



Convergence and Divergence of Same-Sex Marriage Policies (A Comparative Study of Constitutional and Administration Law in Three Core Countries of the European Union)

Malinda Hafizaturrizqo Amania, Nur Syifa Yazidi

Universitas Islam Negeri Antasari

Jalan Ahmad Yani, KM. 4.5 Banjarmasin, Kalimantan Seltan

hafizaturrizqomalinda@gmail.com, syifayazidi18@gmail.com

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Abstract: *Same-sex marriage has become one of the most prominent legal and social issues in recent decades, particularly within the European Union, which upholds the principles of non-discrimination and social integration. The Netherlands, France and Germany three core EU member states have all legalized same-sex marriage, yet each through different legal and policy trajectories. This article aims to examine the convergence and divergence of same-sex marriage policies in these countries through a constitutional and administrative law approach. Using a normative juridical method and comparative legal analysis, the study explores how domestic frameworks and sociopolitical dynamics shape the regulation of same-sex marriage. The findings indicate that although all three countries now recognize same-sex couples equally under the law, their legislative pathways, earlier forms of legal partnerships (such as registered partnerships and PACS) and their responses to social challenges such as discrimination reflect the distinct legal cultures and constitutional settings of each country. This shows that similar legal outcomes do not always emerge from identical processes, and that local factors continue to play a significant role in shaping legal policy, even in matters of global relevance like same-sex marriage.*

Abstrak: Pernikahan sesama jenis telah menjadi salah satu isu hukum dan sosial yang paling menonjol dalam beberapa dekade terakhir, terutama di Uni Eropa, yang menganut prinsip-prinsip non-diskriminasi dan integrasi sosial. Belanda, Prancis, dan Jerman—tiga negara anggota inti Uni Eropa—semuanya telah melegalkan pernikahan sesama jenis, namun masing-masing melalui jalur hukum dan kebijakan yang berbeda. Artikel ini bertujuan untuk menganalisis konvergensi dan divergensi kebijakan pernikahan sesama jenis di negara-negara tersebut melalui pendekatan hukum konstitusional dan administratif. Menggunakan metode yuridis normatif dan analisis hukum komparatif, studi ini mengeksplorasi bagaimana kerangka hukum domestik dan dinamika sosio-politik membentuk regulasi pernikahan sesama jenis. Temuan menunjukkan bahwa meskipun ketiga negara kini mengakui pasangan sesama jenis secara setara di bawah hukum, jalur legislatif mereka, bentuk-bentuk kemitraan hukum sebelumnya (seperti kemitraan terdaftar dan PACS), serta respons mereka terhadap tantangan sosial seperti diskriminasi mencerminkan budaya hukum dan pengaturan konstitusional yang berbeda di masing-masing negara. Hal ini menunjukkan bahwa hasil hukum yang serupa tidak selalu muncul dari proses yang identik, dan faktor lokal terus memainkan peran signifikan dalam membentuk kebijakan hukum, bahkan dalam isu-isu global seperti pernikahan sesama jenis.

Corresponding Author: Email: hafizurrizqomalinda@gmail.com

A. Introduction

Same-sex marriage, often referred to as LGBT marriage, has become a widely discussed and publicly debated topic in recent years. This trend coincides with the growing flow of information, increasing openness, freedom of expression, and the rising prominence of human rights issues. The term LGBT is frequently used to refer specifically to individuals within this group, which includes several categories: 1) *Lesbian*: women who are physically, emotionally or mentally attracted to other women; 2) *Gay*: men who are physically, emotionally or mentally attracted to other men; 3) *Biseksual*: individuals who are attracted to both the opposite and the same sex; 4) *Transgender*: individuals whose gender identity differs from their biological sex and who may choose to undergo medical procedures to align their physical appearance with their identified gender.¹

Amid these dynamics, there has been a legal paradigm shift in several countries, opening access to civil marriage for same-sex couples. The European Union, as a region that strongly upholds the principles of non-discrimination and social integration, has played a significant role in advancing the legalization of same-sex marriage. However, the implementation of such policies has not been uniform. Each member state adopts its own legal approach, both in constitutional law and in the administrative framework governing marriage. For instance, the Netherlands, France and Germany, three core countries of the European Union with significant influence in shaping regional norms offer a compelling illustration of how domestic legal and political frameworks shape the regulation of same-sex marriage.

The Netherlands is recognized as a global pioneer, having legalized same-sex marriage in 2001. France followed in 2013 after intense public debate and resistance from conservative groups, while Germany only legalized such unions in 2017 after lengthy discussions about the constitutional meaning of marriage. Although all three countries now recognize the right of same-sex couples to marry, the legislative and administrative paths they followed were markedly different.

This study aims to identify and analyze the forms of convergence and divergence in same-sex marriage policies in the Netherlands, France, and Germany through the lens of constitutional

¹ Olga Novita, "Hak Perkawinan Bagi Kaum LGBT Legalitas dalam Hukum Indonesia," *Jurnal Ilmiah Dunia Hukum* 6, no. 1 (2021): 6.

and administrative law. By examining the normative frameworks and administrative implementations in these three core EU countries, this research seeks to uncover patterns in the development of legal norms that are responsive to sexual orientation diversity, as well as the challenges that arise within the context of modern constitutional states.

B. Research Method

This study employs a normative legal research method. Normative legal research examines the law from an internal perspective, focusing on legal norms as its primary object of analysis. The process involves studying, interpreting, and understanding legal doctrines, rules, or principles that are later used to resolve legal issues. The aim is to assess the consistency of legal norms and determine whether existing regulations align with prevailing legal principles.²

This research adopts a normative juridical method combined with a comparative legal approach. The comparative approach is chosen due to its relevance in analyzing the structures and systems of law across multiple countries, with the goal of identifying similarities, differences and the potential for mutual learning between legal systems. Therefore, this approach is applied to analyze same-sex marriage policies in the Netherlands, France and Germany, three core countries of the European Union that have established legal frameworks regarding this issue examined from both constitutional and administrative law perspectives.

C. Discussion

A. The Basic Concept of Same-Sex Marriage

Linguistically, the term “marriage” derives from the Arabic words *nakaha*, meaning “to unite” and *zawaja*, meaning “partner”. Etymologically, marriage is understood as the union of two individuals who were previously separate, forming a complete and unified bond. Terminologically, marriage is defined as a binding agreement between a man and a woman that legitimizes their intimate relationship. This bond must be formed voluntarily with the intention of building a harmonious and affectionate household in accordance with Islamic teachings.³

Amid the sacred nature of marriage, the phenomenon of same-sex marriage has emerged.

² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Kencana, 2016), 12.

³ Tinuk Dewi Cahyani, *Hukum Perkawinan* (Malang: UMM Press, 2020), 2.

Same-sex marriage refers to the legal union between two individuals of the same gender. Such marriages may be conducted through civil ceremonies or within religious settings, depending on the laws of each country. In nations with strong religious foundations, marriage is generally recognized only when performed between a man and a woman, in line with religious and state laws. Conversely, in more liberal countries, religious doctrine plays a lesser role, and marriage is governed predominantly by civil law.⁴

From a scientific perspective, LGBT identities are classified as variations of sexual orientation, not as disorders or illnesses. Since the 1970s, American medical and psychiatric associations have removed LGBT classifications from the list of physical or mental disorders. The primary distinction between a disorder and a variation lies in pathological causes; LGBT orientations are more comparable to individual preferences like a preference for certain colors than to medical abnormalities. Historical evidence shows that homosexuality has existed since ancient times, including within Greek civilization. For example, historical accounts often cite Alexander the Great a renowned figure of the Hellenistic era as having had same-sex relationships.⁵

This phenomenon is more commonly referred to as homosexuality, which is defined as romantic or sexual attraction toward individuals of the same gender. Homosexuality is typically divided into two categories: "gay," referring to men attracted to other men, and "lesbian," referring to women attracted to other women. Although the term "homosexual" can broadly refer to same-sex relationships, in everyday usage, it is often associated specifically with male homosexuality. The causes of homosexuality especially in men remain a subject of ongoing debate.⁶

Several factors are thought to contribute, including genetic predispositions, hormonal imbalances, unsupportive sexual development environments or positive early homosexual experiences that may lead individuals to continue seeking same-sex relationships. Additionally, trauma is frequently cited as a contributing factor for instance, negative experiences with women or emotional disappointment in heterosexual relationships may cause individuals to turn away

⁴ Deity Yuningsih dkk., "Same Sex Marriage in Legal and Human Rights Perspectives," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1.

⁵ Leonardus Nopiandi dan Gerwin Bernardus Putra, "Lgbt & Perkawinan Sejenis (Same-Sex Marriage) dalam Pandangan Teologi Moral Gereja Katolik," *Aggiornamento: Jurnal Filsafat-Teologi Kontekstual* 2, no. 2 (2021): 28.

⁶ Marzuki Umar Sa'abah, *Perilaku seks menyimpang dan seksualitas kontemporer umat Islam* (Yogyakarta: UII Press, 2001), 128.

from heterosexuality and pursue same-sex partners.⁷

In women (lesbians), some studies suggest that homosexuality may arise from dissatisfaction in heterosexual relationships or an inability to reach sexual satisfaction with male partners. Trauma resulting from abuse or violence by men is also considered a potential influence, leading to a deep resentment toward men and shaping the development of same-sex attraction.⁸

B. Legal Policy Profile on Same-Sex Marriage in the Three Core Countries of the European Union

1. Netherlands

Efforts to legalize same-sex marriage in the Netherlands began through judicial channels in the early 1990s. Several same-sex couples filed lawsuits demanding legal recognition of their right to marry. They presented two main arguments. First, from the statutory construction perspective, they argued that Article 30, Book 1 of the Dutch Civil Code did not specify gender, and therefore did not explicitly prohibit same-sex marriage. Although the Amsterdam District Court acknowledged the absence of explicit restrictions, it rejected the application on the grounds that the original legislative intent was to limit marriage to opposite-sex couples.⁹

The second argument centered on human rights violations, particularly the right to marry and found a family, and the principle of non-discrimination as enshrined in the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). However, the Dutch Supreme Court (Hoge Raad) rejected this claim, referencing the European Court of Human Rights' precedent that traditionally defined marriage as a union between a man and a woman. As a result, same-sex marriage was deemed outside the protection scope of these international conventions.

The court adopted a passive stance, stating that redefining marriage falls under legislative, not judicial, authority. However, the Supreme Court did acknowledge that

⁷ Muhammad Arif Zuhri, "Perkawinan Sejenis dalam Kajian Islam," *Al-Ahwal* 8, no. 1 (2015): 89.

⁸ Zuhri, 89.

⁹ Ahmad Ega Putra Dani dan Murry Darmoko, "Ketentuan Perkawinan Sesama Jenis di Indonesia dan Belanda," *Judiciary (Jurnal Hukum dan Keadilan)* 12, no. 1 (2023): 134.

denying certain legal benefits tied to marriage for same-sex couples might be unjustifiable, although this issue was not further examined in that case. Following the judicial deadlock, social-political initiatives at the local level began to emerge. Starting in 1991, several municipalities opened registration systems for same-sex couples to record their unions, even though these had no legal force. This symbolic gesture reflected growing social support.¹⁰

Influenced by the broader European trend especially Denmark's pioneering move to establish registered partnerships in 1989 the Netherlands began considering similar arrangements. In 1994, a bill on registered partnerships was introduced in Parliament. Although initially aimed at same-sex couples, a 1995 amendment expanded it to include heterosexual couples as well. The system was enacted in 1997 and came into force in 1998. While offering most of the same legal rights as marriage, it excluded joint adoption and automatic parental recognition.¹¹

However, political pressure persisted. In 1996, Parliament passed a resolution demanding that same-sex couples be granted access to full civil marriage. The government responded by forming the Kortmann Committee to study the issue. In its October 1997 report, the majority of committee members concluded that equality could only be achieved by opening civil marriage to same-sex couples. They rejected the idea that marriage should solely be for reproduction. A minority within the committee opposed this, citing biological differences and concerns over international recognition.¹²

Although the cabinet initially rejected the recommendation and preferred to expand the partnership system, the 1998 general election resulted in a new coalition that fully supported same-sex marriage legalization. The government subsequently proposed a bill to amend Article 30 of Book 1 of the Dutch Civil Code in December 1998 and officially submitted it to Parliament in July 1999. The bill explicitly allowed marriage between two individuals, regardless of gender without creating a separate or parallel marriage system.¹³

¹⁰ Nancy G Maxwell, "Opening Civil Marriage to Same-Gender Couples: a Netherlands-United States Comparison," *Arizona Journal of International and Comparative Law* 18, no. 1 (2001): 153.

¹¹ Maxwell, 153.

¹² Law Library of Congress, "The Netherlands: Same Sex Couples Registered Partnership, Marriage and Adoption" (Washington, DC: Global Legal Research Directorate, 2001), 6.

¹³ Maxwell, "Opening Civil Marriage to Same-Gender Couples: a Netherlands-United States Comparison," 154.

The bill also recognized the unique implications of same-sex marriage, particularly concerning children and international recognition. For instance, it did not automatically presume that a child born to a lesbian couple was legally the child of both parents, in order to align legal provisions with biological realities. Nevertheless, legal protection was provided through joint parental authority and adoption mechanisms. After extensive debate, the lower house of Parliament passed the bill on 12 September 2000 with a majority vote of 109 to 33. The upper house approved it on 19 December 2000 and it was signed into law by the Queen and the Minister of Justice two days later. The law officially took effect on 1 April 2001, making the Netherlands the first country in the world to redefine civil marriage to include same-sex couples.¹⁴

The Dutch regulation on same-sex marriage is stipulated in the *Wet Openstelling Huwelijk*, the official name of the law legalizing same-sex marriage in the Netherlands. This is codified in Article 1:30 of the Dutch Civil Code (*Burgerlijk Wetboek*), which states: “*Een huwelijk kan worden aangegaan door twee personen van verschillend of van gelijk geslacht*”, translated as: “A marriage may be contracted by two persons of different or of the same sex”.¹⁵

The Netherlands made history in 2001 as the first country in the world to legalize same-sex marriage. Since then, it has continued to lead not only in legal advancements but also in promoting social acceptance and protecting the rights of LGBTIQ+ individuals (lesbian, gay, bisexual, transgender, intersex, queer and others). This commitment extends beyond legal provisions and is reflected in education, civil society, and foreign policy. Each year, the Netherlands hosts the inclusive and vibrant Pride Amsterdam, a nine-day celebration that includes a boat parade through the city’s canals. In 2026 the country will mark the 25th anniversary of legalization with the WorldPride, a 15-day global event.¹⁶

The Netherlands also has a long history of bisexual activism, with organizations such as the *Stichting Bisexualiteit Nederland* (Dutch Bisexuality Foundation) and the *Landelijk Netwerk Bisexualiteit* (LNBi: National Bisexual Network of the Netherlands). Although the

¹⁴ Maxwell, 155.

¹⁵ *Burgerlijk Wetboek 1, Wet openstelling huwelijk* (Kitab Undang-Undang Hukum Perdata Buku 1, Undang-Undang Perkawinan Terbuka).

¹⁶ Jeroen Ploegen, “A Quarter Century of Same-Sex Marriage: The Netherlands at the Forefront of LGBTIQ+ Rights,” *Pride Amsterdam’s Brochure*, 2024, 1.

first organization was dissolved years ago, LNBI merged with other LGBT+ organizations in 2019 after more than 25 years of supporting the bisexual and plurisexual communities in the country.¹⁷

Following the legalization of same-sex marriage, Dutch laws have continued to evolve to address emerging challenges. For example, since 2014, civil registrars are no longer allowed to refuse officiating same-sex marriages, in response to earlier cases of refusal. In terms of gender identity, since 2014, individuals can change the gender marker on official documents without undergoing surgery medical assessment is sufficient. The Dutch government has also established the National Coordinator for Anti-Discrimination and Racism (NCDR) and supports healthcare services that are sensitive to gender and LGBTIQ+ issues. In the fields of education and culture, officials are encouraged to share best practices and knowledge to combat discrimination.¹⁸

In practice, same-sex marriages follow the same legal requirements as opposite-sex marriages. Couples may only be married to one person at a time, must meet minimum age requirements, and cannot be closely related. A formal notice of intent to marry must be submitted to the civil registry about two weeks before the wedding. Civil servants check documents such as birth certificates and divorce papers (if applicable) and ensure there are no legal impediments. The wedding is officially conducted at city hall and must be witnessed by at least two adults. Afterward, the couple signs the marriage certificate, which is legally recorded.¹⁹

The rights and obligations of same-sex spouses are almost identical to those of opposite-sex spouses. They are required to support each other, remain faithful, and share household responsibilities. In case of disputes, courts can intervene. Without a prenuptial agreement, all assets and debts acquired before and during the marriage are considered joint property. Exceptions apply if specific items are excluded via a will. Pension rights are not automatically considered shared property, but couples can make arrangements to ensure survivor benefits are granted. Inheritance laws apply equally unless modified through a will.

¹⁷ Emiel Maliepaard dan Renate Baumgartner, *Bisexuality in Europe Sexual Citizenship, Romantic Relationship and Bi+Identities* (London: Taylor & Francis Group, 2021), 36.

¹⁸ Ploegen, "A Quarter Century of Same-Sex Marriage: The Netherlands at the Forefront of LGBTIQ+ Rights.," 2.

¹⁹ Government of the Netherlands, "LGBTI Equality in the Netherlands: Orange Is Always Part of the Rainbow" (The Hague: Government of the Netherlands, 2018), 5.

In case of divorce, whether filed jointly or by one party, a court decision is required to dissolve the marriage. The court may also order spousal support and determine pension distribution based on existing laws.²⁰

One key difference between same-sex and opposite-sex marriages concerns the legal status of children born within the marriage. In heterosexual marriages, a child is automatically recognized as the legal child of both parents, as parentage laws are still grounded in the male-female biological relationship. In same-sex marriages, because having children involves third-party assistance (e.g., sperm donation or surrogacy), the child is not automatically regarded as the child of both spouses. However, the non-biological spouse (e.g., the wife of the birth mother) can legally adopt the child, and upon court approval, both partners are granted full legal parental status under family law.²¹

2. France

France is a country that strongly upholds the principles of freedom (*liberté*), equality (*égalité*) and fraternity (*fraternité*). These principles are expected to bring France into a country that does not apply discrimination, especially to homosexuals in France. The debate on the legalization of same-sex marriage in France has started since the 1990s. One source that records this development is an article titled *Timeline: Marriage and Homosexual Rights in France*. In 1995, the city of Saint-Nazaire became the first city to allow same-sex couples to live together in concubinage (similar to legally recognized cohabitation). Then in 1999, the French government passed a law on PACS (*Pacte Civil de Solidarité*), a form of legal relationship that can be used by both heterosexual and same-sex couples who choose not to get legally married. Although legally valid, PACS differs from civil marriage in several important ways, such as:²²

- a) Place of registration: Marriages are performed at the mayor's office and witnessed by a civil registry official, whereas PACS only requires the approval of an administrative official (*préfecture*).

²⁰ Law Library of Congress, "The Netherlands: Same Sex Couples Registered Partnership, Marriage and Adoption," 6.

²¹ Law Library of Congress, 8.

²² Melpa Tresia dan Airin Miranda, "Peran Gerakan Sosial dalam Pengesahan Mariage Pour Tous di Prancis," *Multikultura: Jurnal Lintas Budaya* 2, no. 4 (2023): 416.

- b) Obligations: Civilly married couples are obliged to be faithful and have to go through a longer legal process to divorce or arrange inheritance if one dies. In contrast, PACS couples are not required to be faithful and the relationship can be terminated simply by reporting to the municipal mayor.
- c) Taxes: Married couples share tax obligations immediately, while PACS couples can only share taxes after three years of living together.
- d) Residence: Only married couples are entitled to a residence allowance.
- e) Citizenship: Legally married foreign spouses can apply for citizenship after one year. But if it is only PACS, they only get a residence permit (not citizenship).
- f) Adoption and artificial insemination: Only married couples are allowed to adopt children and perform artificial insemination.
- g) Divorce and property division: If a PACS couple separates due to conflict, the division of property is done through the courts.
- h) Inheritance: Inheritance from married couples is not taxed up to a certain limit (330,000 francs), whereas for PACS couples, the tax-free limit is lower (250,000 francs), and the tax is much higher if it exceeds that limit.

According to research conducted by Insee in early 2013, around 35% of same-sex couples in France chose to bind their relationship through a Pacte Civil de Solidarité (PACS). This figure shows that only about a third of homosexual couples use PACS, so it cannot be said that PACS are the main form of legal bonding chosen by the homosexual community in France. Although PACS were initially considered to be a favorable alternative, over time many have come to see that the system still has its shortcomings.²³

The stark differences in rights and obligations between PACS and legal marriage, especially in terms of child custody, inheritance and access to artificial insemination, are the reason why some same-sex couples demand mariage pour tous (marriage for all). They want legal recognition and equal rights with heterosexual married couples. This fact reflects that French law at that time did not fully provide fair access for homosexual couples to form families, including the right to have children.

In 2012, while running for President of France, Francois Hollande made legalizing same-sex marriage one of his 60 campaign promises. This promise sparked a new social

²³ Astrid Vionisa Casandra dan Airin Miranda, "Undang-Undang Mariage Pour Tous dan Homofobia di Prancis," *Jurnal Ilmu Budaya* 9, no. 1 (2020): 105.

movement demanding that the government make it a reality. A year later, in 2013, the demand was answered with the passing of the *Mariage pour Tous* (MPT) law or “Marriage for All” which officially opened access to civil marriage for same-sex couples in France.²⁴

By signing this law, President Hollande made France become the 14th country in the world to legalize same-sex marriage. The Minister of Justice at the time, Christiane Taubira, stated that this policy was a political and moral responsibility aimed at expanding freedom for all citizens. This was conveyed through the official government website gouvernement.fr. In a parliamentary meeting, out of 556 votes, 331 members of parliament voted in favor. With this majority, the MPT law was finally passed on May 17, 2013.²⁵ Based on the principle of equality, all citizens regardless of the gender of their partner now have the right to legally marry. The new law also changed some important things in the French legal system:²⁵

- a) Pasal 143 Article 143 states that marriage can be entered into by two persons of either sex or the same sex.
- b) The terms “husband” and “wife” are omitted from marriage documents, replaced by the mention of each partner's name without mentioning gender.
- c) The terms “father” and ‘mother’ are also replaced by the word “parents”.
- d) Married same-sex couples enjoy the same rights as heterosexual couples, including the right to marriage leave, adoption, leave on the death of a spouse, retirement benefits and the right to change residence to follow a spouse (geographical mobility).
- e) The MPT also protects same-sex couples from discrimination in the workplace. For example, an employee cannot be penalized or dismissed simply for refusing to transfer to a country where homosexuality is prohibited.

With the passage of MPT, sexual orientation is no longer a barrier to marriage. All couples are now treated equally in the eyes of the law. Civil rights that were previously only enjoyed by heterosexual couples are now also granted to same-sex couples. This is enshrined in Law No. 2013-404 of May 17, 2013 (LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe) which officially opens up marriage to same-sex couples in France.

²⁴ Casandra dan Miranda, 105.

²⁵ Seb Marchand, “Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe” (Legaletic, 2025), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000027414540>. Accessed on July 3, 2025.

However, the legalization of same-sex marriage in France did not immediately receive widespread support from all levels of society. Opposition to the mariage pour tous policy emerged through the La Manif pour Tous movement driven by conservative and homophobic groups. They opposed the legalization by appealing to traditional French values strongly influenced by Catholicism and the history of family law based on the Code Civil des Français of 1804. Based on these religious views and social norms, homosexuality is considered to be in direct conflict with.²⁶

This rejection has not only taken the form of discourse but has also led to protests, verbal and physical violence against LGBTQ+ people. Excessive social pressure has even contributed to the increasing rates of depression and suicide among the homosexual community in France. In practice, despite the existence of a legal umbrella that recognizes their existence, homosexuals are still often the target of discrimination in various aspects. Then in 2018, political lobbying was carried out by homosexuals by approaching a French politician named Emmanuel Gregoire who is a member of the socialist party and became the mayor of Paris as the first deputy.²⁷

In response to the rise of homophobic violence in Paris, Gregoire in 2018 wrote an open letter voicing support for the LGBT community. The letter was published on Komitid France, an LGBT information platform founded to coincide with the fifth anniversary of the legalization of same-sex marriage. In her letter, Gregoire emphasized that no individual has the right to threaten the security and freedom of LGBT people. She proposed the creation of a roadmap involving meetings between LGBT organizations and public authorities to systematically respond to threats and discrimination. Gregoire also emphasized the importance of police involvement in handling discrimination cases as they have adequate resources. In addition, she encouraged reports and lawsuits related to homophobic acts to be documented and taken seriously, including with clear criminal sanctions. Gregoire's move reflects concrete support from government officials for the protection of LGBT rights in France.²⁸

²⁶ Casandra dan Miranda, "Undang-Undang Marriage Pour Tous dan Homofobia di Prancis," 107.

²⁷ Casandra dan Miranda, 113.

²⁸ Emmanuel Gregoire, "Paris en Grand," Web article, *Discours – Droits des LGBTQIA+ : Faire vivre l'égalité pour toutes et tous!* (blog), 2025, <https://parisengrand.fr/tribune/discours-droits-des-lgbtqia-faire-vivre-l-egalite-pour-toutes-et-tous>. Accessed on July 4, 2025.

3. Germany

Same-sex marriage in Germany underwent a long legal and social journey before it was finally legalized on June 30, 2017, through a vote in the Bundestag, Germany's federal parliament. Although the majority of progressive parties such as the SPD, Die Linke, and the Green Party gave their full support, most members of the conservative CDU/CSU bloc, which was in power at the time, opposed it. However, post-legalization surveys showed that many of them actually had a more positive personal attitude toward legalization. This indicates a discrepancy between personal preferences and voting behavior, which is believed to have been influenced by perceptions of their constituents' attitudes.²⁹

Constitutionally, Germany guarantees protection for the institutions of marriage and family through Article 6(1) of the Grundgesetz (Basic Law), which states that “Marriage and family are under the special protection of the state.” However, the initial interpretation of the Federal Constitutional Court (Bundesverfassungsgericht) defined marriage as a bond between a man and a woman, aimed at lifelong togetherness and the formation of a family. This led to a lengthy debate over whether same-sex marriage could be included in this constitutional definition.³⁰

However, with the passage of time and the growing emphasis on the principle of equality in the constitution (Article 3(3) GG), many academics and legal practitioners began to question this restriction. The Constitutional Court itself, in several of its decisions, has acknowledged that social changes can influence the interpretation of a legal concept, including the meaning of “marriage.” Therefore, there is no strong constitutional reason to exclude same-sex couples in this case, especially if they have formed a legal relationship and bear mutual responsibilities like heterosexual couples.³¹

Before same-sex marriage was legalized in Germany in August 2001, the *Lebenspartnerschaftsgesetz* (Life Partnership Act) came into effect. Its purpose was to “end discrimination experienced by same-sex couples/families compared to heterosexual couples/families in a number of areas”, by adding provisions on civil partnerships to over a

²⁹ Michael Jankowski, “Slowly adopting: the impact of same-sex marriage legalisation on the attitudes of parliamentary candidates in Germany,” *European Journal of Politics and Gender* 6, no. 1 (2023): 141.

³⁰ Anne Sanders, “Marriage, Same-Sex Partnership, and the German Constitution,” *German Law Journal by Cambridge University Press* 13, no. 8 (2013): 912.

³¹ Yulia Amini, “Pengaturan Perkawinan Sesama Jenis dalam Perspektif Hukum Indonesia: Studi Komparatif dengan Negara Jerman,” *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat* 02, no. 02 (2023): 8.

hundred laws. Since then, over 14,000 civil partnerships have been registered. The first partnership took place at the Schöneberg district town hall in Berlin between theologian Gudrun Pannier and lawyer Angelika Baldow. At the same time, dozens of people protested in Munich against the Bavarian government's refusal to implement the law. However, a national poll in the same year showed that 60% of citizens supported civil partnerships for same-sex couples that were equivalent to heterosexual marriage, and at least 55% stated they did not believe same-sex marriage would have a negative impact on families.³²

Although granting certain rights similar to marriage, these partnerships are still considered a separate and unequal legal relationship. The Constitutional Court did allow recognition of same-sex couples through this form, but it still positioned marriage as a more protected and idealized institution. Legislative efforts were then directed at eliminating this discrimination, until finally, in 2017, German civil law officially opened marriage to same-sex couples, and registered partnerships were no longer a new legal option.

The legalization of same-sex marriage in Germany also has a transnational dimension. Within the European Union, mutual recognition of the legal status of partners from other countries is important for supporting freedom of movement. Since marriage is universally recognized as having broader legal standing than registered partnerships, the legalization of same-sex marriage helps eliminate administrative and legal barriers for couples in cross-border mobility.

Since the implementation of the Marriage for All Act (*Ehe für alle*) on October 1, 2017, same-sex couples in Germany have gained full access to the civil marriage administration system, which was previously only available to heterosexual couples. With the enactment of this law, same-sex couples can now marry at the *Standesamt* (civil registry office) just like opposite-sex couples. The administrative procedures applied are no longer differentiated; all couples must meet the same legal requirements regarding identity documents, citizenship status, and the absence of legal obstacles to marriage, such as being married to another person or having a blood relationship.

³² Jackie Jones, "The prospects of legal recognition of same-sex marriage in Germany", *Emerald Insight*, 2009, 224.

C. Analysis of Regulatory Convergence and Divergence in Three Countries (the Netherlands, France and Germany)

In comparative law studies, the terms convergence and divergence are two key concepts often used to understand the extent to which legal systems in various countries are developing toward similarity or maintaining their differences. Legal convergence refers to the process by which legal systems in various jurisdictions increasingly resemble one another. Conversely, divergence refers to differences that persist or even intensify due to factors such as legal sovereignty, local culture, or domestic political dynamics.³³

A comparison of same-sex marriage regulations in the Netherlands, France, and Germany shows convergence in terms of legal recognition of the rights of homosexual couples to marry civilly. The Netherlands became the first country in the world to fully recognize same-sex marriage through the Wet Openstelling Huwelijk Act in 2001. This law not only opened access to civil marriage for same-sex couples but also regulated their rights and obligations in matters of inheritance, child custody, and administrative recognition within the civil registry system. France followed suit by enacting Law No. 2013-404 (Mariage pour Tous) in 2013, while Germany enacted Ehe für Alle in 2017. This legal recognition reflects the state's acceptance of same-sex couples as legal subjects entitled to the same rights and protections. The principle of equality before the law is the common thread running through this convergence of policies, in line with the European Union's fundamental values of non-discrimination and respect for human rights.

In administrative terms, these three countries have also harmonized civil marriage procedures for heterosexual and homosexual couples. The marriage process is now carried out through official mechanisms at the civil registry office with identical requirements, ranging from identity documents, citizenship status, to legal status checks. There is no longer any difference in technical procedures, and same-sex couples are also entitled to enjoy post-marriage rights like other couples, including the right to divorce and receive financial compensation in the event of separation.

However, each country has its own unique path of transformation and presents significant divergences. The Netherlands took an evolutionary path that began with initiatives from civil

³³ Emilie Ghio, *Are Legal Systems Actually Converging or Diverging? An Investigation into the Evolution of the Law Post-Crisis* (Cham: Springer, 2024), 14.

society and city governments, then formulated a legal framework for registered partnerships before finally explicitly amending the Civil Code to include same-sex couples in the marriage system. The path taken was inclusive and progressive, supported by a liberal political climate and widespread public support for values of equality.

Meanwhile, France faced a more challenging path. Despite the country's commitment to the motto of liberty, equality, and fraternity. The passage of the *Mariage pour Tous* law in 2013 sparked massive protests from conservative and religious groups. The *La Manif pour Tous* movement, rooted in Catholic values and traditional family law, became a symbol of resistance to the change, even leading to social tensions and discriminatory actions against the LGBT community. This tension underscores that the legalization of same-sex marriage in France is not merely a legal issue but also an ideological and cultural battle. Nevertheless, the government continues to pursue legal reforms based on the principle of equality among citizens.

Germany on the other hand, faces more complex constitutional challenges. Article 6(1) of the *Grundgesetz* does guarantee protection for the institutions of marriage and family. However, in its initial interpretation, the Federal Constitutional Court only recognized marriage as a union between a man and a woman. This interpretation began to shift with social changes and pressure from the principle of equality enshrined in Article 3(3) of the GG. The legalization of same-sex marriage was finally achieved in 2017 through a vote in the Bundestag, which was partially supported by members of parliament from the conservative coalition, despite their previous refusal to formally initiate the draft legislation. Full legalization was only achieved after a shift in the political landscape, increased public pressure, and the need for legal harmonization at the European Union level.

Another divergence can be seen in the alternative forms of legal relationships that were introduced before same-sex marriage was fully recognized. The Netherlands introduced registered partnerships, France offered the *Pacte Civil de Solidarité* (PACS), and Germany adopted the *eingetragene Lebenspartnerschaft*. These three forms served as a bridge toward legal equality, but with varying scopes of rights and obligations. For example, PACS in France is still used today by some same-sex and heterosexual couples, but it does not grant the same full rights as marriage, particularly regarding adoption, inheritance rights, or naturalization of foreign partners. In contrast, the Netherlands and Germany eventually abolished these schemes and directed all couples into an equal civil marriage system.

Although same-sex couples in all three countries have obtained adoption rights, there are still differences in terms of filiation. The Netherlands still requires formal adoption by the couple

from the biological parents because the lineage system still refers to heterosexual couples. In Germany, aspects of filiation and the identity of children of lesbian or gay couples are still evolving and remain a focus of post-2017 family law reforms. In France, changes in legal terminology such as “father” and ‘mother’ to “parent” reflect a radical step toward accommodating diverse family structures, though they continue to face cultural resistance.

One other important aspect is how the country deals with discrimination against same-sex couples post-legalization. The Netherlands has been relatively successful in creating a supportive social environment through education, public campaigns and institutions such as the National Anti-Discrimination and Racism Coordinator (NCDR). France, despite having strong legal instruments, still faces considerable social challenges. Figures such as Emmanuel Gregoire symbolize state support in responding to homophobic violence, including by proposing concrete steps such as a collaborative roadmap between the LGBT community and public authorities. Meanwhile, in Germany, the protection of same-sex couples has also been administratively strengthened, particularly in the context of cross-border mobility within the European Union. The legalization of marriage has had the positive effect of removing legal barriers to the recognition of spouses from other countries, which was previously difficult under the registered partnership regime.

This analysis thus shows that although the Netherlands, France and Germany have all legally recognized same-sex marriage, the way in which they got to that point is different. This difference is strongly influenced by the political situation, legal culture and constitutional system of each country. From this comparison the author sees that although the end result seems similar, the path taken by each country is very different. This shows that local factors still have a big influence in shaping legal policies, even in issues that are global in nature such as same-sex marriage.

D. Conclusion

Based on the comparative analysis of the legal frameworks in the Netherlands, France, and Germany, the author concludes that all three countries have legalized same-sex marriage. Convergence is evident in the shared recognition of the principles of equality and non-discrimination, which integrate same-sex couples into the civil marriage system with procedures, rights, and obligations equivalent to those of heterosexual couples. However, the paths they followed to reach this outcome vary significantly.

The Netherlands demonstrated a progressive and relatively stable process, supported by strong social acceptance. France encountered ideological challenges and cultural resistance, highlighting that legal reform does not automatically transform public perceptions. Meanwhile, Germany navigated the issue through cautious constitutional debate, ultimately achieving equality through political shifts and legal reinterpretation.

The author observes that although the final outcome legal recognition of same-sex marriage is the same, the processes and challenges faced by each country differ. This policy evolution underscores that, in global issues such as same-sex marriage, local factors continue to play a crucial role. Thus, while legal frameworks may appear uniform, in reality, there are significant differences in the steps and approaches taken. Accordingly, this comparison not only reveals the trajectory of legal convergence within European Union countries but also emphasizes the importance of understanding the social and political contexts of each country in shaping fair and broadly accepted legal norms.

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