

Discussion, Suggestions for Revisions and Amendments in Vietnamese Land Law 2013

LLD. Nguyen Trong Diep¹; Dinh Tran Ngoc Huy^{2*}; Le Ngoc Nuong³; Pham Thi Hong Nhung⁴;
Ly Thi Hue⁵

¹School of Law, Vietnam National University, Hanoi.
¹dieptrongnguyenvnu@gmail.com

^{2*}MBA, Banking University HCMC Ho Chi Minh City, Vietnam.
International University of Japan, Japan.
^{2*}dtnhuy2010@gmail.com

³PhD, Thai Nguyen University of Economics and Business Administration, Thai Nguyen Vietnam.
³ngocnuong85@gmail.com

⁴Master, Ho Chi Minh College of Economics, Vietnam.
⁴hongnhunghce2911@gmail.com

⁵PhD, National Academy of Public Administration, Vietnam.
⁵lythyhuenapa2021@gmail.com

Abstract

The Land Law was issued 30 years ago with 5 times of revisions and amendments, most recently in 2013. For people, when selling land to other people, the contract is always the lowest price, and the amount of money received is the highest that the State can't actually control. Therefore, the tax calculation will be based on the land price bracket set by the State. When the interests of the parties are not the same, but the land price bracket according to the market price poses an extremely difficult problem.

At the same time, the legislators have not put in place a mechanism to reduce and pull back those conflicting relationships. This paper pointed that the Land Law 2013 has revealed many shortcomings and overlaps leading to difficulties in the process of organization and implementation, affecting the rights and interests of land users and investors as well as causing confusion for state agencies in the implementation of land policies and laws.

Key-words: Amendment, Land Law, Analysis, Revisions.

1. Introduction

The 2013 Land Law also revealed certain shortcomings, leading to limited enforcement of the land law, significantly affecting the management and use of land, legal rights and interests of the

people... Therefore, it is necessary to amend and supplement the Law to match the actual land policy in the current period.

To turn Vietnam's traditional agricultural economy into a modern industrial one, the party-state sees it necessary to convert agricultural land to create space for industrialization and urbanization” (“Agricultural Land Conversion”).

We see related studies in below table:

Table 1 - Related Studies Summary

Authors	Year	Content, results
Hansen	2013	As Vietnam continues to search for its ideal balance between Communist control and a market-led economy, land rights emerge at the forefront of the discussion concerning the tension between traditional Socialist ideals of people-owned and state managed property versus neoliberal ideals of private property rights. The purpose of this study is twofold. First, this study will explore the legal relationship between the Vietnamese state and individuals in regards to land ownership, land management, and land use rights, explaining how this relationship has changed over time with subsequent land laws. Going further, this study will focus on the 2013 land law reform and explain the major differences, if any, from past land laws and how these differences will affect the state’s right to appropriate land—often called “land grabbing”—for both public and private development. Second, through interviews, this study will also explore the roles of two international organizations, The World Bank and Action Aid Vietnam, within the current debate over land rights, exploring each organization’s relationship with the Vietnamese government and opinions regarding land grabbing and the 2013 land law
(Gillespie, “Vietnam’s Land Law Reforms”)	2013	The state seizes land from individuals for two reasons, and this paper will differentiate between the two by using the terms “public” versus “private” appropriation. Similar to the way that the power of eminent domain (i.e. compulsory acquisition) functions in Western land systems, the Vietnamese government has the right to seize land for the public interest, defined by state, collective, national defense, and security purposes. As one would expect, the state leverages this power to build military bases, schools, hospitals, roads, bridges, etc. The second form, what this paper will call “private” acquisition and what the Vietnamese government calls “economic” acquisition for projects of “national significance,” is for the purposes of economic development
Almeida	2021	Employs the concept of ‘wicked problems’ to overcome the limitations of law. First, it shows how these grievances should be studied through a multi-disciplinary approach instead of a purely legal one. Second, it argues that transitional justice regarding land grievances is primarily a political issue, and creating adequate arenas for political negotiation should be prioritized. Finally, the article shows that, due to its complexity and political nature, transitional justice for land grievances is ultimately a search for acceptable, rather than optimal, solutions.
Nguyen Lan Huong	2022	Land tenure security is important to agricultural development, especially in developing countries. Viet Nam’s land law has been significantly improved since its economic reform starting in 1986, and made a great contribution to the enhancement of the security of farmers’ land-use rights. However, in a transition to a modern economy as emerging in Viet Nam, there remain challenges to the security of farmers’ land-use rights such as limitation of arable landholding ceiling, unnecessary procedural provisions of renewals, and no clear-cut transition to modern thinking of law-makers for land use management. These challenges require a further reform of the land law in order to encourage more effective land use for agricultural development and bring larger economic benefits to small farmers

(Source: author synthesis)

2. Method

Authors used methods such as synthetical method, statistical method, legal analysis method, case study, comparative method, etc., are used to clarify issues relating to policies on land use management, land resource recovery, pricing, transfer of land use right, update on land use fluctuations, and authors have observed practical access and implementation of provisions of the Land Law in Vietnam to learn experiences and lessons.

3. Discussion

These shortcomings describe below.

Shortcomings in Management and Use of Land for Economic Development

Firstly, Secondly, shortcomings in identifying land use origin as basis for issuance of land use right certificate.

As the Land Law and guiding documents are constantly revised and amended with inconsistent provisions, violations in issuance of land use right certificates are found in some places, mostly relating to time limit of issuance, incorrect land area allocation (excess or shortage), wrong subjects of land allocation, incorrect identification of land use duration and origin, issuance of land use right certificate without specific boundary or landmark or land plot measurements, incorrect application of financial obligations and exemption/reduction of fees and levies of land users. Noticeably, there are shortcomings in identifying origin of land use as reclaimed or encroached land for issuance of land use right certificates without documents under Article 100 of the Land Law. Despite shortcomings in issuance of land use right certificates, there are remarkable achievements in this area. By the end of 2019, cadastral maps of 77% of total natural areas nationwide had been completed. Land use right certificates were issued for 97.36% of total areas of land subjected to certification (an increase of 0.16% compared to the same period in 2018) (*see Figure 3*).

Figure 1 - Statistics on Issuance of First Land Use Right Certificates in 2012, 2013, 2017, 2018 and 2019

Year	2012	2013	2017	2018	2019
Percentage of issuance of first land use right certificates	81.2%	83.2%	96.9%	97.2%	97.36%

(Source: Statistics from the General Department of Land Administration, Ministry of Natural Resources and Environment)

Problems in regional economic development planning, long time to determine price due to many stages affecting compensation, inconsistent documents, overlapping of land compensation and land investment costs, compensation price Compensating for the difference between the state recovered and the project recovered by the enterprises, the procedures for granting the certificate of land use rights are complicated, there are problems due to the unpublished set of administrative procedures on land, inadequacies due to differences in land use rights. About the time to carry out administrative procedures between documents...

Secondly, compensation for land recovery is not effective and protecting rights and interests of the people

Under the Land Law, the State shall compensate for land users eligible for compensation for land recovery. Subject to land availability, local authorities might make decision on compensation in land having the same land use purpose or in money calculated according to the specific land price of the type of recovered land. These provisions do not meet demands of people whose land is recovered. At the same time, compensation options are limited, especially in localities where land fund is abundant but without land having the same land use purpose of recovered land.

Thirdly, land recovery due to termination of land use according to law, voluntary return of land, or risk of endangering human life. In case the land user voluntarily returns the land to the State, the land use right value will be returned. The calculation of this return value is based on the land price list, so there are no specific regulations on determining land prices. Particularly for the case of land recovery located in areas with environmental pollution or affected by natural disasters that pose a threat to human life, compensation shall be paid. This compensation is made in accordance with the provisions of "compensation for land when the State recovers residential land and support for resettlement in case of recovery of residential land".

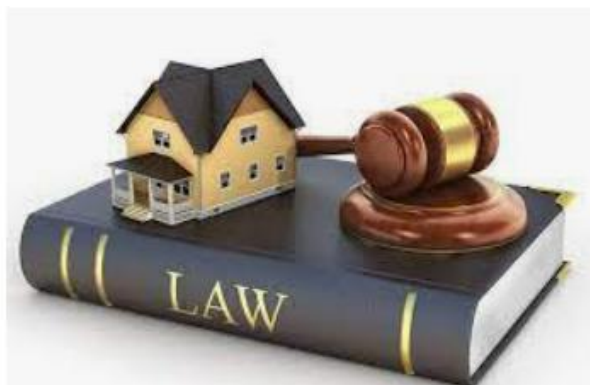
From the legal basis and practice of compensation, support and resettlement when the State recovers land, there are still some shortcomings and problems.

4. Recommendations

The Land Law was issued 30 years ago with 5 times of revisions and amendments, most recently in 2013. Presently, many countries in the world recognize private or multiple ownership of land. However, the all-people ownership of land regime in Vietnam does not exclude the land use right legal entities such as religious organizations, local communities, political and social organizations. The regime is also in line with socialist-oriented market economy of Vietnam. The all-people ownership of

land is a common ownership regime of the society for the benefits of the whole Vietnamese people. Under the all-people ownership of land, certain rights are given to state agencies while some other rights are given to the people (individuals, families, or collectives). This regime harmonizes public and private interests, facilitating conditions for land users to exploit land resources for economic development for their own interests, enabling the State to regulate land relationships for national interests, avoiding abuse of land use rights to enslave other people. The all-people ownership of land enables the State to actively manage land resources, regulating land relationships for the benefits of the nation and the land users. As representative of the all-people ownership of land, the State is entitled to allocate and recover land with or without rental payment, with or without compensation, etc., to protect interests of land users, supporting the poor, creating land fund for industrialization and urbanization, avoiding pro-longed and complicated negotiations with private owners. The necessary conditions for the all-people ownership of land include development of a transparent land state management system, reform of administrative procedures, and provision of sufficient information on land use rights to increase confidence of land users in investment and use of governmental mechanisms to protect their legitimate rights and interests.

Figure 2 – Still Shortcoming Sin Land Law Need Amendment



(Source: internet)

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Conflicts of Interest

There is no conflict of interest.

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