

Analyzing Shortcomings in Vietnamese Land Law 2013 and Recommendations

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Abstract

The current Land Law has made contributions to allocation of land resources and infrastructures for ecnomic development and establishment of the real estate market. Legislators have not yet provided a mechanism to reduce and pull back those conflicting relationships. In the draft, many mechanisms have been proposed, but the supervision has not been approached, specifically the fact that non-state forces have not been involved in the process of determining how much the market price is, because the determination of The market price needs to be agreed and accepted by the multi-component so that the market price can be created and applied in reality. This paper shows the amendment of the Land Law 2013 is an urgent requirement to promptly institutionalize the guidelines, guidelines and policies on land of the Party and State, ensuring compliance with documents in the legal system. laws, especially provisions of the Civil Code and specialized legal documents; overcome the shortcomings and inadequacies posed in the process of implementing policies and laws on land.

Key-words: Revisions of the Land Law, Analysis, Shortcomings.

1. Introduction

The 2013 Land Law has been amended and supplemented many times by the National Assembly to suit the practice and relevant laws, but so far there are still a number of shortcomings that need to be further amended and supplemented.

Land is a valuable national resource, a special means of production, a great asset and resource of the country. The land use right is a special good. In the annual report on the Vietnam Provincial Competitiveness Index (PCI), access to land is the second out of the total 10 subindices for competitiveness assessment, measuring by 11 indicators relating to openness of land procedures, ground clearance, and land recovery support (VCCI, 2021). Effective and efficient exploitation and use of land resource as well as harmonization of interests of the State, land users, and investors in using land for economic development have been consistent objectives since the current Land Law was approved in 2013. However, practical enforcement of the Land Law over the last 10 years has showed certain shortcomings of legal provisions, which affects management and use of this important natural resource. On 31 October 2012, the XIth Central Committee issued Resolution No. 19-NQ/TW on further reform of land policies and laws for comprehensive development, forming the backdrop for Vietnam to become a modern and industrialized country by 2020 (Resolution No. 19-NQ/TW). Accordingly, it is important to review the implementation of the Land Law 2013 nationwide as basis for issuance of a new law to meet requirements of the new context.

2. Method

Desk study: compilation and analysis of the current situation of implementation of the Land Law 2013 and recommendations for revisions and amendments are based on results of a comprehensive desk study of reports on the implementation of the Land Law and recommendations for revisions and amendments submitted by provinces to the Steering Committee on review of the implementation of the Resolution No. 19-NQ/TW. In addition, relevant legal normative documents, research papers, articles published on journals and newspapers, and reports on land resource management and use in Vietnam over the past few years are also studied.

Field study: the research team have observed practical access and implementation of provisions of the Land Law in Vietnam to learn experiences and lessons.

In this paper, various research 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. Based on results of analysis and assessment of the current situation, the paper proposes recommendations on improvement of provisions of the Land Law.

3. Discussion

Shortcomings in enforcement of the current Land Law focus on land use planning and management, compensation, and support for resettlement in land use projects, land registration, land financing, land use regime, obligations of land users. Specifically,

Overlapping of Legal Provisions

These shortcomings are reflected in complaints from businesses in the period from 2016-2019, mainly focusing on access to land, allocation and use of land (*see Figure 1 and Report No. 0036/PTM-KHTH dated 8 January 2020 of VCCI for details*).

No.	Criteria/year	From October 2016 –	2017	2018	2019	Total
		December 2019				
1	Total complaints of businesses	489	1,152	701	936	3,287
2	Complaints solved by relevant ministries/departments	372	954	546	710	2,582
	Percentage (%)	76.1%	82.4%	77.9%	75.9%	78.5%
3	Pending complaints	117	198	155	253	705
	Percentage (%)	23.9%	17.6%	22.1%	24.1%	21.5%

Figure 1 - Total Complaints of Businesses from 2016-2019

(Source: Vietnam Chamber of Commerce and Industry - VCCI, Report No. 0036/PTM-KHTH dated 8 January 2020 on review of settlement of complaints of businesses for the period from 2016-2019)

Specifically, relating to the Law on Procurement, it is unclear what type of land (with or without ground clearance) is subject to procurement for selection of investors through procurement of land price and projects associated with land use rights. The Land Law does not specify whether it is required to auction land use rights in compliance with the Land Law after procurement to select investors is conducted in compliance with the Law on Procurement. Accordingly, under Paragraph 1, Article 118 of the Land Law 2013, the State shall allocate land with land use levy or lease land through auction of land use rights in the following cases: (1) investment in construction of houses for sale or for lease, (3) use of

land fund to create capital for infrastructure construction, (4) use of land for trading or services, and land for non-agricultural production establishments, (5) lease of land which is part of agricultural land fund for public purposes for agriculture, forestry, aquaculture or salt production, (6) allocation or lease of land recovered by the State through rearrangement and handling of working offices, non-business establishments, or production or business establishments of which the land-attached assets are owned by the State, (7) allocation of urban and rural residential land to households or individuals, (8) allocation or lease of land in the cases eligible to land use levy or land rental reduction. Paragraph 3, Article 1 of the Law on Procurement 2013 provides for "Selection of investors to perform the investment projects with land use" while Point b, Paragraph 1, Article 1 of Decree No. 30/2015/ND-CP dated 17 March 2015 of the Government provides for "Projects of investment using land with high commercial value that require investor selection on the list of approved projects prescribed in Point b, Paragraph 1, Article 10 of Decree to develop constructions in urban areas, new urban areas; commercial housing, commercial and service works; multi-purpose complexes that are not the cases mentioned in Point a of this paragraph (i.e. investment projects in the form of public-private partnership). Point b, Paragraph 1, Article 10 on compiling and approving the list of projects provides for "Relevant Departments and equivalent agencies or the People's Committees of districts shall propose projects using land with high commercial value that need investor selection and send proposals to the Department of Planning and Investment; the provincial Department of Planning and Investment shall submit the list of land-using projects to the President of the People's Committee of the province for approval". Due to inconsistency between provisions of the Land Law and the Law on Procurement on auction of land use rights and procurement of land-using projects, some provinces have selected the Law on Procurement but not the Land Law to implement land-using projects (Thanh Hoa city, Thanh Hoa province, etc.).

Shortcomings in Management and Use of Land for Economic Development

Firstly, shortcomings in land financing policies to attract foreign investment

There are shortcomings in provisions on the general economic zones consisting of economic zones and hi-tech zones prescribed in the Land Law 2013, the Law on Investment 2014 (currently the Law on Investment 2020) and incentives in terms of land use compared to other areas to attract foreign investment capital. Failure to distinguish incentives for hi-tech zones and economic zones has resulted in limited effectiveness of foreign investment attraction policies (Pham Minh Hoa, 2019).

Secondly, shortcomings in using land

Land resources have not really been exploited, fully and sustainably promoted to become an important internal resource for the country's socio-economic development; the recovery of added value from land is not commensurate with the State's investment in infrastructure; the use of land in many places is still wasteful and inefficient; many projects are slow or do not put the land to use; agricultural land has been abandoned.

Thirdly, shortcomings in planning quality

The quality of the planning is not high, there is no long-term vision, the harmony between economic development, solving social problems and environmental protection is not ensured; Not following the spatial planning approach, relying on the ecosystem, the situation of unplanned land use still occurs, causing waste.

Fourthly, lack of transparency in evaluation of land price

Article 113 of the Land Law provides for adjustment of land price frames by the Government. Specifically, "during the implementation of land price frames, if the popular price in the market increases 20% or more over the maximum price or reduces 20% or more below the minimum price prescribed in land price frames, the Government shall adjust land price frames accordingly". It is difficult to decide the accurate popular price in the market as this depends mostly on experiences and subjective judgment of evaluators. Most businesses are using rented land. Auction procedures are often bypassed when land-use purpose is changed to urban land. Meanwhile, value of land use right is not strictly based on the popular price in the market. In practice, many state-owned enterprises are allocated a large area of land without strict management of competent state management agencies. Consequently, in some cases, public land is transferred into private land.

No.	Province	Inspection	Checking	Violations of the Land Law/Settled	Land-related complaints and petitions /Settled	Land-related denunciations/ Settled	Land- related disputes/ Settled
1	Ninh Binh province (2014- 2020)	Provincial level: 56 delegations	Provincial level: 09 delegations	District level: 178/174 cases	Provincial level: 2.018/1.850 cases District level: 261/259 cases	Provincial level: 43/41 cases District level: 04/03 cases	District level: 66/65 cases
2	Bac Giang province (2014- 2018)	-	-	-	District level: 78/78 cases	District level: 02/02 cases	District level: 01/00 cases
3	Ha Nam province (2014- 2020)	-	-	Provincial level: 1.000/865 cases	Provincial level: 327/195 cases	Provincial level: 60/46 cases	Provincial level: 636/544 cases

Figure 2 - Compilation of Inspection, Checking, Settlement of Land-related Disputes, Complaints, Denunciations, Violations of the Land Law in Ninh Binh, Bac Giang, Ha Nam Since 2014 to Present

(Source: Departments of Natural Resources and Environment of Ninh Binh, Bac Giang, Ha Nam)

Fifthly, Second, the site clearance specified in Articles 62 and 73 of the Land Law still has many unclear issues between economic development projects and socio-economic development projects for the national interest., public. The phrase "socio-economic development for the national and public benefit" in Article 62 of the Land Law 2013 can be applied to any project. Therefore, economic development projects should be clearly separated from public projects in the national interest, which should be amended in the new Land Law.

Sixthly, the inadequacy of project land allocation. According to the provisions of Clause 3, Article 45 of the Land Law: "The People's Committees of provinces shall submit to the People's Councils of the same level for approval the list of projects that need to be recovered as prescribed in Clause 3, Article 62 of this Law before they can be recovered. approve district-level land use plans". As such, projects on the new list may acquire land, allocate land or change land use purposes. However, for projects arising during the year but not included in the land use plan, according to Clause 10, Article 2 of Decree No. 01/2017/NDCP dated January 6, 2017 of the Government, the People's Committee of The province considers, approves the permission to implement and updates the district-level annual land use plan of the following year.

4. Recommendations

The Land Law has been around for more than 30 years with 5 amendments, the most recent being in 2013. However, according to experts, after 7 years, the Land Law 2013 has revealed many shortcomings and overlaps leading to difficulties. 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.

In order to continue renewing land law policies in the new period, on October 31, 2012, the 11th Central Committee issued Resolution No. 19-NQ/TW on continuing to innovate policies and laws. land law in the period of comprehensive promotion of renovation, laying the foundation for our country to basically become a modern industrialized country by 2020 (referred to as Resolution 19-NQ/TW), which sets out the requirement to review and summarize the implementation of the 2013 Land Law nationwide to serve as the basis for the process of promulgating a new Land Law.

Therefore, the amendment of the Land Law 2013 is an urgent requirement to promptly institutionalize the guidelines, guidelines and policies on land of the Party and State, ensuring compliance with documents in the legal system. Laws, especially provisions of the Civil Code and specialized legal documents; overcome the shortcomings and inadequacies posed in the process of implementing policies and laws on land.

Then we would like to propose recommendations on improvement of legislation as follows:

Firstly, identifying the nature of land resource and referring to tendencies in land adjustment and management in other countries for improvement of the Land Law

It is important to strengthen institutions to control the power of land management agencies and civil servants to avoid abuse of power and positions for land-related corruption (Tran Thi Minh Chau, 2021). Therefore, experiences in land management of other countries should be referred to effectively apply the all-people ownership of land as an effective measure in the revised Land Law.

Secondly, improvement of legal provisions on rights and obligations of various subjects of land use

In addition to national organizations and individuals, Vietnam should pay attention to foreigners to attract high quality human resources. Specifically, the Land Law might be revised to allow overseas Vietnamese to receive transfer of residential land use rights attached to houses outside housing development projects through house exchange transactions. In this case, financial obligations are similar to those of domestic families and individuals in buying and selling houses attached to residential land. At the same time, land use rights of overseas Vietnamese in general and their residential land use rights outside the housing development projects in particular should be recognized if land use rights are legally established in the past¹.

Thirdly, urgent needs for amendment and revision of the Land Law to minimize land disputes, ensuring transparency and effectiveness of the real estate, creating incentives for economic development to make greater contributions to the Government and the society.

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Conflicts of Interest

Ther is no conflict of interest.

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