



RESEARCH ARTICLE

The Land Law 2024 - Some Inadequacies need to be completed towards Efficient Development of Land Resources

Nguyen Thanh Phuong^{1*}, Tran Thi Thu Van²

¹ Faculty of Law, Nam Can Tho University, Can Tho, Vietnam

² Ha Noi Law University, Ha Noi, Viet Nam

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ABSTRACT

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***Corresponding Author**

nguyenthphanhphuong099@gmail.com

The land law 2024 was decided to pass at the 5th extraordinary meeting on January 18, 2024, replacing the land law 2013. This is an important legal basis, contributing to the most effective and comprehensive management and exploitation of land. although comments have been received and revised many times to make it more complete but we realize that there are still undesirable things that need to continue to be resolved such as: needing to identify issues related to land managed by state agencies and organizations; delineate the authority of the general judge and the people's committee's own judge in land management; issues related to land use by households; issue certificates of land use rights, assets attached to land are the common property of husband and wife... from there, the article will point out the points that need to be further improved in the 2024 land law and propose some recommendations before this law becomes effective in the future.

INTRODUCTION

The Land Law is a law that affects all aspects of the country's socio-economic life, national defense, security, and environmental protection; plays a central role in the land legal system, having relationships with many other provisions of law. Based on the summary of the implementation of Resolution No. 19-NQ/TW, the summary of the implementation of the Land Law in 2013 shows that, after nearly 8 years of implementing the Land Law, land management has achieved remarkable results, creating a synchronous, tight, and feasible legal corridor for resource exploitation, rational, economical, and effective use of land, development of technical infrastructure, social infrastructure, and urban housing; create conditions for land to participate in the real estate market; increase revenue for the state budget, contributing to the process of socio-economic development, national defense and security.

However, the management and use of land during the implementation of the 2013 Land Law still has limitations such as: lack of long-term vision; Land resources have not been exploited, fully and sustainably promoted, land use in some places is still wasteful, low efficiency..., With the adoption of the Land Law 2024 including 16 chapters, 260 articles have been completed. one of the most important legislative tasks of the 15th National Assembly term in accordance with the 2013 Constitution; At the same time, solve the problems arising in the implementation of the 2013 Land Law and continue to legislate regulations that have been proven to be appropriate in practice. Compared to the Land Law 2013, we see that the Land Law 2024 has made adjustments such as adding an additional chapter regulating land fund development and separating the chapter on land recovery and land requisition, compensation and resettlement support into 02 chapters, lawmakers have amended and supplemented 180 articles; 78 new articles added, 30 articles removed (due to merging 13 articles; removing 13 articles and separating 4 articles). Accordingly, the 2024 Land Law has moved the regulations on the rights and obligations of land users to be placed immediately after the chapter regulating the rights and responsibilities of the state and citizens with respect to land

and before the regulations on State administrative management of land demonstrates aim to respect for the rights of the people, considering the people as the root, the foundation, and the center of policy. In addition, the following chapters also provide regulations on the contents of state management of land, arranged in the order of practical implementation steps to ensure logic, science, and convenience in searching. However, this law still has many unamended provisions, causing certain "gaps" in understanding and application. Thereby, the authors will apply qualitative methods to point out inadequacies before the 2024 Land Law takes effect.

2. Current situation of The Land Law 2024 and some problems that need to be completed when The Law is enforceable

2.1. Regarding the scope of regulation of the Land Law 2024 with public land areas managed by state agencies and organizations.

As the representative of the entire people's ownership of land, the State will grant land use rights to land users through competent State agencies on the basis of Article 14 of the Land Law 2024. To implement this article, at article 20 of the Land Law 2024 lists 18 contents of state management of land, and also clarifies the powers and responsibilities of state management agencies on land from the central level to local level through Article 21 of the 2024 Land Law. However, the land area managed by State agencies and organizations is regulated by the Land Law 2024 and previous land laws that still comprehensively and specifically regulate the issue. Researching through legal regulations shows that there are still some contents that are not really compatible and regulate issues related to "public land". For example, in Article 217 of the Land Law 2024 “

1. Land managed by state agencies and organizations is land that has not yet been allocated, leased or has been allocated for management, including:

- a. Land used for public purposes;
- b. Land of rivers, streams, canals, creeks, streams, ponds, lakes, lagoons, lagoons;
- c. Cemetery land, funeral homes, cremation facilities; Base land for storing ashes;
- d. Land with specialized water surface;
- e. Special-use forest land, protective forest land, production forest land;
- f. Land recovered by the State and assigned to land fund development organizations for management;
- g. Land recovered by the State and assigned to the commune-level People's Committee to manage in the cases mentioned in Point đ, Clause 1 and Clause 3, Article 82; Clause 2, Article 82 in rural areas; Clause 5, Article 86; Point e, Clause 2, Article 181 of this Law;
- h. Land re-allocated and land use rights transferred by foreign organizations with diplomatic functions when there is no need to use the land shall be carried out on the basis of international treaties, international agreements and relevant provisions of law. relate to;
- i. Agricultural land used for public purposes of communes, wards and towns;
- j. Unused land.

2. State agencies and organizations assigned to manage the land fund specified in Clause 1 of this Article are responsible for managing and preserving the land area assigned for management; the use of the above land fund shall comply with the corresponding land use regime according to the provisions of this Law.

The above regulations may lead to certain inadequacies in the understanding and application of public land management and use. Because if we compare the issue with Clause 3, Article 83 of the Land Law 2024, it shows: “In cases where land use rights and assets attached to land are public assets that are not subject to land recovery cases as prescribed by this Law, there is no need to rearrange or handle public assets according to the provisions of law. Law on management and use of public assets”. Accordingly, this article only refers to the handling of land recovery, assets attached to land are public assets. However, on Clause 5, Article 199 of the Land Law 2024 stipulates: “*The management, use and exploitation of land funds specified in Clauses 1 and 2 of this Article fall within the scope of regulation of the law on management, using of public property shall comply with the*

provisions of law on management and use of public property; contents that are not regulated by the law on management and use of public assets shall comply with the provisions of this Law." Thereby, when comparing the scope of regulation of the Land Law 2024 with the area of public land, it is only limited to "land for construction of agency headquarters and public works". At that time, if compared with the Law on Management and Use of Public Assets explained by Decree 167/2017/ND-CP and Decree 67/2021/ND-CP, real estate is public property with a wide scope. Moreover, when including land of enterprises with 100% charter capital held by the State; Enterprises in which the State holds more than 50% of charter capital or total voting shares; Unused vacant land in urban areas...

From the above issue, it can be seen that the management and use of land by state-owned enterprises, such as: change of land use purposes, change of land use forms, contributing capital with land use rights..., have not yet been properly adjusted fully by the Land Law 2024. In practice, when applied, state-owned enterprises have the right to use "public land" according to the annual land rental regime. According to regulations, in some cases land users have the right to choose the form of annual land lease or one-time land lease for the entire lease period; land use purpose can be changed according to land use planning and plans (Tran Van Bay 2024). Based on the request of the enterprise and the permission of the competent authority, that portion of "public land" has been converted to a land lease with one-time payment or converted to residential land purposes by administrative decision. of the government without having to go through auctions or bidding. After the land user fulfills its financial obligations regarding land, they have full rights of the land user, including the right to mortgage and transfer. However, if we compare the issue according to the law on public property, when deciding to use "public land" rights, we must go through auction procedures. The problem is that the law has not yet clearly defined which cases will be applied based on land law, and which cases will be applied according to public property law?

3. Regarding the issue of delineating the authority of the People's Committee in state management of land

In principle, the People's Committee is the State representative agency with the function of land management at the local level. Functions and tasks are implemented on the basis of the Law on Local Government Organization 2015, Land Law 2013, Land Law 2024 (not yet effective).... Accordingly, based on the Law on Local Government Organization 2015, amended and supplemented in 2019, there have been specific adjustments related to the management authority of the People's Committee at the local level. Specifically, clearly define the authority of the People's Committee and the authority of the Chairman of the People's Committee compared to before. Accordingly, with macro management, skill requirements will be decided by the People's Committee, less important issues will be decided by the Chairman of the People's Committee. In this issue, you can understand that the appraisal authority of the District People's Committee is the general authority and the authority of the Chairman of the District People's Committee in the state management of land activities. However, this has not been consistently implemented in the land law in 2024. It is found that most cases related to local authority are regulated with the term under the authority of the Commission People's Committee, only in some cases, some contents clearly fall under the authority of the Chairman of the People's Committee.

This can lead to certain inadequacies. When it is stipulated that the People's Committee at the provincial, district or commune level decides on an issue related to land, this is understood as the law delineating authority between local government levels, but due to the unclear expression method, it is understood that all content expressing the authority of the People's Committee is understood as general authority, even if it is a matter or simple administrative procedures. Meanwhile, according to the Law on Local Government Organization, the People's Committee operates under the collective regime of the People's Committee combined with the responsibilities of the Chairman of the People's Committee. Accordingly, in the Land Law 2024, there are contents that need guidance that fall under the general or separate jurisdiction of the People's Committee. For example: (i) On the basis of Article 161 of the Land Law 2024, which stipulates that the Provincial and District People's Committees decide to establish a specific Land Price Appraisal Council; Meanwhile, Article 160 of this law stipulates that the Chairman of the Provincial and District People's Committees decides on specific land prices according to their authority. (ii) On the Article 136 of the Land Law 2024 stipulates that Provincial and District People's Committees have the authority to

issue Certificates of land use rights and ownership of assets attached to land. This regulation also needs to have clear instructions on whether it belongs to general or specific jurisdiction; (iii) According to Clause 2, Article 142 and Clause 2, Article 145 of the Land Law 2024, when granting Certificates of land use rights and ownership of assets attached to land to organizations, religious organizations, religious organizations affiliated schools that are using land, based on the organization's current land use status report, the Provincial People's Committee where the land is located will check the actual land use and handle it according to regulations. The above regulations do not clarify general and specific jurisdiction.

The lack of delineation of local land management functions and tasks under separate or common jurisdiction has actually existed in recent years, which has caused certain confusion about how to understand and apply laws relating to private or general jurisdiction. From the above issue, it is thought that the Ministry of Justice needs to coordinate with the Ministry of Home Affairs and the Ministry of Natural Resources and Environment to advise the Government when promulgating Decrees guiding the Land Law (and other Laws) as well as in disseminating To thoroughly implement and implement these documents, it is necessary to clearly clarify the above issues to unify implementation and help localities avoid unnecessary violations.

4. Regarding of issue of land use rights certificates

In terms of nature, the issue of granting Land Use Rights Certificates has been clearly regulated in the Land Law 2024. However, there still exist some "gaps" that need to be resolved. related to Households using land; issue certificates of land use rights, assets attached to land are common property of husband and wife. Accordingly:

Firstly, the Land Law 2013 stipulates that households are one of the types of land users, subject to land allocation, lease, and transfer of land use rights by the state. This means that households according to the 2013 Land Law are still considered subjects of land legal relations. Although considering households as subjects of land legal relations, including civil transaction relations on land use rights in the Land Law 2013, does not conflict with Clause 2, Article 101 of the Civil Code 2015 when this law still recognizes households using land according to the provisions of the Land Law as subjects of civil legal relations. Regarding this issue, many people believe that many issues need to be guided before the Land Law 2024 takes effect when:

(i) The Land Law 2024 has narrowed the scope of content related to "households using land". Based on account 25, Article 3, this concept is only limited to "people who are related by marriage, blood, and adoption according to the provisions of the law on marriage and family, are living together and have the right to Use and use common land at the time the State allocates land, leases land, recognizes land use rights, or receives transfer of land use rights before the effective date of this Law. Through this, it is realized that, although the Land Law 2024 does not eliminate the subject with land use rights as households, the limit of households using land is only within the scope of cases of establishing use rights. Common land between people with previous marriage, blood, or foster relationships This Law takes effect to resolve the consequences of previous Land Laws. When the Land Law 2024 takes effect, household subjects will not have the right to allocate land, lease land, receive transfer of rights or participate in land legal relations (Nguyen Thanh Phuong 2020).

Many arguments revolve around this issue. However, to clarify the relevant regulations, it is necessary for the law to clarify the case of people related by marriage, blood, or adoption who have the right to use common land due to transfer of rights after the date of the Law. When the land year 2024 takes effect, land use rights will be the common property of many individuals instead of households like the 2013 Land Law. Accordingly, when carrying out procedures for granting a Certificate, how will the authorities proceed with recording information about land users? In this case, the enforcement agency will issue 01 Certificate including all individuals with land use rights on the Certificate or each individual with common land use rights will be issued a separate certificate. Some researchers believe that lawmakers should specifically stipulate the method of granting a Certificate to each family member, with the form of use on the certificate clearly stating which subjects it is to be used with. In addition, for households using land before the 2014 Land Law takes effect, in order to determine the conditions for being a member of a household using land, it is necessary to clearly define what is "living together". In practice, we have seen many cases where

husband and wife receive land use rights transferred, land use rights are common property but do not satisfy the conditions for recognition as a household using land because two people do not meet the conditions "are living together at the time of receiving land use rights transfer" (Pham Van Vo 2024).

(ii) If the 2024 Land Law takes effect and does not recognize the subject with land use rights as this household, there will be some inadequacies related to notarization procedures, because when carrying out procedures related to notarization and authentication of contracts and transactions related to the Land Use Rights Certificate issued to the "Land User Household" has been issued to the household. How will the family before the 2024 Land Law takes effect? This is one of the issues that needs detailed guidance when the 2024 Land Law takes effect. Because of previous reality, if based on the 2013 Land Law, the law initially made adjustments related to the term "household", but the relevant provisions to explain the term. This is not yet specific, as there are still many different ways of understanding and applying it. In this issue, identifying household members when notarizing and authenticating contracts and transactions related to Land Use Rights Certificates issued to "Households" is something that needs to be specifically explained. in the Land Law 2013 and followed by the Land Law 2024. Secondly, regarding of granting land use rights certificates, assets attached to land are the common property of husband and wife; On the basis of Clause 4, Article 98 of the 2013 Land Law, it is shown: "In case of land use rights, land use rights and assets attached to land all are common property of husband and wife, both the wife's full name and the husband's full name must be written on the certificate of land use rights and ownership of assets attached to land, unless the husband and wife have agreed to write one person's name. Based on this regulation, many localities have implemented the form of one spouse authorizing the other to represent and sign a transfer contract; or the spouse makes a written commitment that the separate property (the transferred amount) is the spouse's separate source of money during the marriage period. When receiving land use rights transfer, the husband or wife's name is on the land use rights certificate. This approach creates convenience and flexibility for people; nor does it damage the legal rights and interests of spouses in the disposition of common property during the marriage period. Because, in case of dispute, the Court applies Clause 1 and Clause 3, Article 33 of the Law on Marriage and Family 2014 to determine the separate and common property of husband and wife. (In some other localities, when receiving a transfer, both husband and wife must sign the transfer contract or authorize one person to sign the transfer contract - if it is common property) (Pham Van Vo 2024).

The Land Law 2024 has many new points, which will remove many inadequacies and problems related to land in recent times, thereby contributing to the socio-economic development of localities. However, developing and promulgating of legal documents and detailed instructions for the Law play a very important role in bringing the 2024 Land Law to life. In addition, the timely and effective organization of land law enforcement (especially new points) is one of the stages that needs to be further emphasized in the coming time (Cao Thanh Son & Nguyen Thanh Phuong, 2023)

5. Determining the scope of land recovery for socio-economic development for national and public benefits

Compared to cases of land recovery for socio-economic development for national and public interests as stipulated in Article 62 of the 2013 Land Law, cases of land recovery for socio-economic development for the National and public interests specified in Article 79 of the Land Law 2024 have the following new points:

(i) Cases of land recovery for socio-economic development in the 2024 Land Law tend to expand compared to the 2013 Land Law. For example: According to the 2013 Land Law, projects developed by If the Prime Minister approves and decides on the investment policy, the State will only recover land if it falls into the cases specified in Clause 2, Article 62 of this Law; Meanwhile, according to Clause 31, Article 79 of the Land Law 2024, all projects approved by the Prime Minister and decided on investment policies are subject to land recovery (Tran Van Bay 2024).

According to the 2013 Land Law, for projects in the fields of education and health, the state will only recover land if it is a public investment project; Meanwhile, according to the Land Law 2024, these projects, regardless of public or private, are all subject to land recovery...

(ii) More specific regulations in the direction of listing each case of land acquisition for socio-economic development, limiting general, difficult-to-define regulations such as the case of "urban beautification projects" being regulated. specified in Clause 3, Article 62 of the 2013 Land Law. Although the above-mentioned new points will certainly have positive impacts on socio-economic development, some issues may also arise that need to be kept in mind in the process of promulgating documents detailing or applying regulations in practice. Specifically:

- i. Expanding cases of land recovery for socio-economic development can lead to widespread land recovery, violating the legitimate rights and interests of land users, causing instability. socio-political. The 2013 Land Law limited cases of land recovery for socio-economic development; Now, for the purpose of economic development, the Land Law 2024 expands cases of land recovery, it is possible that the situation of people making collective complaints and inappropriate behavior when recovering land and clearing land may occur. To overcome this situation, according to the author, the most feasible solution is that when promulgating the Decree on compensation, support, and resettlement when the State recovers land, there must be specific regulations; ensure the legitimate rights and interests of land users, such as conditions for compensation for land, assets on land, land prices to calculate land compensation...
- ii. The regulation of land recovery cases in the direction of listing each specific case according to Article 79 of the Land Law 2024 has the advantage of being clear, avoiding abuse or explanations contrary to the spirit of the developer. the law. However, these approaches also have limitations: when developing laws, it is difficult to list all actual cases (Nguyen Anh Hoa 2024).

For example, Clause 15, Article 79 of the Land Law 2024 regulates cases of land recovery for medical facility and social service projects established or allowed to operate by the state. However, what is a project that is allowed to operate without clear regulations? If explained according to the Law on Medical Examination and Treatment, the operating license of a medical facility is only issued after completing construction and according to the process of implementing a construction investment project, rights must be established. Use school land with an operating license. Therefore, detailed regulatory documents need to clarify this issue.

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