



## Law on Ensuring the Legitimate Interests of the People in the Land Sector

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**Abstract:** Recently, shortcomings in legal policies and practices, together with lax land management, have led to many land conflicts, causing complex political and social hotspots. Among the causes of this situation are unreasonable compensation prices for site clearance; unclear land boundaries, lack of legal basis, lack of land management records; and overlaps and conflicts between customs and practices of land use with laws and administrative regulations in land management in ethnic minority areas. The purpose of this study is to clarify the limitations in land laws such as land use limits, land use terms; regulations on land recovery and compensation when recovering land, restrictions on land prices; regulations on resettlement for people whose land is recovered; land use planning; from these shortcomings, propose solutions to improve land laws to protect the legitimate interests of the people.

**Keywords:** Law, land sector, guarantee, legitimate interests, people.

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## INTRODUCTION

Land is a very complex and sensitive issue that receives the attention of the whole society, related to all aspects of economic and social life, and all people, so the promulgation of legal documents must continue to closely follow the policies and guidelines of the Communist Party of Vietnam (CPV), especially the CPV Platform (2011) and the Constitution (2013), Resolution of the XIIIth National Congress (2021) of the CPV. At the same time, solving specific and short-term issues in each period, maximally liberating, exploiting and promoting land resources to serve the country's development, maintaining independence, sovereignty, and territorial integrity, especially contributing to building an independent and autonomous economy.

In 2013, the XIIIth National Assembly of the Socialist Republic of Vietnam passed the Land Law. On December 9, 2013, the Law was signed by the President of the Socialist Republic of Vietnam and

will take effect from July 1, 2014. The 2013 Land Law has a total of 14 chapters with 212 articles, an increase of 07 chapters and 66 articles compared to the 2003 Land Law, in addition to properly and fully institutionalizing the viewpoints and orientations in the spirit of the 6th Conference of the Central Executive Committee of the XIth CPV (2012). At the same time, it contributes greatly to the practice of State management activities as well as the source of information that land users need to know.

However, in the State management of land, there are still some shortcomings and limitations. In some localities, the implementation of regulations on land recovery, conditions for land allocation, land lease, and permission to change land use purposes has not been thoroughly implemented in the spirit of creating a clean land fund for auctioning land use rights according to the provisions of the 2013 Land Law. Although the rate of granting land use right certificates to people has been completed, the results of granting certificates based on cadastral maps and

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cadastral measurements with coordinates are still limited; compensation, clearance, and resettlement work still have many shortcomings.

In that context, the 2024 Land Law was passed by the XVth National Assembly at the recent 5th Extraordinary Session with many new points to comprehensively institutionalize the guidelines and policies of the CPV, the resolutions of the National Assembly, and at the same time remove obstacles drawn from the practical summary of the implementation of the 2013 Land Law and legalize regulations that have been proven to be appropriate in practice, contributing to removing difficulties and obstacles, and unblocking land resources for national development. The Law has fully implemented the spirit of Resolution No. 18-NQ/TW dated June 16, 2022, of the 5th Conference of the XIIth Central Executive Committee of the CPV, following the Constitution, and in sync with the current legal system. This is a necessary foundation to bring land resources into the socio-economic development process, improve the effectiveness and efficiency of land management and use, and create momentum to turn our country into a high-income developed country as the policy of the CPV and the State (Huan, 2024).

However, according to experts, although the new land law has made many changes following the practical situation, there are still some shortcomings in the regulations on the interests of the people, specifically: Regulations on land use limits, land use terms; regulations on land recovery and compensation when recovering land, regulations on land prices; regulations on resettlement for people whose land is recovered; regulations on the right to access information, etc. Based on the analysis and assessment of the shortcomings and limitations of the law, this study recommends solutions to improve the land law to protect the legitimate interests of the people.

## Literature Review

### Concept of land law

Land relations in Vietnam are land relations owned by the entire people, with the State as the representative of the owner, which are designed to separate ownership rights and land use rights. The process of cooperation between land users basis of State protection when fully implementing the rights of users is the most flexible and diverse factor in land relations.

According to The University of Sunderland (2022), As the name implies, land law is focused on the rules and governance of land including ownership, land use, boundaries, and access.

The Land Law can be defined as follows: “The Land Law is a synthesis of legal norms promulgated by the State to establish land relations based on the regime of ownership of land by the entire people and the full protection of the rights of land users by the State, forming an important branch of law in the legal system of the State of Vietnam” (Hanoi Law University, 2016).

### Overview of current land law

The 2024 Land Law consists of 16 chapters, and 260 articles, an increase of 2 chapters compared to the 2013 Land Law (adding 1 chapter regulating land fund development and separating the chapter on land recovery, land requisition, compensation, and resettlement support into 2 chapters), in which 180 articles are amended and supplemented; 78 new articles were added, 30 articles were removed (due to merging 13 articles; 13 articles were removed and 4 articles were separated).

The current Land Law (Land Law 2024) stipulates the land ownership regime, the powers and responsibilities of the State representing the entire people’s ownership of land and unified land management, the land management and use regime, the rights and obligations of citizens and land users regarding land within the territory of the Socialist Republic of Vietnam.

### The legitimate interests of the people in the land sector

In Vietnam, right from the 1946 Constitution - the first constitution of the Democratic Republic of Vietnam, the people’s ownership rights to land were recognized. From the 1980 Constitution to the 2013 Constitution, the land ownership regime was defined as a public ownership regime under the name of “ownership of the entire people” and the State was the representative body of the owner, reflecting the true nature of land not belonging to anyone, while closely following the socialist orientation when the means of production are owned by the entire people. This does not mean that the State ignores the legitimate rights and interests of the people.

According to law researchers, the respect and guarantee of the legitimate rights and interests of the people in the field of land is demonstrated in the fact that the State grants the people - land users - most of the rights equivalent to land owners. “The State has granted the people relatively many rights in the Land Law as well as related documents. For example, as land users, they will have the general rights of land users stipulated in Article 166 of the Land Law, such as being granted a land use right certificate, a certificate of ownership of assets on land, and being protected by the State when their legitimate interests are violated. In addition, they

have the right to complain, denounce, and sue when there are violations of the Land Law. The State also grants land users 8 rights to land transactions including conversion, transfer, lease, sublease, donation, mortgage, and capital contribution" (Hanh & Quang, 2023).

The 2024 Land Law has many new and superior points compared to the 2013 Land Law and is closer to reality, ensuring legislative techniques and forecasting. While drafting the Law, the drafting committee coordinated to collect opinions from experts and the public to provide a scientific, objective and transparent nature. This shows that the CPV and our State always pay attention to and innovate so that the Law can keep up with the developments in life, better protecting the legitimate and legal rights and interests of the People. Therefore, people need to be extremely alert, identify and objectively evaluate the above issues based on reality and official information, and not listen to conspiracy theories and baseless speculations of hostile forces, thereby falling into their trap of incitement, enticement and committing illegal acts.

## RESEARCH METHODS

**Textual research:** Exploring theoretical issues on land and land law as well as legal regulations on ensuring the legitimate interests of the people in the land sector cannot be separated from the policies and guidelines of the Communist Party of Vietnam (CPV); policies and laws of the State of Vietnam (legal documents); Decrees and Circulars of Ministries, Departments and Branches, focusing on legal documents issued by the National Assembly, Decrees of the Government and Circulars of the Ministry of Natural Resources and Environment, Ministry of Science and Technology, etc.

**Interdisciplinary and sectoral research methods:** In the field of social sciences and humanities, the main research methods used are: analysis - synthesis, comparison - contrast, deduction - induction; synchronicity - diachrony, logic - history, etc. The use of these methods allows for exploring the contents related to the development of land law and the Law on ensuring the legitimate interests of the people in the land sector.

## RESEARCH RESULTS

### Land price regulations in the law

According to Article 113 of the 2013 Land Law, the current land price framework is clearly stated as follows: The Government issues a land price framework every 5 years for each type of land, according to each region. During the implementation of the land price framework, if the common land price on the market increases by 20% or more compared to the maximum price or decreases by 20% or more

compared to the minimum price in the land price framework, the Government will adjust the land price framework accordingly. However, the revised 2024 Land Law has removed the land price framework issued every 5 years.

Clause 1, Article 159 of the 2024 Land Law stipulates: The land price list is applied in the following cases: (i) Calculating land use fees when the State recognizes the right to use residential land of households and individuals; changing the land use purpose of households and individuals; (ii) Calculating land rent when the State leases land and collects annual land rent; (iii) Calculating land use tax; (iv) Calculating income tax from the transfer of land use rights for households and individuals; (v) Calculating fees in land management and use; (iv) Calculating fines for administrative violations in the land sector; (vii) Calculating compensation to the State for causing damage in land management and use; (viii) Calculating land use fees and land rent when the State recognizes the right to use land in the form of land allocation with land use fee collection, land lease with one-time land rent collection for the entire lease term for households and individuals; (ix) Calculating the starting price for auctioning land use rights when the State allocates or leases land in cases where the land plot or land area has been invested in technical infrastructure according to the detailed construction plan; (x) Calculating land use fees in cases where land is allocated without auctioning land use rights to households and individuals; (xi) Calculating land use fees in cases where state-owned houses are sold to tenants.

This new regulation shows that: Only the price of land use rights as a special commodity has value, not the land price because land is owned by the entire people. Determining land prices according to market prices is very complicated, so it is necessary to accept the principle of relativity and error. Therefore, it is necessary to separate the two cases: valuation of land use rights to fulfill financial obligations to the State and valuation to compensate people whose land is recovered. In some countries, the valuation of basic financial obligations refers to the land tax payment price, while the price for compensation to the people is based on negotiation and synchronous calculation (TTXVN, 2023).

### Regulations on land recovery and compensation when recovering land

From Article 95-101, Section II, Chapter VII, Land Law 2024 stipulates specific cases when the State: Recovers land for national defense and security purposes; socio-economic development for national and public interests; recovers agricultural land of households and individuals; recovers agricultural land of economic organizations, residential

communities, religious organizations, affiliated religious organizations; recovers residential land; recovers non-agricultural land that is not residential land of households and individuals. Decree No. 88/2024/ND-CP detailing and guiding the implementation of Clause 3, Article 87, Article 92, Article 94, Article 95, Article 96, Article 98, Article 99, Article 100, Article 102, Article 106, Article 107, Article 108, Article 109 and Article 111 of the Land Law on compensation, support and resettlement when the State recovers land. In which it is determined that compensation, support and resettlement when implementing investment projects to renovate and rebuild apartment buildings are following the provisions of the law on housing.

The above provisions show that: The right to use each plot of land must be a certain property right and the recovery of land use rights must be the work of the State, not of enterprises. How to recover at what price is an issue that requires specific guidance documents; However, if land use rights are considered property rights, the recovery price will follow competition, based on reasonable prices, suitable to the time of land users in bidding. It is necessary to enhance the autonomy of localities, reflected in planning, organizing bidding to select land developers" (TTXVN, 2023).

### **Regulations on resettlement for people whose land is recovered**

Also being resettled, but resettled people in apartment building reconstruction projects (applicable to apartment buildings built from 1994 onwards) are entitled to many preferential policies according to the provisions of Clause 9, Article 111, Land Law 2024; Point b, Clause 1, Article 157, Land Law 2024; Point a, Clause 1, Article 63 and Point a, Clause 1, Article 72, Housing Law 2023, etc.

In addition to being arranged for resettlement according to the above provisions, based on the specific conditions of the locality, the provincial People's Committee decides to support funding for people arranged for resettlement from the local budget according to the order and procedures of the law on the state budget.

According to the above regulations, resettled people in apartment building reconstruction projects are arranged to resettle on-site, or in other accommodation in a new apartment building in the ward, district, or neighboring district with new resettlement apartments that often have larger areas, better quality, and are exempted from land use fees according to the provisions of the 2024 Land Law, the 2023 Housing Law and do not have to pay for infrastructure construction, so resettled people in apartment building reconstruction projects will have

a less disturbed living environment and may have a better livelihood than before. Therefore, the regulation that "the minimum resettlement quota is determined by land, housing or housing or money to suit the choice of the person being resettled" according to the regulations of the provincial People's Committee depending on the specific conditions of the locality is very suitable for practical requirements.

For example, Ho Chi Minh City stipulates that the minimum resettlement quota is an apartment with an area of 30m<sup>2</sup>. Because, also being the subject of resettlement, it is known that in reality, in the past, there have been some localities that have stipulated to collect additional infrastructure fees for resettlement areas for resettled people in cases where the State reclaims land to implement socio-economic development projects, not apartment building reconstruction projects, with an additional collection of about three million VND/m<sup>2</sup>, so if resettled people are "compensated" (exchanged) with a 100 m<sup>2</sup> house plot, they must pay an additional 300 million VND; or a similar case in a locality that collects additional infrastructure fees for resettled people at a rate of about 7 million VND/m<sup>2</sup>, so if resettled people are "compensated" for a 100 m<sup>2</sup> house, they have to pay an additional 700 million VND, even though these resettled people have their living environment and livelihoods disrupted.

Most concerning are the cases where the State reclaims land to implement socio-economic development projects in mountainous areas, remote areas, and ethnic minority areas, where these resettled people have to leave their familiar living environment, following customs and traditions, to live in a resettlement area that is completely different from their old place of residence, especially in terms of life and livelihood, so if they collect additional infrastructure fees for the resettlement area, it is not reasonable.

### **Right to access land information**

The 2016 Law on Access to Information, effective from July 1, 2018, stipulates the implementation of citizens' right to access information, principles, procedures for implementing the right to access information, and responsibilities and obligations of state agencies in ensuring citizens' right to access information. Thus, the right to access information is the right of all citizens to access information that has been issued and stored at agencies, organizations, and public authorities, including information on land.

The right to access land information is also stipulated in the Land Law (2024), specifically: citizens have access to land information such as land

use planning, land use plans, land use-related planning that has been decided and approved by competent state agencies; results of land statistics and inventories; land allocation, land lease; published land price lists; compensation, support and resettlement plans when the State recovers land approved by competent authorities; results of inspection, examination and settlement of land disputes; results of settlement of complaints and denunciations on land, results of handling of violations of land law; administrative procedures on land; legal documents on land; other land information as prescribed by law (Article 24).

This provision shows that: The Land Law only states basic laws article and that are difficult to implement when most land disputes mostly stem from a lack of transparency and lack of public information about land. Therefore, when drafting the law, it is necessary to clarify what types of information about land are. What is the legal validity of these types of information in order of priority? The validity period of information that has been announced or made public, etc. In reality, there are many legal problems arising from the lack of information on land and difficulties in exercising the right to access and exploit land information, although the regulations on the construction, management and exploitation of land information systems are stipulated in Circular 34/2014/TT-BTNMT dated June 30, 2014 and now Consolidated Document No. 06/2020/VBHN-BTNMT dated August 7, 2020 of the Ministry of Natural Resources and Environment.

### **General Recommendations**

The Land Law must ensure consistency with relevant laws; and be consistent with Vietnam's political system; the regulation of land relations must pay more attention to the role of the market; promulgated policies cannot cover all aspects of life but need to remove difficulties and bottlenecks in practice, both in terms of institutions and implementation; Strengthen decentralization and delegation of power in land management in the direction of assigning tasks to those who do better, individualizing responsibilities, allocating resources reasonably, improving the implementation capacity of all levels and staff, strengthening supervision, inspection, and urging; ensuring harmony of interests between the State, people, and enterprises, etc.

The Land Law must closely follow reality, originate from reality, respect reality, take reality as a measure, and encourage and listen to opposing opinions from many perspectives. Clear issues, proven correct by reality, effectively implemented, and agreed upon by the majority should continue to be implemented; issues that are reasonable and emotional but do not have high consensus, do not

have regulations, or exceed regulations should be boldly piloted, learn from experience while doing, and gradually expand, without being perfectionist or hasty.

It is necessary to more clearly define the role of the State when representing the owner and when performing the role of State management of land. Land use planning must have a long-term vision, be innovative, stable but flexible, comprehensive, and interconnected. Land recovery, compensation, and resettlement must ensure the harmony of interests between the State, people, and businesses, ensuring that people's lives are better than or equal to their old place of residence and that the following year is better than the previous year, etc.

### **Recommendations for Improving the Law Regarding legal regulations on resettlement**

In Clauses 8 and 10, Article 111, the 2024 Land Law stipulates: In cases where people whose residential land is recovered have to move their residence and are compensated with residential land or resettlement housing, but the compensation for residential land is not enough compared to the value of a minimum resettlement quota, the State shall support enough money to be assigned a minimum resettlement quota; the provincial People's Committee shall, based on the residential land fund, resettlement housing fund, and the actual situation in the locality, specify in detail the minimum resettlement quota.

Based on the actual situation, it is proposed to add to Article 28 of the draft Decree on Regulations on Compensation, support and Resettlement when the State acquires land, prepared by the Ministry of Natural Resources and Environment, the regulation that "no money will be collected for infrastructure investment in resettlement areas for resettled people who have been allocated resettlement land according to the compensation, support and resettlement plan approved by the competent state agency".

Thus, resettled people in cases where the State reclaims land to implement projects other than apartment building reconstruction projects can rest assured and local authorities can easily implement unified policies and laws nationwide. In addition, it is necessary to amend and supplement: The minimum resettlement quota is determined by residential land with infrastructure (house foundation), or by housing attached to residential land, or apartment, or by money to suit the choice of the people being arranged for resettlement.

### **Regarding regulations on land recovery and compensation when recovering land**

Land Law 2014, Article 96. Compensation for land, when the State recovers agricultural land of households and individuals, stipulates: Households and individuals currently using agricultural land when the State recovers land, if they meet the conditions for compensation prescribed in Article 95 of this Law, shall be compensated in agricultural land or money or land with a different purpose than the type of recovered land or in housing. Article 97. Compensation for land when the State recovers agricultural land of economic organizations, residential communities, religious organizations, and affiliated religious organizations, stipulates that economic organizations currently using agricultural land that the State allocates to them land with land use fees collected, leases land with one-time land rent collected for the entire lease term, or receives the transfer of land use rights when the State recovers land, if they meet the conditions for compensation prescribed in Article 95 of this Law, shall be compensated for land.

It can be seen that this viewpoint is very correct and humane in the spirit of Resolution No. 18-NQ/TW on "Continuing to innovate and perfect institutions and policies, improving the effectiveness and efficiency of land management and use, creating momentum to turn our country into a developed country with the high income" is suitable for the interests and meets the aspirations of the majority of people, especially those whose land is recovered. However, the law needs to institutionalize regulations to ensure the rights of people whose land is recovered, and it is necessary to specify the criteria of "better than the old place of residence". Specifically: through regulations on resettlement area criteria on technical infrastructure; roads ensuring traffic connection with neighboring areas, lighting and electricity, water supply and drainage systems, communications, environmental treatment; social infrastructure; ensuring schools, medical services, cultural houses, sports areas, markets, commercial - service areas, etc.

### **Regarding the regulations on resettlement for those whose land is recovered**

According to current regulations, the new place of residence must be equal to or better than the old place of residence. However, to ensure that this regulation is implemented, the law also needs to stipulate that resettlement work must be one step ahead. It is necessary to supplement regulations on the principles and conditions of resettlement. In particular, the regulations need to clarify the legality of the type of land recovered, to enjoy the resettlement policy; clarify the subjects of resettlement; and the cases of resettlement. Even the

regulation with the content "land recovery must ensure a better life than or equal to the old place of residence" needs to be clarified, must be quantified specifically, not left in general terms.

During the resettlement process, it is necessary to set out 2-3 options for people to choose from and those options must be assessed by an independent, objective, market-based agency, to determine the value of the resettlement land and housing, what criteria it meets, and they will be responsible for that. If there is no such independent, objective thing, then people will say it does not meet the requirements, while the state will say it is good, meets the standards, the investment rate, all indicators, everything is done to the best, and the best interests are guaranteed, then there will be no one to be the arbitrator, the person in the middle to ensure the real interests.

### **Regarding the right to access information**

According to the provisions of the Land Law (2024), Article 24 stipulates that citizens have access to the following land information: Land use planning, plans, and plans related to land use that have been decided and approved by competent state agencies; Results of land statistics and inventories; Land allocation and lease; Announced land price list; compensation, support and resettlement plans when the State recovers land approved by competent authorities; results of inspection, examination and settlement of land disputes; results of settlement of complaints and denunciations on land, results of handling of violations of land law; administrative procedures on land; legal documents on land; other land information as prescribed by law.

However, the issue we need to discuss is the priority level of land data collection results including legal validity, transparency and clarity of land information based on several criteria. Therefore, the law needs to supplement citizens' right to be notified of announced master plans; development plans in the near and distant future; land use right certificates granted to land users; planning certificates for each case upon request; digital certificate records, digital data on land, etc.

## **CONCLUSION**

Land law in general and the recently passed Land Law 2024 have institutionalized Resolution No. 18-NQ/TW dated June 16, 2022, of the 5th Conference of the XIIIth CPV Central Executive Committee, building institutions and policies on land management and use synchronously and consistently with the institution for developing a socialist-oriented market economy. In particular, the comprehensive amendment of the Land Law also helps land resources to be managed, exploited, and

used to ensure the highest savings, sustainability, and efficiency; meeting the requirements of promoting industrialization, modernization, fairness, and social stability; creating momentum for our country to become a developed country with high income by 2045; creating conditions for the real estate market, including the land use rights market, to become a reasonable, fair and effective land allocation channel; at the same time, it has demonstrated the assurance of the legitimate interests of the people in the land sector. With the above limitations, the proposal and recommendation to improve the land law is the basis for continuing to improve the land law in the future, ensuring the legitimate rights and interests of the people.

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