

# Law on Land Use Term in Vietnam: The Issues in Need of Modification in the Current Situation for Economic Development and Social Stability

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**Keywords:** Land, non-agricultural land, agricultural land, Land Law, land use term, Vietnam.

**Abstract:** Currently, in Vietnam, the law on land use term plays a particularly important part because it both directly affects the economic benefits (rights to exploit and use land) of land users and the social stability (due to its potential to cause conflict between the competent authorities of land management and land users when the land use term expires and land users are not allowed to have more land use term). Studying legal provisions on land use term to figure out existing shortcomings so as to have appropriate solutions to overcome them is extremely important, which ensures the lawful rights and benefits of land users and promotes the development of market economy and stabilizes the social life of Vietnam. Therefore, this paper focuses on analyzing the content of current regulations on land use term in Vietnam. In particular, it includes the regulations on land used for long and stable term; land used for limited term corresponding to specific types of land of two main land groups: non-agricultural land and agricultural land. The article also assesses the impact of these regulations on the use of land by individuals, households, and organizations in practice. On that basis, it can detect the nonconformities of the current law on land use term so that to propose solutions to amend these laws.

## 1 INTRODUCTION

In Vietnam, the land ownership regime is similar to China because both countries have a socialist political regime led by the Communist Party, in which all land in the country belongs to the entire people (Ding, 2003). In this ownership regime, the State represents the “entire people”, keeps the role of representative of the owners to exercise their rights to the land. Owners here are individuals, households, organizations and they do not have ownership of agricultural land but only the right to use it through the State allocation, lease of land and recognition of land use rights or transfer of land use rights from other people (the transfer of land use rights from one person to another by ways of exchange, transfer, inheritance or donation of land use rights, or capital contribution with land use rights) together with rights and obligations prescribed by law (Luan, 2020). When being granted land use rights by the State or receiving transfer of land use rights, owners may only use land

for a certain period of time corresponding to each specific type of land prescribed by the Land Law 2013, this is the land use term. The purpose of setting the land use term of Vietnamese lawmakers is to ensure the maintenance of the entire people's ownership of land and the position of the ownership representative of the State (Smith et al., 2007). If the owners are allowed to use the land permanently, the ownership regime of the entire people and the position, the role of the ownership representative of the State are only in law and have no practical value. Along with that, the land use term also has the effect of promoting the owners to actively exploit, use up the land's full capacity to gain maximum benefits within that time limit and strictly abide the law so that the State may consider handing over land use rights again when the land use term expires. Issues of current law on land use term in Vietnam will be presented in this article.

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## 2 LAND USE TERM ACCORDING TO PROVISION OF CURRENT LAW

### 2.1 Types of Land with Long and Stable using Term

According to Article 125 Land Law 2013, land users may use land for a long and stable term in the cases mentioned below from the time of receiving the issuance of land allocation decisions or recognition of land use rights by competent state agencies. For this type of land, the time when owners begin to use land is clearly determined but the time of termination of land use rights is not prescribed by Law. Land for long-term and stable use includes the following types of land:

- Land for protective forest, for special-use forest and for production forest which are natural forests
- Agricultural land used by communities include:
  - + ) Communities are allocated land or recognized land use rights by the State to preserve national identities associated with the traditions and customs of the people.
  - + ) Communities which are allocated land or recognized land use rights by the State shall protect the allocated land and may use land for combined purposes of agriculture and aquaculture, but may not use such land for other purposes.

It can be understood that, stemming from the policy of prioritizing forest's protection and development in the context of global climate change in which Vietnam is forecasted to be one of the countries that will suffer the most severe consequences (Lindegaard 2019), hence, protective forest land, special-used forest land, production forest land which are natural forests and forest land used by communities are of long-term use.

- Residential land used by households or individuals.
- Land for trading or services, for non-agricultural production establishments of households and individuals that are using the land stably and that land is not allocated for limited term or leased by the State.
- Land for construction of offices includes land for construction of offices of state agencies, political organizations and socio-political organizations. For example: The headquarters of the People's Committees at all levels, the ministries' offices under the Government (Ministry of Public Security, Ministry of Defence, Ministry of Health ...); Land for construction of non-business facilities which are not independent on finance, includes: Land for

construction of facilities in the sectors and fields of economy, culture, society, health, education and training, physical training and sports, science and technology, environment, and foreign affairs and other non-business facilities. For example: Hospitals under districts and provinces; Public schools at primary, secondary and university levels... .

- Land used for national defense or security purpose.
- Land used by religious establishments includes land for pagodas, churches, oratories, sanctuaries, monasteries, religious schools, head offices of religious establishments and other religious establishments whose operation is licensed by the State.
- Land used by religious establishments.
- Land for transportation and irrigation, land with historical-cultural relics and scenic spots and land used for the construction of other public facilities for non-commercial purposes.
- Land for cemeteries or graveyards.

### 2.2 Types of Land with Limited Term

According to Article 126 of Land Law 2013, the following types of land can be used by owners within a certain period of time when there is a decision on land allocation or land lease by a competent state agency:

- The term for land allocation, recognition of agricultural land use rights for households and individuals directly engaged in agricultural production (including land for annual crops, aquaculture and salt production; land for perennial crops, land for protective forest; land for production forest) is 50 years.
- The term for lease of agricultural land to households or individuals must not exceed 50 years. At the expiry of the term, households or individuals that have demand shall be considered by the State for continued leasing of the land.
- The term for land allocation or land lease to organizations for the purpose of agriculture, forestry, aquaculture or salt production; to organizations, households or individuals for the purpose of trading and services or for non-agricultural production establishments; to organizations for implementing investment projects; to overseas Vietnamese and foreign-invested enterprises for implementing investment projects in Vietnam, shall be considered and decided on the basis of the investment projects or applications for land allocation or land lease, but must not exceed 50 years.

+) For large investment projects with slow recovery of capital, projects in areas with difficult socio-economic conditions or with especially difficult socio-economic conditions which require a longer term, the term of land allocation or land lease must not exceed 70 years. Areas with difficult socio-economic conditions or with especially difficult socio-economic conditions are stipulated in Appendix II issued under Decree No. 118/2015/ND-CP such as: Bac Kan province, Cao Bang province, Ha Giang province, Son La province and Dien Bien province...

+) For projects on construction of houses for sale or for a combination of sale and rent or for lease-purchase, the land use term shall be determined in accordance with the duration of the project. Those who buy houses associated with land use rights may use land for a long and stable term.

- The land lease term for the purpose of office construction of foreign organizations with diplomatic functions must not exceed 99 years. At the expiry of the term, if these organizations are still in need of the land, the State shall consider extending the land lease term or leasing another land parcel. Each extension period must not exceed 99 years.

- The lease term for land which is part of agricultural land fund for public purposes of communes, wards or townships must not exceed 05 years.

- Regarding land for construction of non-business facilities of self-financed public non-business organization which include land for construction of non-business facilities includes land for construction of non-business facilities in the sectors and fields of economy, culture, society, health, education and training, physical training and sports, science and technology, environment, and foreign affairs and other non-business facilities and other public facilities involving commercial purpose, the land use term must not exceed 70 years. At the expiry of the term, if the land users still have land use needs, the State shall consider an extension but the extension must not exceed 70 years.

### **2.3 Land Use Term in the Cases of Changing Land Use Purpose**

Change of land use purpose means that the owners are allowed to change the initial land use purpose when they are first allocated, leased or recognized of land by the State to land use for other purposes with approval of the State. For example: Converting rice cultivation land into land for perennial crops, forest land, aquaculture land, salt production land, etc.

According to Article 127 of the Land Law 2013, the land use term in the case of changing land use purposes are as follows:

- The land use term for households and individuals upon change of land use purpose:

+) In case the land use purpose is changed from land for protective forest or special-use forest to land for other purposes, the term shall be determined on the basis of the land type of the new purpose. The land use term shall be calculated from the time of the decision on approval.

+) In case the land use purpose is changed from land for rice cultivation, other annual crops, perennial crops, production forest, aquaculture or salt production to land for protective forest or special-use forest, households or individuals may use the land for a stable and long term.

+) In case the land use purpose is changed among land categories including land for other annual crops, perennial crops, production forests, aquaculture or salt production, households and individuals may continue using such land for the determined land use term.

At the expiry of the term, if the land users still have land use needs, the State shall consider an extension which must not exceed 50 years.

- For organizations, overseas Vietnamese or foreign-invested enterprises implementing investment projects outside industrial parks, industrial clusters, export processing zones or hi-tech zones, when the land use purpose is changed, the land use term shall be determined on the basis of the investment project or application for land allocation or land lease (50 years, 70 years or long-term and stable use of land).

- Economic organizations that change the land use purpose from non-agricultural land with long and stable land use term to non-agricultural land with limited land use term or from non-agricultural land with limited land use term to non-agricultural land with long and stable land use term, may use the land for a long and stable term.

### **2.4 Land Use Term When Receiving Transfer of Land Use Rights**

According to Article 128 of Land Law 2013, the land use term in case of transfer of land use rights for the land with definite land use term is the remaining period of the land use term defined prior to the transfer of land use rights. People who acquire land use rights for the land with a long and stable land use term may use the land for a long and stable term.

### 3 SOME INADEQUACIES OF THE CURRENT LAW ON LAND USE TERM

Based on the analysis of the contents of the current law on land use term, some inadequacies can be found as follows:

First, it can be seen that Land Law 2013 stipulating on the land use term which includes “land used for long and stable term” and “land used for limited term” is inappropriate. For “land used for long and stable term”, when the owners are given land use rights by the State or received transfer of land use rights, the time of termination of land use rights is unknown. Land use rights of owners only terminate when the State recovers land or owners transfer land use rights. Compared with the provisions of Article 144.1 of the Civil Code 2015: “Time-limit means a length of time calculated from one point of time to another point of time” (National Assembly, National database of legal documents 2015), in this case of “land used for long and stable term”, there is no land use term. Thus, it is clear that the regulation of “land without expiry date of using” to be “land used for limited term” under the name of “land used for long and stable term” is unreasonable, contradicting the provisions of Article 144.1 of Civil Code 2015 on time limits, which affects the synchronism and unity of the Vietnamese legal system.

Second, previously, Land Law 2003 (National Assembly, National database of legal documents 2003) only allowed the term for individuals and households to directly use land for annual crops, land for aquaculture and salt production is 20 years while the term of use of these types of land for economic organizations is 50 years (López Jerez, 2020). With a land use term of 50 years for individuals and households who directly use annual crop land, aquaculture land, and salt production land which have been clearly stated in the 2013 Land Law is undeniably more appropriate. It can not only be based on the method of short-term or long-term tree cultivation, or between individuals, households and economic organizations to determine the land use term. In many cases, investing in annual crops or aquaculture is more expensive than investing in perennial crops, so the short term of land use will limit farmers’ investment. It can even make them to overexploited land, resulting in the exhaustion of agricultural land. On the other hand, a long land use term will help create an attachment psychology to land for users, which promotes investment in farming on land, thereby bringing higher productivity and

economic efficiency. However, although the Land Law 2013 has increased the term of agricultural land use to 50 years, it is still relatively short for agricultural production. To recover the invested capital and profitability for agricultural production takes longer time than other production and business sectors. Meanwhile, Article 126.2 of the Land Law 2013 stipulating that the agricultural land use term is equal to the land use term for service, commercial and non-agricultural production establishments (50 years) is not consistent with the characteristics of agricultural production (Smith et al., 2007) (Pilarczyk & Nuoi, 2005)

Third, differences between the use term of agricultural land (which are land for annual crops, land for aquaculture and salt production; land for perennial trees, protective forest land; production forest land) and use term of residential land, commercial land, services, non-agricultural production establishment land of households and individuals, results in households’ property rights over agricultural land being protected by the State at a lower level, more vulnerable to being revoked by the State.

Fourth, Article 6.1 of Law Amendments to some articles concerning planning of 37 Laws related to planning in 2018, stipulates that the land use period is 10 years, while land use with definite time will lead to the case when the old planning period of land using ends, the newly developed land use plan shall be adjusted and changed. Therefore, when the land use term expires, it is difficult for land users to extend the land use by the State because their use of land is not in line with the new approved land use plan. Hence, the provision of “the land users are considered for land use extension when the land use term expires” is not clear, which can lead to unnecessary disputes in practice.

Fifth, the maximum term of land allocation or land lease is 50 years for organizations to implement investment projects; Vietnamese residing abroad, foreign-invested enterprises to implement investment projects in Vietnam, which is generally short. This makes it difficult to attract investors to invest large-scale investment in Vietnam. At the same time, extending the land use term for an additional 20 years (the law stipulates that the maximum allocation or lease of land must not exceed 70 years) as a preferential measure for investors implementing projects in the areas with difficult socio-economic conditions and areas with exceptionally difficult socio-economic conditions is not appropriate. For large-capital projects implemented in these areas, the process of capital recovery and profitability will be



much slower than those invested in areas with uniform development regarding the infrastructure, the level of the labor force, the convenient transportation position..., hence, the additional 20 years of land use term will not create a strong attraction for investors to implement large investment projects in areas with difficult socio-economic conditions and areas with exceptionally difficult socio-economic conditions (van der Burg, 2015).

Sixth, the land use term through the transfer or receipt of capital contribution of agricultural land use rights of the owners is very short, so that the owners do not dare to invest large amounts of capital in agricultural and industrial production, services, which will limit the development of the real estate market (Thanh, 2019).

#### **4 SOME ISSUES NEED TO BE CHANGED BY THE LAW ON LAND USE TERM TO PROMOTE ECONOMIC DEVELOPMENT AND SOCIAL STABILITY IN VIETNAM TODAY**

In the context of Vietnam's economy growing rapidly and integrating into the global economy, the stable and long-term use of land is the motivation for investors to invest large-scale capital in implementing socio-economic development projects. The current regulations on land use term need some amendments as follows:

First, the Land Law 2013 needs to revise the "land used for long and stable term" regulation to "land with indefinite term" to make it more reasonable, avoiding conflicts with the provisions of the Civil Code 2015 on time limit.

Second, the Land Law 2013 needs to clearly state if it falls into the case of simultaneously expiry of the land use term and expiry of old planning period of land using; the newly developed land use plan has some changes, thus there will be no extension of land use term to avoid unnecessary disputes.

Third, for the extension of the land use term, it can be chose to extend to 99 years for all types of land with limited term (Derostyne R.V 2013). Extending the land use term to 99 years is a relatively long period of time, which will create a peace of mind for land users. At the same time, it will also overcome the difference between the land use term of agricultural

land and the residential land, business land (Barai et al., 2017).

However, is it necessary to continue to maintain the regulations on land use term? In fact, regulations on land use term have not been enforced, namely the allocation of agricultural land to individuals and households for annual crops, aquaculture in accordance with the Land Law 1993 (have a term of 20 years, but upon the expiry of this period, the Land Law was amended to increase the time limit to 50 years, which is extended for another 30 years due to concerning about uncertainties and disturbances that may occur in economic and social life. This extension is really a temporary solution when there is not enough determination to eliminate agricultural land use term. In the future, at the end of this extended 30-year period, similar concerns will continue to be raised, which are much more complex because the value of agricultural land is increasing with the Vietnam's rapid economic development and this will undoubtedly happen to other types of land with other land use term (Thanh, 2019).

At the same time, the Land Law 1993, the Land Law 2003 and the Land Law 2013 all stipulate that upon the expiry of the land use term, if land users still wish to use that land, they will be considered by the State to grant land use rights. A sure thing is that land users always have the need to continue using the land at the end of the land use term because it is a benefit associated with their assets so it is not easy to give up. In the context of widespread and complicated corruption in the land sector in Vietnam (Chris Rowley & Rama, n.d.; Li et al., 2016; Powell et al., 2019) (Powell et al., 2019), this may be the cause of negative acts and violations by competent state agencies such as: Recover land with the reason of expiry of the land use term (without considering to reallocate land to owners with expired land) to grant to other entities or acts of harassment or bribery from people who want to continue to extend land use. This is reflected in the land acquisition of Mr. Doan Van Vuon in Tien Lang district, Hai Phong province in 2012. Accordingly, the People's Committee of Tien Lang district acquiring Mr. Doan Van Vuon's land due to expiry of land use is not correct. This led to Mr. Vuon protested by force of land acquisition of Tien Lang District People's Committee, resulting in 01 death and 06 injuries (Nguyen, 2019).

Simultaneously, the determination of the land use term which aims at ensuring the maintenance of the entire people's ownership system of land and protecting the status of State ownership representative is not necessary because the State's ownership status will always be guaranteed through

the State exercising the important rights stipulated in Article 13 of the Land Law 2013 such as: To decide on master plans, plans on land use; To decide on land recovery and land requisition; To decide on financial policies on land... In addition, the regulation of land use term does not make much sense in promoting the owners to actively exploit and use all the land's functions to obtain maximize benefits within the time limit and strictly abide by the land law so that the State may consider handing over land use rights when the land use term expires because in the market economy, owners always have to do everything to get the most economic benefits from the assets. The abandonment of land, destroying land... has been the basis for the state to implement land acquisition in Article 64 of the Land Law 2013 .

## 5 CONCLUSION

Vietnamese lawmakers have defined the land use term with two types of time: land used for long and stable term; land used for limited term corresponding to each specific types of land. The stipulation of land use term is aimed at maintaining the status of the State as the ownership representative of the entire people on land and for the owners to actively exploit and use land effectively in the land use term. However, the law on land use term has not brought about the desired effect but also led to inadequacies due to the different land use term between land types and short land use term which is incompatible with the current economic development and social stability of Vietnam. Therefore, the law on land use term requires a change in the direction of extending the land use term of all types of land to 99 years or more drastically changing such as abolition of land use term. By the end, land use term only undergoes land laws and are not enforced in practice.

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