefs and their relationship, highlighting the longstanding tension between religious norms and same-sex relationships. The landmark case *Baker v. Nelson*, 191 N.W.2d 185 (1971) marked the first instance in which an American Court addressed—and ultimately dismissed—a claim by a same-sex couple seeking equal marriage rights. The Court denied the claim under both Minnesota state law and the U.S. Constitution.

Similarly, in *Jones v. Hallahan*, 501 S.W.2d 588 (1973), the Kentucky Court rejected a constitutional challenge against the state’s refusal to grant marriage licenses to same-sex couples, asserting that the concept of marriage, by definition,

excludes such unions. In *Singer v. Hara*, 247, 522 P.2d 1187 (1974), the Washington Court upheld the denial of marriage rights to same-sex couples under both state and federal constitutional grounds. This case was notably the first to reject the argument that excluding same-sex couples from marriage constituted sex-based discrimination under a state Equal Rights Amendment. In *Zablocki v. Redhail*, 434 U.S. 374 (1978), the U.S. Supreme Court recognized marriage as a fundamental right.

However, in *De Santo v. Barnsley*, 476 A.2d 952 (1984), the Court held that same-sex relationships could not constitute a valid common-law marriage, mirroring their exclusion from statutory marriage. In *Coon v. Joseph*, 237 Cal. Rptr. 873 (1987), the Court ruled that same-sex partners did not possess the same standing as legally married spouses to bring claims for emotional distress resulting from harm to a partner. In *In re Landrach*, 573 N.E.2d 828 (1987), the Court decided that a transgender woman (assigned male at birth) could not legally marry a man, as such a union would amount to a prohibited same-sex marriage under state law.

Meanwhile, at the international level, in *Juliet Joslin et al. v. New Zealand*, Communication No. 902/1999, Doc. A/57/40 at 214 (2002), the UN Human Rights Committee maintained that same-sex couples do not possess the right to marry under Article 23(2) of the ICCPR. The Committee emphasized that the term “men and women” has consistently been interpreted as referring solely to the union between a man and a woman intending to marry one another.

In these cases, the Courts consistently reaffirmed the prevailing legal interpretation that marriage was, by its very nature, a heterosexual institution. This judicial stance not only reflected the dominant sociocultural norms of the time but also reinforced a moral and legal framework rooted in traditional understandings of gender roles and procreative union. By upholding such interpretations, the courts functioned as instruments of legal conservatism, preserving a heteronormative paradigm that aligned with religious, historical, and legislative narratives. These rulings underscored the judiciary’s reluctance to deviate from established definitions of marriage, thereby legitimizing societal resistance to the recognition of same-sex unions within the formal legal order.

By the late 20th century, significant legal shifts began to emerge. For instance, in *Romer, Governor of Colorado, et al. v. Evans et al.*, No. 94–1039 (1996), the U.S. Supreme Court invalidated a Colorado state amendment that had barred LGBT (Lesbian, Gay, Bisexual, Transgender) individuals from obtaining legal protections as a distinct group. It marked a critical step toward the formal recognition of LGBT rights. Entering the early 21st century, the Court further expanded these protections in *Lawrence et al. v. Texas*, No. 02–102 (2003), where it invalidated sodomy laws in Texas and 13 other states, effectively decriminalizing same-sex sexual relations nationwide. One of the most pivotal legal milestones followed in *United States v. Windsor, Executor of the Estate of Spyer, et al.*, No. 12–307 (2013), where the

Supreme Court struck down Section 3 of the Defense of Marriage Act (DOMA), which had defined marriage at the federal level solely as a union between one man and one woman. This ruling constituted a prominent constitutional acknowledgment of same-sex relationships, laying the groundwork for broader marriage equality across the United States.

This progression culminated in the landmark ruling of *Obergefell et al. v. Hodges, Director, Ohio Department of Health, et al.*, No. 14–556 (2015), in which the Supreme Court held that the right of same-sex couples to marry is guaranteed by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. The Obergefell decision not only invalidated state bans on same-sex marriage but also established marriage equality as a fundamental constitutional right, thereby reshaping the moral and legal contours of civil rights jurisprudence in the United States.

This ruling effectively overturned previous decisions and marked a turning point in the legal recognition of LGBTQ+ (now includes ‘Queer’ along with a range of other sexual orientations and gender identities) rights in the United States. It symbolized a broader societal transformation in which notions of equality, dignity, and individual autonomy began to take precedence over traditional religious and moral interpretations of marriage. The United States’ transition from a firm rejection to full legal acceptance of same-sex marriage reflects not only a change in legal reasoning but also a profound cultural and ideological evolution within the American democratic framework.

The third factor pertains to the wave of social movements initiated by various societal groups within a given country. The country has historically faced numerous challenges in ensuring the protection of human rights, particularly in the area of civil equality. These struggles have led to the rise of various social movements advocating for the rights of marginalized groups. For instance, Cultuur en Ontspanningscentrum (known as Centre for Culture and Leisure or COC Netherlands) in the Netherlands. In the United States, gender-based inequality led to the founding of the National Organization for Women. It can be argued that these precedents indirectly contributed to the development of movements advocating for the rights of homosexual individuals by positioning them within the broader context of minority rights struggles. Indeed, as noted by Abidin et al. (2024), movements in Brazil—namely Grupo da Bahia and the Associação Brasileira de Gays, Lésbicas, Bissexuais, Travestis e Transexuais—have collaborated with the Brazilian government to position the country as a leading advocate for LGBT rights at the international, regional, and domestic levels.

Moreover, the persistent promotion of LGBT rights, alongside media representations that portray LGBT lives positively, has significantly shaped public attitudes. Through McHenry (2022) discussion, Drescher’s perspective becomes

evident that a significant milestone in this shift occurred when the American Psychiatric Association (APA) officially removed homosexuality from the classification of mental disorders.

From a psychological standpoint, individuals are often shaped by the surrounding cultural and societal environment. It can be seen in the United States, where the classification of homosexuality has undergone a significant shift over time. In the first edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published in 1952, homosexuality was categorized as a sociopathic personality disturbance. In the 1968 DSM-II, it was reclassified under the broader category of sexual deviations. This pathologization reflected prevailing societal attitudes that considered homosexuality to be a mental illness. However, following persistent criticism and evolving social perspectives, the APA made a significant revision in 1973 with the release of DSM-III, removing homosexuality from the list of mental disorders. The DSM-III introduced the concept of ego-syntonic homosexuality, in which same-sex attraction was no longer viewed as pathological unless it caused personal distress. In its later revisions, the DSM eliminated any reference to homosexuality.

In light of Wakefield (2024) analysis, Nicolosi's view is brought to mind that this paradigm shift had profound implications for the discourse surrounding the legal and social status of homosexual individuals and the broader LGBT community. Homosexuality began to be framed as a natural and legitimate variation of human sexuality. However, as Ronald Bayer argues in his critical analysis, the APA's decision was not purely the result of scientific deliberation; instead, it was shaped by the ideological climate of the era. The convergence of the sexual revolution and various rights movements—civil rights, minority rights, and feminist rights—exerted considerable influence on psychological institutions. It created a climate in which even academic research on homosexuality by heterosexuals was viewed with suspicion. As a consequence, critical engagement with the lived experiences and challenges within the LGBT community has been limited. Despite empirical findings that highlight patterns such as the prevalence of anonymous sexual encounters among some gay men, such observations are often met with silence due to fear of social backlash, reminiscent, as some have suggested, of the parable of the emperor's new clothes.

The justification that has been presented by countries that support same-sex marriage is that marriage should not be confined solely to heterosexual unions but should also encompass same-sex partnerships as a matter of human rights. These proponent countries have formally recognized same-sex marriage, granting it legal parity with heterosexual marriage. From their perspective, the legalization of same-sex unions constitutes a moral obligation in the broader context of human rights. Conversely, restricting marriage rights exclusively to different-sex couples is

increasingly viewed as a form of discrimination and, therefore, a violation of human rights.

In referencing Stewart et al. (2021), one is reminded of Akpan's argument that this shift has prompted major dictionaries, sociologists, and anthropologists to revise their definitions of marriage. This evolution highlights how individualistic ideology can foster innovation, adaptability, and a deeper respect for human dignity and freedom. Such a perspective encourages thinking beyond traditional frameworks—even when it challenges established values—in pursuit of societal progress. In the case of the United States, for example, the guarantee of individual freedoms, irrespective of gender, has led to the legalization of same-sex marriage being framed as one of the nation's most significant achievements in advancing equality. Nonetheless, while the spirit of Western individualism fosters excellence and competitiveness, it has also been critiqued for lacking a strong emphasis on collective responsibility and social cohesion.

According to Nicolosi, the removal of homosexuality from the DSM had a profound impact on global societal perspectives. One significant consequence was a decline in clinical research and therapeutic intervention related to homosexuality. Earlier psychodynamic theories primarily characterized homosexuality as a non-normative and acquired condition. However, academic discourse on the topic diminished significantly once the belief that homosexuality was not pathological became widely accepted. This shift discouraged clinicians from engaging in professional discussions or presenting research on the subject. Notably, this transformation was not precipitated by new empirical findings affirming homosexuality as a natural and healthy variation of human sexuality, but rather by a sociopolitical shift that rendered critical discussion unfashionable. Until that point, health science literature generally regarded homosexuality as a condition requiring psychological, social, or spiritual support. The public's perception gradually evolved, leading to broader acceptance of LGBT identities and contributing to a significant cultural and political shift—particularly in proponent countries—where homosexuality is no longer regarded as requiring treatment.

The fourth factor involves the influence of public appeals made by prominent figures. Individuals who are perceived to hold significant social influence can contribute to shaping public consensus through their statements. Their endorsements or criticisms often serve to legitimize certain decisions or social positions in the eyes of the broader community. For instance, in proponent countries, several public figures have played key roles in advocating for same-sex marriage. One notable example is former U.S. President Barack Obama, as reported by BBC News (2015), who expressed his support for the legalization of same-sex marriage during his tenure, describing the ruling as “a victory for America.” He emphasized that the decision reflected a widely held belief among the American public, asserting that true

freedom is achieved when all citizens are treated equally and fairly. He further noted that the ruling marked a significant step forward in the pursuit of equality for LGBT individuals in the United States.

Moreover, various celebrities and influential figures from the entertainment industry have also expressed public support for LGBT rights, thereby amplifying the visibility and acceptance of same-sex marriage. Their broad media reach and cultural influence enable them to shape public attitudes, particularly among younger generations. These voices, when aligned with political and legal advocacy, often create momentum for legislative change and foster greater social acceptance within the countries that support them.

According to Nashrullah (2020), a notable discourse has emerged suggesting that Judaism played a foundational role in the early development of the LGBT movement in Europe. At one point, Joe Biden—then serving as Vice President of the United States—publicly acknowledged and commended the contributions of Jewish figures in reshaping American public attitudes toward same-sex marriage. These contributions are viewed as instrumental in transforming societal perceptions, resulting in broader social acceptance and institutional inclusion of LGBT individuals in the United States. Psychologist Kevin MacDonald has argued that various intellectual movements of the 20th century—many of which were initiated and led by Jewish thinkers—have significantly altered the fabric of European society and undermined traditional Western values. Within the American context, the Jewish community is often credited with exerting considerable influence over public discourse and opinion. Eugene Fisher, who served as the Director of Catholic-Jewish Relations, encapsulated this sentiment by stating, “If there is Jewish power, it’s the power of the word, the power of Jewish columnists and Jewish opinion makers.”

In contrast, the perspectives voiced in the opposing countries present a markedly different stance. For instance, in the case of Malaysia, Ismail & Nasri (2019) highlight the position of Datuk Dr. Khairuddin Aman Razali, a parliamentary expert from Kuala Nerus, who publicly supported Prime Minister Tun Dr. Mahathir’s firm rejection of LGBT inclusion in Malaysian society. Dr. Khairuddin asserted that this stance aligns with Islamic principles, the state’s legal system, and the cultural norms of the Malaysian people, and is consistent with universal human values as understood within that context. Additionally, Datuk Tuan Ibrahim Tuan Man urged a comprehensive rejection of any initiatives aimed at legalizing LGBT practices, even advocating for sanctions against individuals who promote such rights under the banner of human rights. He further recommended that the issue be escalated to the Cabinet for the issuance of an official national policy stance.

Equally significant is the role of parental upbringing in shaping societal perspectives. Societal mindsets are often deeply ingrained and resistant to change, primarily due to the early indoctrination of values and norms during childhood,

which eventually become an integral part of an individual's identity. This process is closely tied to the prevailing ideology of a given country and the way its institutions shape the lives of its citizens. Parents, as primary agents of socialization, play a crucial role in transmitting cultural, moral, and ideological values to their children. These values are then perpetuated across generations. In societies such as the proponent countries, children are often raised with an emphasis on individual autonomy and personal choice, encouraged to pursue actions they believe are right for themselves, often without a strong focus on collective consequences. In contrast, in other countries, parental guidance typically emphasizes the importance of evaluating actions based on their moral and social implications. Children are taught to assess whether a decision is good or harmful, not only for themselves but for others, and are often encouraged to prioritize communal well-being over individual preference.

This study argues that altering a society's collective mindset is inherently challenging, primarily because values and beliefs are instilled from early childhood and eventually become embedded within individual and collective identity. This phenomenon is closely tied to the ideological framework upheld by a country and how that ideology shapes the relationship between the state and its citizens. Within this process, families—especially parents—play a central role in transmitting values to their children. Children internalize these teachings and later reproduce them across generations, creating a persistent cycle of cultural reproduction.

In proponent countries, parents tend to emphasize personal autonomy and encourage their children to make decisions based on what they perceive as individually appropriate—"as long as it feels right to you, pursue it." There is little emphasis on weighing potential consequences beyond the individual. It stands in contrast to parents in other countries, who instill in their children a framework of moral evaluation that considers whether an action is inherently right or wrong and what broader social consequences it may entail. Individuals are often encouraged to sacrifice personal interests for collective well-being if their choices are deemed potentially harmful to others.

In many countries, religious teachings classify homosexual behaviour as a sin with severe moral and spiritual consequences, including condemnation in the afterlife. These religious narratives are deeply embedded in the cultural consciousness, making it easier for such societies to categorize homosexuality as morally reprehensible. By contrast, proponent countries, where secularism and the separation of religion from public life are more prevalent, do not respond to such religious deterrents in the same way.

The fifth factor relates to the specific objectives a state seeks to achieve concerning its society. In this context, advocates of same-sex marriage often frame their struggle as a pursuit of personal happiness through the fulfilment of love. This

pursuit frequently overlooks other competing values, such as cultural and religious norms. A clear illustration of this can be seen in the United States Supreme Court's ruling in *Obergefell v. Hodges*, where the majority opinion deliberately separated the institution of marriage from religious doctrines, thereby redefining marriage beyond the constraints traditionally imposed by religious teachings. By affirming the right of same-sex couples to marry, proponents aim to safeguard their citizens' right to pursue happiness, which they perceive as an essential component of human rights. In this framework, the failure to legalize same-sex marriage could be interpreted as a failure of the state to fulfil its obligation to promote and protect the happiness and dignity of its people.

It is evident that the advancement of LGBT rights in proponent countries—particularly in many European nations—has been a gradual process marked by incremental progress. Most of these states began formally recognizing and legalizing same-sex marriage in the early 2000s, with further consolidation in subsequent years. It indicates that the struggles of LGBT communities across different national contexts are interconnected and often serve as mutual sources of inspiration. It may be argued that the legal endorsement of same-sex marriage in these countries reflects a broader commitment to ensuring the well-being of all citizens.

A clear distinction can be observed in Malaysia, a nation that firmly upholds Asian values and integrates religious norms—particularly Islamic teachings—into its legal framework. In judicial decisions, Malaysian judges frequently reference principles derived from the Qur'an and Hadith. For instance, as reported by dkp/dkp (2018), two women were publicly caned and fined RM 3,300 (approximately USD 763) after being convicted of engaging in same-sex relations in a car, in violation of Islamic law. This case illustrates how Malaysia, as an opponent country, incorporates religious doctrine into state law, applying it uniformly to those deemed to have violated moral codes. The incorporation of scriptural references in court rulings illustrates the state's strict adherence to religiously grounded legal standards. The public implementation of corporal punishment serves both as a specific deterrent for the offender and a general deterrent for society as a whole. In contrast, proponent countries refrain from using religious law as a legal foundation, thereby offering no comparable framework of religiously based sanctions for same-sex behaviour.

The advancement of LGBT rights—particularly the push for the legalization of same-sex marriage—stands in stark contrast to the societal norms of opposing countries. In these contexts, LGBT identities and relationships are widely perceived as deviating from established religious and cultural standards. Societies in these countries are deeply rooted in traditions that integrate religious and cultural values into everyday life, making such norms central to the collective assessment of what is deemed acceptable or unacceptable, as well as moral or immoral. This communal

orientation informs legal and social responses to emerging phenomena, including issues of gender and sexuality.

Another contributing factor is how individuals interpret the concept of “love.” The appeal to love as a justification for legalizing same-sex marriage on the grounds of human rights remains ambiguous. Some proponents argue that love should be the sole requirement for marriage. However, this assertion can be considered both overly inclusive and overly exclusive. It is excessively inclusive because not all loving relationships are deemed appropriate for marriage. Love manifests in various forms—such as familial affection, platonic friendship, erotic attraction, and compassion—and while these may be valuable, they are not all valid bases for marriage. For instance, close relatives often share deep affection but are legally barred from marrying; similarly, the love between children and parents, or between humans and pets, does not justify marital union. Homosexual love is thus not uniquely excluded; numerous other expressions of sexual affection—such as adultery, incest, bestiality, or pederasty—are likewise criminalized even in jurisdictions that permit homosexual acts.

Conversely, the claim that love is a necessary component of marriage is overly narrow. Historically, romantic love was not regarded as central to the institution of marriage in Western societies and remains secondary in many non-Western traditions. Marriage has often served broader social functions, including ensuring child-rearing, inheritance, and mutual support. Even within liberal democracies, legal systems do not require love as a prerequisite for marriage, nor does the absence of love render a marriage invalid. Arranged marriages, for example, may proceed without prior acquaintance, let alone affection, between the spouses. Many such marriages are nonetheless deemed successful if they are characterized by mutual respect, care, and responsibility. As Andrew H. Friedman argues, love is neither a prerequisite nor an adequate justification for a marriage to be deemed socially or legally valid.

According to Crossman (2019), marriage is conceptualized by sociologists as a socially endorsed union involving two or more individuals in a stable and enduring arrangement, generally grounded—at least partially—on a sexual relationship. The recognition and validity of marriage may depend on religious or civil endorsement; however, in some cultures, cohabitation over a specific period (commonly referred to as common-law marriage) may suffice. In most societies, marriage constitutes a legally and socially binding contract that establishes mutual rights and responsibilities between the spouses. However, marriage transcends the private relationship between individuals and functions as a broader social institution embedded within legal, economic, cultural, and spiritual or religious structures. Typically, the formalization of marriage is preceded by a period of courtship and followed by a ceremony that outlines and affirms the mutual obligations of the

partners. In many jurisdictions, either state or religious authorities must officiate the union for it to attain legal legitimacy.

From a legal aspect, the legalization of same-sex marriage in proponent countries is primarily grounded in legal interpretations of equality and non-discrimination. These states argue that restricting marriage to heterosexual couples violates international human rights standards, particularly those articulated in the UDHR and the ICCPR. The right to marry, as framed in these instruments, is viewed as a universal entitlement that must be extended to all individuals regardless of sexual orientation. Accordingly, legal systems in these jurisdictions have redefined marriage to encompass same-sex unions, asserting that the denial of such recognition constitutes a breach of constitutional and international legal obligations. This legal evolution reflects a commitment to ensuring that marriage laws align with contemporary interpretations of justice, dignity, and equal protection under the law.

From a sociological standpoint, the recognition of same-sex marriage reflects evolving social norms and changing collective attitudes toward gender, identity, and family. In societies where individual autonomy and self-expression are highly valued, legal acceptance of same-sex marriage aligns with broader movements toward social inclusion and minority rights. This shift is often driven by increased visibility of LGBTQ+ communities, growing public discourse on equality, and shifts in generational values. Conversely, in collectivist societies where social cohesion, tradition, and religious norms hold central importance, same-sex marriage is frequently viewed as a disruption to established moral and familial structures. The legal stance of a country, therefore, is not only a matter of jurisprudence but also a reflection of prevailing societal values, cultural memory, and the degree to which a society tolerates or resists social transformation.

Philosophically, the debate on same-sex marriage centers on competing conceptions of morality, human dignity, and the nature of rights. Universalist perspectives, rooted in liberal individualism, emphasize autonomy, equality, and the inherent right of individuals to choose their life partners regardless of gender. In this view, moral legitimacy derives from reason and personal freedom, rather than tradition or religious dogma. Conversely, relativist approaches argue that moral values are culturally embedded and context-dependent. From this perspective, marriage is not merely a private contract, but a social institution rooted in historical, religious, and communal norms. Thus, legal recognition of same-sex marriage raises fundamental questions about the source of moral authority: whether it is derived from universal human reason or particular cultural and metaphysical worldviews.

The factors outlined above can be illustrated in the diagram below:

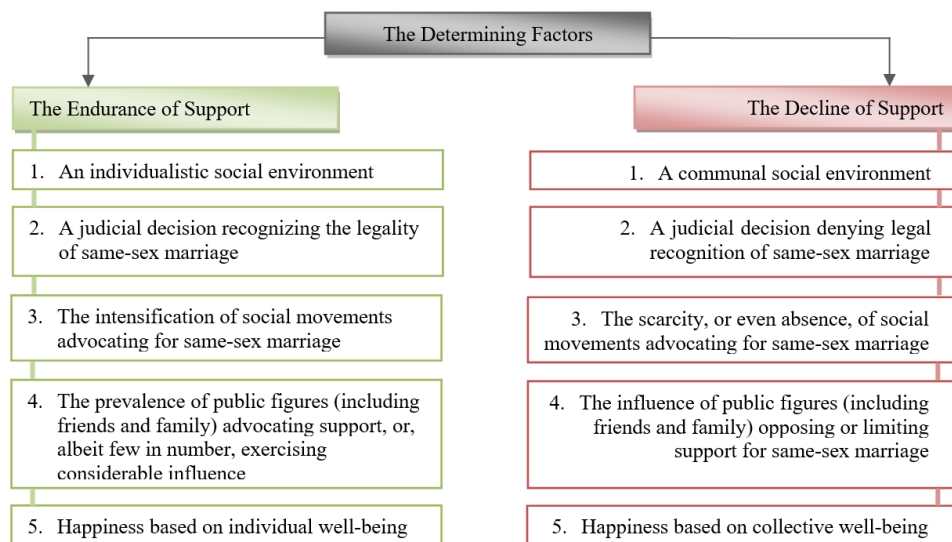


Figure 2. The determinants of the endurance and decline of support for same-sex marriage

D. CONCLUSION

At least five key factors underpin the differing perspectives on the recognition and rejection of same-sex marriage: (1) the enduring classical debate between the universality and relativity of human rights adopted by various states; (2) divergent ideologies or worldviews upheld by these nations; (3) distinct approaches to the role of religion in public life; (4) variation in how states define and apply standards of morality; and (5) differences in the formulation of national legal systems. Meanwhile, factors that contribute to the strengthening or weakening of the spirit of same-sex marriage recognition include: (1) the individualistic or communitarian orientations prevalent within a society; (2) judicial rulings and the reasoning articulated by judges; (3) social movements; (4) the influence of prominent public figures; and (5) the goals pursued by the state.

In light of the diverse perspectives and complex factors that influence the recognition or rejection of same-sex marriage, several recommendations can be proposed. First, cross-cultural dialogue should be encouraged to foster mutual understanding between states that adopt universalist versus relativist approaches to human rights. It may help reduce polarization and promote more inclusive human rights discourses. Second, states are encouraged to revisit their legal and moral frameworks in light of evolving societal values while maintaining sensitivity to local contexts. It includes evaluating the role of religion in public policy and lawmaking to ensure that legal reforms align with broader human rights commitments. Third, judicial bodies should strengthen their use of transparent and reasoned legal argumentation that balances constitutional mandates with cultural values, thereby enhancing public trust in the judiciary's role in navigating contentious social issues. Finally, policymakers and

civil society actors should work collaboratively to create inclusive public education programs that raise awareness about human rights, gender diversity, and the ethical foundations of equality, without undermining the cultural and religious fabric of society.

E. REFERENCES

- Abidin, A. Z., Khamim, M., & Nuridin. (2024). Keabsahan Pernikahan LGBT Diluar Negeri Yang Dilakukan WNI Dalam Perspektif Hukum Perdata. *Pancasakti Law Journal*, 2(1), 67–76. <https://doi.org/10.24905/plj.v2i1.61>
- Adihartono, W., & Jocson, E. U. (2020). A Comparative Analysis of the Status of Homosexual Men in Indonesia and the Philippines. *Journal of Southeast Asian Human Rights*, 4(1), 271–305. <https://doi.org/10.19184/jseahr.v4i1.12810>
- Baker v. Nelson, 191 N.W.2d 185, (1971).
- Baldwin, G. (2024). Same-sex marriage in Japan and the role of courts in a dominant party system. *Comparative Constitutional Studies*, 2(1), 1–22. <https://doi.org/10.4337/ccs.2023.0008>
- BBC News. (2015). “Gay Marriage ruling is a victory for America” Barack Obama. BBC News. <https://www.youtube.com/watch?v=ixhvEwQQO>
- Boll, A. M. (2001). *The Asian values debate and its relevance to international humanitarian law*. ICRC. <https://www.icrc.org/en/doc/resources/documents/article/other/57jqzl.htm>
- Cassese, A. (2005). *Hak Asasi Manusia di Dunia yang Berubah* (2nd ed.). Jakarta: Yayasan Obor Indonesia.
- Coon v. Joseph, 237 Cal. Rptr. 873, (1987).
- Crossman, A. (2019). *The Definition of Marriage in Sociology*. ThoughtCo. <https://www.thoughtco.com/marriage-3026396#:~:text=Updated on November 01%2C 2019,sexual bond of some kind.>
- De Santo v. Barnsley, 476 A.2d 952, (1984).
- dkp/dkp. (2018). *Pertama Kali, Pasangan Sesama Jenis Dicambuk di Terengganu Malaysia*. Detiknews. <https://news.detik.com/bbc-world/d-4196114/pertama-kali-pasangan-sesama-jenis-dicambuk-di-terengganu-malaysia>
- Funder, D. C. (1997). *The Personality Puzzle*. New York: Norton.
- Guterman, A. S. (2024). Definitions and Models of Organizational Culture. SSRN, 1–19. <http://dx.doi.org/10.2139/ssrn.4967434>
- Haviland, W. A., Prins, H. E. L., McBride, B., & Walrath, D. (2010). *Cultural Anthropology: The Human Challenge* (13th ed.). Boston: Wadsworth Cengage Learning.
- Hayati, Z., Hadits, S. R., & Hafidzi, A. (2025). Pengakuan Perkawinan Sesama Jenis: Komparasi Hukum Perkawinan Belanda Dan Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1496–1507. <https://doi.org/10.62976/ijijel.v3i2.1135>

- ICCPR. (1966). *International Covenant on Civil and Political Rights*.
In re Landrach, 573 N.E.2d 828, (1987).
- Ismail, M. A. M., & Nasri, M. S. (2019). Gejala LGBT Di Malaysia: Isu Dan Cadangan Penyelesaian. *Journal of Law & Governance*, 2(1), 51–65.
<https://unimel.edu.my/journal/index.php/JLG/article/view/595>
- Jones v. Hallahan, 501 S.W.2d 588, (1973).
- Juliet Joslin et al. v. New Zealand, Communication No. 902/1999, Doc. A/57/40 at 214, (2002).
- Katz, J. N. (2021). *Constructing the Heterosexual, Homosexual, Bisexual System*. Outhistory.
https://outhistory.org/exhibits/show/heterohomobi/karlmaria?utm_source=chatgpt.com
- Lawrence et al. v. Texas, No. 02–102, (2003).
- McHenry, S. E. (2022). “Gay Is Good”: History of Homosexuality in the DSM and Modern Psychiatry. *American Journal of Psychiatry Residents’ Journal*, 18(1), 4–5. <https://doi.org/10.1176/appi.ajp-rj.2022.180103>
- Muthmainnah, S. (2020). Peran Cyber Religius dalam Bermedia Sosial. *Infokam*, 16(1), 56–64. <https://doi.org/10.53845/infokam.v16i1.214>
- Nashrullah, N. (2020). *Amerika Serikat Religius, Mengapa Nikah Sejenis Legal?* Republika.Co.Id. <https://www.republika.co.id/berita/qijoos320/amerika-serikat-religius-mengapa-nikah-sejenis-legal>
- Obergefell et al. v. Hodges, Director, Ohio Department of Health, et al., No. 14–556, (2015).
- Oetomo, D. (2001). *Memberi Suara pada yang Bisu* (1st ed.). Yogyakarta: Galang Press.
- Perry, M. J. (2020). The Morality of Human Rights. *Human Rights Quarterly*, 42(2), 434–478. <https://doi.org/10.1353/hrq.2020.0023>
- Pew Research Center. (2025). *Same-Sex Marriage Around the World*. Pew Research Center. <https://www.pewresearch.org/religion/fact-sheet/same-sex-marriage-around-the-world/>
- Popoola, A. O., Seriki, O. O., Ajao, P. O., Fakayode, T. E., & Okunola, A. M. (2024). Marriage Institution and the Trend of Delayed Marriage: Understanding from Single Ladies. *Ilorin Journal of Business and Social Science*, 26(1), 99–109. [https://fssunilorinedu.org/ijbss/2024 volume 26 number 1/article 6.pdf](https://fssunilorinedu.org/ijbss/2024%20volume%2026%20number%201/article%206.pdf)
- Proceedings B Editor-in-Chief. (2021). Retraction: Individual personalities shape task differentiation in a social spider. *Proceedings of The Royal Society B Biological Sciences*, 1. <https://doi.org/10.1098/rspb.2021.0335>
- Romer, Governor of Colorado, et al. v. Evans et al., No. 94–1039, (1996).
- Salim, H. S., & Nurbani, E. S. (2016). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Jakarta: Rajawali Pers.

- Singer v. Hara, 247, 522 P.2d 1187, (1974).
- Soble, A. (2005). *Philosophy of Sexuality*. London: Rutledge Press.
- Soekanto, S., & Mamuji, S. (2015). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Stewart, R. S., Reenen, D. van, & Watuwa, R. (2021). Sexual Minority Rights Are Not Just for the West: Health and Safety Considerations in Africa. *Journal of Health Ethics*, 17(1), 1–15. <https://doi.org/10.18785/jhe.1701.06>
- Stone, H. M., & Stone, A. (1939). *A Marriage Manual: A Practical Guide Book to Sex and Marriage*. New York: Simon and Schuster.
- Sumaila, B. D., Wajo, A. R., & Dama, R. W. (2024). Kontroversi Perkawinan Sesama Jenis di Halmahera Selatan: Tinjauan Hukum Islam Dan Dampaknya terhadap Masyarakat. *Al-Maqasid: Jurnal Ilmu Kesyariahan Dan Keperdataan*, 10(2), 189–205. <https://doi.org/10.24952/almaqasid.v10i2.11455>
- Syed, I. B. (2022). *Same Sex Marriage and Marriage in Islam*. Islamic Research Foundation International, Inc. http://www.irfi.org/articles/articles_151_200/same_sex_marriage_and_marriage_i.htm
- The Robinson Professors. (2004). *Is America a Christian Nation?* George Mason University. <https://robinsonprofessors.gmu.edu/is-america-a-christian-nation/>
- Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, (1994).
- UDHR. (1948). *Universal Declaration of Human Rights*.
- United States v. Windsor, Executor of the Estate of Spyer, et al., No. 12–307, (2013).
- Wakefield, J. C. (2024). R. Spitzer and the depathologization of homosexuality: some considerations on the 50th anniversary. *World Psychiatry*, 23(2), 285–286. <https://doi.org/10.1002/wps.21206>
- Yirka, B. (2013). *Study Shows Some Spiders Have Individualized Personalities*. PHYS.ORG. <https://phys.org/news/2013-07-spiders-individualized-personalities.html>
- Zablocki v. Redhail, 434 U.S. 374, (1978).
- Zuhdi, M. (1991). *Masā'il Fiqhiyyah*. Jakarta: Haji Masagung.