



STATE POWER BALANCE IN GOVERNING LAND: LAW AND REGULATION OF VIETNAM

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Abstract:

Recent years have seen an increase in the number of cases involving illegal land purchases in Vietnam. In addition to making people lose faith in the Party's and the State's leadership, it also reduces the confidence of both domestic and foreign investors and businesspeople engaged in land leasing and commercial development in Vietnam. Land is the most important natural resource of each country worldwide. When used effectively, the state maintains a stable political system and achieves economic sustainability. However, countries' authorities still face many challenges when governing land resources. Although there have been many efforts to enact Laws and regulations to improve the legal system on land, Vietnam's authority administration is still very complicated now. Vietnam's National Assembly is collecting opinions from relevant organizations and individuals to finalize the draft and prepare to promulgate the revised 2022 Law of Land. In this article, the author clarifies the issue of state power control when expropriating land in Vietnam. From there, the author suggests ways to strengthen the legal framework for land when revising and creating new laws and regulations for the land, balancing the interests of the government and the people of Vietnam for the coming period. To do this research, the author combines many kinds of methodologies, such as surveying to collect data and opinions of experts, people and authorities, analyzing the laws and regulations related to managing land.

Keywords: Control of state power, Expropriating land, Complete the Law of the land, Vietnam.

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INTRODUCTION

Recently, many cases have been related to violations when acquiring land in Vietnam. It not only causes people's loss of trust in the leadership of the Party and the State, but it also reduces the trust of domestic and foreign investors and entrepreneurs when conducting land lease activities and business development in Vietnam. One of the reasons for illegal land acquisition is that the state's control over power is still inadequate. Therefore, it is necessary to have a profound and comprehensive study on the control of state power in the 2022 Law on land to better control the state power in land acquisition in the next period.

In Vietnam, the issue of controlling state power has been recognized in the 2013 Constitution. Accordingly, Vietnamese state power is unified, with assignment, coordination and control among state agencies in exercising legislative, executive and judicial powers. It is necessary to establish a

mechanism of mutual control between state power agencies, to prevent the possibility of power abuse and to ensure that state power is used correctly. The assignment and control of power are reflected in the delimitation of the scope of power for each state agency. Specifically, the National Assembly is empowered to make constitutional and legislative decisions, to decide on critical national issues and to supervise the state's activities, the government to exercise executive power and the Supreme People's Court to exercise judicial power.

As the highest state power organ elected by the people, the National Assembly is given the authority to control the power of the Government and the Supreme People's Court. First, the election, relief from duty and removal of powerful titles belonging to the Government and the Supreme People's Court: According to regulations, after the National Assembly election, the National Assembly will meet and conduct the election of the State President. Prime Minister, Chief Justice of the Supreme People's Court; approve the proposal to appoint powerful titles under the government and Supreme People's Court judges. The National Assembly can also deprive the influential positions of power it elects. For example, through the no-confidence voting procedure, the National Assembly can remove or dismiss powerful titles such as the President and Vice President, the Prime Minister and Deputy Prime Ministers, and members of government if these powerful titles do not perform well the assigned tasks. The National Assembly can also remove or dismiss the Chief Justice and Supreme People's Court judges.

Second, supervise the activities of the Government and the Supreme People's Court: The National Assembly supervises the Government and the Supreme People's Court through such forms as reviewing the State President's report, the Prime Minister, the Chief Justice of the Supreme People's Court, and at the same time required these titles to explain on issues of concern to the National Assembly. As elected deputies, the National Assembly deputies have the right to question the Prime Minister, ministers and other members of the Government, the Chief Justice of the Supreme People's Court, and request agencies, organizations and individuals to provide information and documents related to the government's activities. The Ethnic Council and the committees of the National Assembly also supervise the exercise of power over the executive branch within their respective areas. Annul the decisions of the Government and the Supreme People's Court: To ensure the constitutionality and legitimacy of the legal documents, the National Assembly has the right to annul documents of the President, the government, the Prime Minister, the Supreme People's Court if these documents are contrary to the Constitution, laws and resolutions of the National Assembly. The National Assembly Standing Committee is empowered to suspend the implementation of documents of the Government, the Prime Minister and the Supreme People's Court if these documents are contrary to the Constitution, laws and resolutions of the National Assembly and submit to the National Assembly for the decision to annul these documents at the nearest session; to annul documents of the Government, the Prime Minister, and the Supreme People's Court if these documents are contrary to ordinances and resolutions of the National Assembly Standing Committee.

In general, in the mechanism of controlling state power in Vietnam, the center of control is placed on the government, precisely the control of the National Assembly over the government. However, the 2013 Constitution continues to maintain a provision recognized in the 1992 Constitution, which is to give the President the power to "limited veto" over the legislature. Accordingly, when the Standing Committee of the National Assembly submits an ordinance to the President for promulgation, if he disagrees, the President has the right to request the Standing Committee of the National Assembly to reconsider that ordinance within 10 days from the date of approval by the Standing Committee of the National Assembly. Suppose such an ordinance continues to be voted on by the Standing Committee of the National Assembly, but the President

still disagrees. In that case, the President will submit it to the National Assembly for decision at the nearest session. However, this right of the President does not apply to laws of the National Assembly. Therefore, this can be considered the "limited veto" of the State President over the legislative power. The President can only delay an ordinance but not cancel it.

As for the judiciary, the Constitution does not give the National Assembly and the Government any control over the operation of the Supreme People's Court. This provision ensures that the court has an independent and objective position in adjudication activities. However, the Supreme People's Court also has no control over the National Assembly and the Government. The Supreme People's Court does not perform constitutional functions (veto power over legal documents, decisions of the National Assembly and the government if they are contrary to the Constitution) nor supervise activities of these two authorities. The court system only performs the statutory duty of adjudication. Through adjudication, the court has the right to request or request the competent authorities to correct, amend, or repeal provisions that are no longer appropriate. On that basis, the Supreme People's Court shall summarize the trial practice to ensure the uniform application of the Law in adjudication activities.

In the field of land management, in addition to complying with the general legal provisions on controlling power in the legislative, executive and judicial branches, the control of state power is very clearly and specifically regulated details in the Law of the land. Contents of state management of land include: Promulgating and organizing the implementation of legal documents on land management and use; Dissemination, education, training, scientific and technological research, international cooperation in land management and use; Determining administrative boundaries, making and managing administrative boundary dossiers; Measuring and making cadastral maps, current land use maps, land use planning maps and thematic maps on land management and use; Investigate and evaluate land resources, protect and improve land; Formulate, adjust and manage master plans and plans on land use; Land allocation, land lease, land recovery, land use purpose change; Investigate and develop land price lists, specific land prices, land price management; Financial management of land; Compensation, support and resettlement upon land recovery; Land fund development; Land registration, making and management of cadastral records, granting certificates of land use rights, ownership of houses and other land-attached assets; Statistics and inventory of land; Building, managing and exploiting land information systems; Manage and supervise the exercise of rights and obligations of land users; Settlement of disputes over land; settle complaints and denunciations in land management and use; Providing and managing service activities on land; To inspect, examine, supervise, monitor and evaluate the observance of the provisions of the Law on land and handle violations of the Law on land; The tasks and powers of the government, the Prime Minister, ministries, ministerial-level agencies and People's Committees at all levels are detailed in Article 27.

Accordingly, the government performs the unified state management of land; The Prime Minister shall perform the task of state management of land under this Law; The Ministry of Natural Resources and Environment is responsible to the Government and the Prime Minister for the unified state management of land; Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, coordinate with the Ministry of Natural Resources and Environment in assisting the Government and the Prime Minister in the state management of land under this Law; People's Committees at all levels are responsible for the state management of land in their localities according to their competence prescribed in this Law. Based on description provided above, the authors decided to conduct another research titled "State Power Balance in Governing Land: Law and Regulation of Vietnam".



METHODS

To carry out this study, the author combines many scientific research methods on the primary research object: Vietnam's legal regulations on controlling state power during land acquisition. First of all, the scientist synthesizes relevant legal documents, analyzes these legal provisions on the issue of state power control when acquiring land, regulations on functions and duties of the state agencies, competent state agencies when conducting land recovery, including legally effective documents (specifically, the Constitution, the 2013 Land Law and guiding documents, the Draft Land Law 2022) and the new draft land law 2022. In addition, the author also studies case precedents and dispute cases related to the issue of state power control when acquiring land in Vietnam in the past. In addition, the author uses survey questions and interviews with experts, individuals who have acquired land, representatives of businesses, associations, and state agencies implementing land acquisition on the issue of land acquisition control state power when acquiring land. From there, general conclusions and evaluations about the research problem are drawn.

RESULT AND DISCUSSION

Regulations of Vietnamese Law on land acquisition. In the Vietnamese legal system, the provisions on land acquisition are one of the essential provisions in the Land Law under the provisions of the 2013 Constitution. Therefore, innovations related to this issue have received significant attention from the masses. To meet the requirements of reality, the Land Law has provisions on land recovery as follows:

1. Specifying cases in which the state recovers land for national defense and security purposes (for example, a place to station an army, an office for work, construction of a military base, or a national defense structure), battlefields, notable works on defense - security; construction of military stations and ports). Strictly control and narrow down the cases in which the state recovers land for socio-economic development for national and public interests. Accordingly, the state only recovers land when implementing projects of national importance for which the National Assembly decides investment policies, projects approved by the Prime Minister, investment decisions and projects approved by the People's Councils of provinces;
2. Amendment of the authority to recover land for administrative reform when implementing projects in the direction of the People's Committee of the province to decide on land recovery in case the recovered land includes both organizations and households, individuals are using the land;
3. Specifying the order and procedures for land recovery for national defense - security, socio-economic development for national and public interests; principles, conditions, order and procedures for enforcement of the decision on compulsory inventory and enforcement of the decision on land recovery in order to create conditions for localities to implement uniformly;
4. Regulations in the direction of increasing the direct participation of the people, the responsibility for dialogue and accountability of the competent state agencies when people have yet to reach a consensus on land acquisition and compensation resettlement assistance.

The 2013 Land Law is the first law document detailing the order and procedures for land recovery, precisely the following basic steps:

1. Making and approving plans for land acquisition, investigation, survey, measurement and tally; Notice of land acquisition; Implement a damage assessment process.
2. Preparation and appraisal of compensation, support and resettlement plans.
3. Decision on land acquisition and approval of compensation, support and resettlement plan; Payment of compensation, support and land handover.

4. Coercive implementation of the decision on land acquisition.

The above are the progressive points of the 2013 Land Law. However, there are still areas for improvement and limitations in the order and procedures for land acquisition, compensation, and resettlement support that need to be reviewed and completed. As follows:

Firstly, the order and procedures for land recovery are prescribed in many documents, including Laws, Decrees, Circulars and Decisions of the Provincial People's Committee. Currently, the regulations on the order and procedures for land recovery are scattered in many specific legal documents specified in Articles 67, 69, 70, 71, and 93 of the 2013 Land Law; Article 17 Decree No. 43/2014/ND-CP, Article 28 and Article 30 Decree No. 47/2014/ND-CP; Article 13 of Circular No. 37/2014/TT-BTNMT, so it is not easy for enforcers and people to fully systemize and adequately understand the process of land acquisition.

Second, legal documents are not uniform, challenging to implement, and easy to cause controversy. The content of the notice of land recovery is regulated: "The content of the notice of land recovery includes the plan for land recovery, investigation, survey, measurement and tally". Clause 1, Article 17 of Decree No. 43/2014/ND-CP stipulates the plan for land acquisition, investigation, survey, measurement and tally, including the following contents: "(a) Reasons for land acquisition; (b) Area and location of land to be acquired based on current cadastral records have or detailed construction planning approved by competent state agencies; in case of land recovery according to the project implementation schedule, clearly state the land recovery schedule; (c) Plan of investigation, survey, measurement and tally; (d) Proposed relocation plan and resettlement arrangement; (d) Assign the task of formulating and implementing compensation, support and resettlement plans. However, in Clause 2, Article 17 of Decree No. 43/2014/ND-CP, the contents of the notice of land recovery include the contents at points (a), (b), (c), and (d) of Clause 1. Article 17 of Decree 43/2014/ND-CP, excluding the content specified at point (dd) clause 1 of this article, so if understood according to the provisions of the 2013 Land Law, the notice of land recovery must be all 5 contents are specified in Clause 1, Article 17 of Decree 43/2014/ND-CP. However, Clause 2, Article 17 of Decree 43/2014/ND-CP stipulates that the notice of land recovery includes only 4 contents.

Third, regulations on the Compensation, Support and Resettlement Council need to be more specific and challenging to implement. Article 68 of the 2013 Land Law stipulates that the organization in charge of site clearance compensation includes the Compensation, Support and Resettlement Council and the Land Fund Development Organization. However, the Law and its guiding documents do not specify the composition of the members of the Compensation, Support and Resettlement Council, do not specify the duties and powers of the Council and the coordination mechanism cooperation of the Council with other agencies and organizations in the ground clearance process. Currently, the Compensation, Support and Resettlement Council is established according to the provisions of Decree 47/2014/ND-CP. Accordingly, "The chairperson of the district-level People's Committee is responsible for establishing the Compensation, Support and Resettlement Council to prepare compensation, support and resettlement plans and training and job change plans. Karma. For localities that have established land fund development organizations, the competent People's Committees may assign the task of formulating compensation, support and resettlement plans; training and career change plans for land fund development organizations". The decision to establish the Compensation and Resettlement Assistance Council must specify each member's operating principles, coordination mechanism and responsibilities. Thus, although the Provincial People's Committee has issued guiding documents,

it is still general, and there needs to be a consensus. It affects the legal status and operation of the compensation council, which is the subject of very important in the land acquisition process.

Fourthly, the order and procedures for land recovery do not prescribe the method of recording the current status of the acquired land at the time of land recovery notice. According to the provisions of Clause 2, Article 93 of the 2013 Land Law, properties attached to land that is created after receiving a notice of land recovery from a competent state agency are not entitled to compensation, so the recording of the current status of the land acquired at the time of land acquisition notice has an essential meaning in the compensation of assets attached to the land. In practice, there are many cases where there is an incongruous dispute over assets attached to the land between the users of the recovered land, and the compensation and clearance council, especially crops and other properties that are not the creation, do not need to be declared. The reason is that the people using the recovered land create assets in anticipation of compensation to increase the value of land and assets on land when the state recovers the land. On the other hand, this is also a loophole for those in positions of authority and authority in the compensation and clearance council to increase the number of plants and animals, creating conditions for users of the acquired land to build assets associated with the acquired land.

Fifth, the enforcement of the decision on compulsory inventory has yet to be strictly regulated and needs more specificity. Counting is crucial in ensuring that the compensation and support are precise, quick, and fair. Building an adequate compensation and assistance plan requires the tally's accuracy, integrity, and timeliness. Article 70 of the 2013 Land Law enforces the decision on compulsory inventory for land users who do not cooperate with the compensation and clearance council to conduct the tally. However, apart from this regulation, there needs to be a document guiding the implementation, while enforcing the decision on compulsory inventory is more straightforward than coercive land recovery. Clause 3, Article 70 stipulates that "The chairperson of the district-level People's Committee shall issue a decision on enforcement of the decision on compulsory inventory and organize the implementation of the decision on enforcement". Thus, the subject of implementation of the decision on enforcement of compulsory inventory has yet to be clearly defined in the Law. Circular 30/2014/TT-BTNMT, dated June 2, 2014, of the Ministry of Natural Resources and Environment also needs to identify who is the subject of the decision to enforce the decision on the tally.

Meanwhile, a committee for enforcement must be established according to the specified composition to enforce the decision on land recovery. About the order and procedures for implementing the decision on enforcement of Compulsory counting specified in Clause 4, Article 70 of the 2013 Land Law is also not specific and strict, only stipulating that the organization assigned to perform coercion has lobbied, persuaded, and dialogued with the coerced person, but they did not. If they do, they shall execute the coercive decision without specifying how long after they have mobilized, persuaded and negotiated for the coerced person to execute it voluntarily. The process at the enforcement meeting of how to implement the tally decision, the enforcement plan, the duties of the members participating in the enforcement, the enforcement minutes, and many other issues have yet to be specified. Leading to a situation in each different project, the organization of the enforcement of compulsory tally is different. There are projects the organization assigned to carry out the compulsory tally needs to be more experienced, so when conducting the compulsory tally, there are not enough participants, and the people with assets are not invited to participate in the counting. Count. Therefore, it is impossible to detect and fully reflect the actual status of assets attached to the land, especially in areas with many graves. However, when counting, because no land user is participating in the tally, it needs to be known that records lead to inaccurate counting results, making it challenging to develop compensation and support plans.

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Sixth, regulations on collecting opinions in making compensation, support and resettlement plans could be more precise and easier to implement. Organizations in charge of compensation and ground clearance are responsible for formulating compensation, support and resettlement plans and coordinating with commune-level People's Committees of localities where the recovered land is located in organizing consultations on such plans compensation, support and resettlement in the form of holding direct meetings with people in the area where the land is recovered, and at the same time publicly posting plans for compensation, support and resettlement at the headquarters of the commune-level Committee people, familiar living places of the residential areas where the recovered land is located. Here, it is necessary to determine that the person whose land is acquired is only one of the people in the area whose land is acquired and needs to be consulted, so the remaining subjects still need to be specified. Is the subject of consultation required to be a person living in the area where the land is acquired? Are tenants, business premises tenants, and employees working in businesses in the area subject to land expropriation? This regulation needs to be clarified. There are many different interpretations. It will lead to inconsistency in determining the object of consultation, affecting the people's legitimate interests. Therefore, it is necessary to clearly define the people with the acquired land to be consulted or specify the principles to determine.

Seventh, more regulations on the enforcement of land recovery decisions are needed. The additional provisions in the regulations regarding the make-up of the enforcement committee and the particular requirements for carrying out enforcement partially address the practical issues. However, some difficulties in the enforcement process still need to be clarified, leading to inconsistent and confusing implementation. The coercion plan prepared by the Coercive Implementation Board needs to specify in detail the necessary contents. At the same time, this option plays a decisive role and dramatically affects the results of enforcement work. Therefore, the author believes it is necessary to consider supplementing the provisions on the actual contents of the coercive plan. It will ensure consistency and coherence in the enforcement of land acquisition decisions.

Some regulations related to land acquisition and proposals for the completion of the draft revised Vietnam's Land Law 2022. Firstly, for the regulation of the functions, powers and responsibilities of the competent state agencies in land use management. Chapter 2 of the draft Land Law 2022 stipulates the rights and responsibilities of the state and citizens towards land. Accordingly, the state decides on master plans and land use plans to allocate and zone land for socio-economic development, national defense, security, environmental protection and adaptation to climate change.

Climate change. Article 15 stipulates that the state shall decide on land use purposes through land use planning, land use plans, land allocation, land lease, recognition of land use rights and permission to change land use purposes. It is necessary to specify more clearly that the decision on planning and this plan must be based on research and assessment of the actual situation and land use needs of individuals and organizations, not from the will of the owner authority of the state. Only then will it be accurate and capable of practical implementation.

Secondly, land price is essential and directly related to the rights and interests of the people involved in land acquisition. However, there is unreasonableness when stipulated in Article 19 of the Draft Law. As the country decides the land price, the state stipulates the principles and methods of land pricing. It is unreasonable for the state to issue a land price list and decide on a specific land price because it will not be flexible and keep up with market trends, especially in land acquisition for investment projects and investment economic development. It should be regulated that the state promulgates a land price bracket under the market price in each period.

Thirdly, concerning the provisions on State guarantees for land users, the Draft Law stipulates that the state protects the land users' lawful land use rights and land-attached assets; Grant certificates of land use rights and ownership of houses and other land-attached assets to land users when fully meeting the conditions prescribed by Law; When the State recovers land for national defense and security purposes; for socio-economic development for national and public interests, land users shall be compensated, supported and resettled by the state under Law; Having policies to create conditions for people directly engaged in agricultural, forestry, aquaculture and salt production to have no production land due to the process of land-use restructuring and economic restructuring. Occupation, job change and job search; The State does not recognize the reclaim of land that has been allocated according to the state's regulations for other people to use in the course of implementing the land policy of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of the Republic of South Vietnam and the State of the Socialist Republic of Vietnam.

Fourth, for land information, the state's responsibility in providing land information is to ensure the right of organizations and individuals to access the land information system under the Law. Timely and publicly announce information under the land information system to organizations and individuals, except for confidential information as prescribed by Law. Notify administrative decisions and acts in land management to affected organizations and individuals with their legitimate rights and interests.

About authority Land management agencies and cadastral officials in communes, wards and townships are also detailed in Article 28. The organizational system of land management agencies is uniformly organized from the central to the district level.

Local. The central state management agency for land is the Ministry of Natural Resources and Environment. Local land management agencies are established in provinces and centrally run cities and districts, towns and provincial cities. Land public service organizations are established and operate according to the government's regulations. Communes, wards and townships have civil servants performing cadastral work according to the provisions of the Law on Cadres and Civil servants. Cadastral civil servants in communes, wards and townships shall assist the commune-level People's Committees in local land management.

The draft also details the rights of citizens to land in Articles 29 and 30. Accordingly, citizens have the right to participate in auctions of land use rights; participate in bidding for projects using land; request the state to allocate or lease land without auctioning land use rights or bidding for projects using land under Law; Receive transfer, donation, inheritance, capital contribution or lease of land use rights; buy, sell, receive the transfer of shares, contributed capital is the value of land use rights as prescribed by Law; To have the right to access land information (information on master plans, plans on land use, master plans on land that have been decided and approved by competent state agencies; results of statistics and audits) List of land; announced land price list; compensation, support and resettlement plan approved by competent state agencies when recovered by the state; inspection, examination and settlement results. Disputes, complaints and denunciations about land, results of handling of violations of the land law; Information on administrative procedures in the field of land; Legal documents on land; The reception access to land information under this Law and the Law on access to information); Participating in state management, discussing and making recommendations to state agencies on land management and use; Right to gender equality in land use; To exercise the rights of land users under this Law; Obligations of citizens towards the management and use of land include strictly observing the provisions of the Law on land; Participating in commenting and monitoring social criticism in the improvement and implementation of land policies and laws; Preserve, protect and develop land

resources; Respect the land use rights of other land users; To correctly perform the obligations of land users under this Law.

In order to well exercise control over state power when acquiring land, it is necessary to have a national land use master plan and plan in Article 40. The national land use master plan is approved in the first year of the planning period. Grounds for the formulation of national land use planning, including:

- a. Strategy for socio-economic development, national defense and security;
- b. Natural, economic and social conditions;
- c. Current status of land use, land potential and results of the implementation of the national land use planning in the previous period;
- d. Demand, land useability of sectors, fields, localities and land potential;
- e. Scientific and technological progress related to land use.

The content of the national land use planning includes the national land use orientation, the 10-year socio-economic region, and the 30 – 50 year land use vision to meet the land use demand for economic development. , society; ensuring national defense and security; environmental protection, adaptation to climate change; Determination of land use norms and allocation to socio-economic zones for groups of agricultural land, non-agricultural land and unused land; which determines the area of some types of land, including rice cultivation land, protection forest land, special-use forest land, production forest land, defense land, security land, industrial park land, export processing zone land, and development land. National level infrastructure development; residential land in urban areas, residential land in rural areas; land with national historical - cultural relics; To delineate and arrange land use space according to areas including land use areas that need strict protection, areas that need to be kept stable, and areas for development according to national needs; Develop a set of national land use planning maps; Building a database of national land use planning; Solutions for implementing land use planning.

The basis for national land use planning, including national land use planning; Socio-economic development plan, medium-term public investment plan of the whole country; Land use demand of industries and fields; Results of the implementation of the land use plan in the previous five (05) periods; Ability to invest and mobilize resources. Contents of the national land use plan, determination of the areas of different types of land specified at Points b and c, Clause 3 of this Article within the period of the 5-year land use plan; Five-year land use plan to the socio-economic region; Develop a database of national land use plans.

CONCLUSION

In summary, controlling state power in land acquisition in Vietnam is essential today. It is not only the task and function of the competent state agency but also needs the participation of mass organizations such as the Fatherland Front, associations and the press. Information transparency and socialization of public services are essential in land acquisition.

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