

# LEGAL ISSUES OF VIETNAM'S LAND USE RIGHTS MARKET

LUU QUOC THAI

Senior Lecturer, PhD., Faculty of Commercial Law,  
Hochiminh city University of Law, Vietnam  
lqthai@hcmulaw.edu.vn  
<https://orcid.org/0000-0003-4215-9709>

*Abstract - The land market in Vietnam is known as the “land use rights market” because in Vietnam no one but the State has the right to own land (under the entire people's ownership of land regime). The basic cause of this policy is that Vietnam's political and economic institutions are built according to the socialist orientation. This makes the land use rights market in Vietnam quite complex and different from the land market in countries that recognize private ownership of land. The market for land use rights in Vietnam is divided into two levels and in which the State also participates as a supplier of goods in the primary market. The relationship in the primary market has many influences on the secondary land use rights transaction market between land users or with other entities. So, this article will point out the basic economic and legal issues for the land use rights market in Vietnam.*

*Keywords - economic, legal, land use rights, market, Vietnam.*

## INTRODUCTION

Vietnam has implemented a socialist-oriented market economy for many years. Land use rights in Vietnam is considered as a special type of property and goods but not as a right of ownership; land use rights and land-attached assets are protected by law. For many years, building and developing a healthy real estate market has been one of the basic contents in the national economic development strategy of the State of Vietnam<sup>1</sup>. To do this, the law on land in general and the law on the land use rights market in particular need to be perfected because land is the basic "constituent" element of real estate. Officially recognized from the Land Law 1993, Vietnam's land use rights market has made certain developments, contributing to economic development<sup>2</sup>. However, according to the Communist Party (the only political party leading the state), the real estate market, in which the market for land use rights is not stable, transparent and sustainable, with many potential risks. Administrative reform in land management is still slow and has not met practical requirements; It is still difficult for businesses, especially small and medium enterprises, to access land. The work of land registration and statistics, especially the registration of land changes has not been strictly implemented, there is still a state of harassment and trouble for people and businesses<sup>3</sup>. Therefore, this article analyzes the overview of Vietnam's land use rights market from an economic and legal perspective to have an objective view of this market.

## DISCUSSION AND RESULTS


### 1. Market and its role in economic development

The market, in a narrow sense, is the place where the exchange of goods created in the

<sup>1</sup> Nguyen Xuan Trong, *Exploring some legal and practical issues of land-related transactions in Vietnam*, Ha Noi, Journal of State and Law, (4), 2001, p.47-56.

<sup>2</sup> See more: Luu Quoc Thai, *Public ownership of land and its impact on the socialist-oriented market economy in Vietnam*, Bucharest, Cogito, Vol.XIV, no.4/December, 2022, p. 160 - 175.

<sup>3</sup> Central Committee - Communist Party of Vietnam, *Resolution 18-NQ/TW on "continuing to renovate and perfect institutions and policies, improve the effectiveness and efficiency of land management and use, creating a driving force for our country to become a high-income developed country"*, Ha Noi, 2022.



production process takes place. In this sense, a market is a geographical space for entities to exchange goods with each other. Thus, the market appeared with the birth and development of commodity production.<sup>4</sup>

In a broad sense, the market is the totality of economic phenomena reflected through the exchange and circulation of goods, together with economic relations and economic relationships between people, thus linking together.<sup>5</sup> It can be said that the market is a network through which the exchange and purchase of goods is carried out. Through this meaning, the nature and operating rules of the market can be grasped.

With such origins and nature, the market plays a particularly important role in socio-economic development, because through it the circulation of goods according to human needs will be done naturally. To do this, the market has a self-regulating function that no other tool of the State can compare with. Unlike the regulation in the State's plan, which is an administrative order, the regulation of the market is carried out through the economic interests of the market participants. This is the factor that governs behavior such as urges, changes the behavior of subjects to gain benefits when participating in the market.

Thus, along with the production of goods, the market is first and foremost an important factor for the realization of specialization in production and business - basic requirements to improve productivity and product quality to better serve people's lives. In addition, the market also has the ability to "guide" the activities of economic actors. It will be the factor that determines the exact type and quantity of products to be produced that society needs, avoiding the waste that the planned economy has encountered. In addition, the supply of goods through the market will cause competition between the owners, from which the product quality is getting higher and lower, the price is lower, so the society is more and more beneficial. And most importantly, the market is the only intermediary factor that can help to distribute in the most reasonable and fair way the production and business resources, especially the limited natural resources in which including land.

## 2. The concept of the market for land use rights

The recognition of land use rights as a commodity shows the observance of the necessary economic laws of Vietnamese legislators in the face of the need for land circulation to realize the commodity economy. This circulation is done through the exchange of land use rights as a commodity. This process gave birth and formed a market for land use rights - a special kind of market for land that exists only under a special public land ownership regime.

Like other types of market, the market for land use rights is the mechanism through which land use rights are circulated and exchanged. To be more specific, "The land use rights market is the sum total of conditional transactions on land use rights that take place in a certain space, at a certain place, at a certain time."<sup>6</sup>

Thus, the object of circulation in the market for land use rights is the land use rights - a special commodity rather than the circulation of land ownership. This has led to many different views on the existence or non-existence of a land market in Vietnam.


The first point of view is that, due to the all-people ownership of land, land ownership belongs only to the State, so there is only transaction and exchange of land use rights, but no transfer of land ownership, and therefore, Vietnam does not have a land market, but only a

---

<sup>4</sup> Ho Chi Minh National Academy of Politics - Faculty of Economic Management, *Economic Management Textbook*, Ha Noi, National Political Publishing House, 2001, p. 70.

<sup>5</sup> Institute for Research & Dissemination of Polytechnic Knowledge, *Great dictionary of market economy*, Ha Noi, Bach Khoa Publishing House, 1998, p. 114.

<sup>6</sup> Bui Thi Tuyet Mai, *The market for land use rights in Vietnam*, Ha Noi, Labor - Society Publishing House, 2005, p. 42-43.



real estate market, including the market for land use rights.<sup>7</sup> In other words, in Vietnam, there are no goods for land but only goods for land use rights and there is only a market for land use rights without a land market.

On the contrary, according to the second point of view, land is still a commodity, even if it is a special commodity, and the land market still exists and operates normally in the condition of the entire people's ownership of land, because land can be converted into money and can still be exchanged on the market.<sup>8</sup> Thus, regardless of the land ownership regime, a real land market will exist when land has a price and can be exchanged on the market through common means of payment, when transactions of exchange, purchase and sale of land are allowed. In other words, the issue of whether land is considered a commodity or not is the determining factor of the existence or non-existence of a land market.

The notion that land is not a commodity comes from K. Marx's theory of commodities in general. Goods must therefore be man-made, which means that there must be a crystallization of human labor. Meanwhile, land is an item given by nature, man cannot create land. That is, land has no "value" of goods. In addition, according to K. Marx, for an asset to be considered a commodity, the circulation of ownership of that property must be possible. Specifically, this view holds that: "in order for products to be related to each other as commodities, the producers and exchangers of goods must recognize each other as owners.",<sup>9</sup> that is, private ownership of the property must exist. Unfortunately, this is not available in Vietnam.

However, when discussing the nature of goods, there is a view that considering land to have no theoretical value is a big mistake. The original land is not a commodity, but through the process of labor, people act on the land and make their labor crystallize into the land, turning it into commodity land - understood in the economic sense. This view also holds that, whether you want to admit it or not, the exchange and purchase of land still takes place in reality as an indispensable need. Therefore, without acknowledging this nature, it is difficult for the State to control land relations. Moreover, in order to meet the requirements of synchronous formation of markets in the process of building a market economy in Vietnam, the land market must be recognized. Therefore, land in Vietnam must be considered a special commodity.<sup>10</sup>

In my opinion, land in Vietnam in current conditions can still be considered a commodity and the "land market" still exists, but the land use rights market is a specific form of expression (or form), for the following reasons:

*Firstly*, although the "orthodox" views only recognize land use rights (but not land) as a commodity, but land use rights only make sense when it is "attached" to the land, because the land use rights of the land user will also terminate when the corresponding land plot no longer exists in reality. Besides, legally, the transfer of land use rights will also lead to a change in land holders. The land holder in this case is not the owner, but their holding is legal. This is the condition for the actual exploitation and use of land.

*Secondly*, the State's recognition of valuable land and regulations on land prices proves that land has been recognized as a special commodity. According to current law, the determination of financial obligations of land users must in principle be based on the land price

---

<sup>7</sup> Vu Van Phuc - Tran Thi Minh Chau, *Perspectives of the Vietnamese Party and State on the development of the real estate market in the socialist-oriented market economy*, Ha Noi, Cadastral Magazine, (4), 2003, p.6-8.

<sup>8</sup> Le Thanh Khuyen, *Discussing the theoretical and scientific basis for the organization and management of the real estate market in Vietnam*, Hai Noi, Cadastral Magazine, (12), 2001, p.10-12; Nguyen Quang Tuyen, *Some thoughts on inheritance of land use rights in accordance with current law*, Ha Noi, Journal of State and Law, (2), 2003, p. 47-54.

<sup>9</sup> Ngo Van Luong, *Marxist-Leninist political economy*, Ha Noi, National Political Publishing House, 2001, p. 31.

<sup>10</sup> Hoang Viet (Ed), *The issue of land ownership in the multi-sector commodity economy in Vietnam*, Ha Noi, National Political Publishing House, 1999, p. 80-81.



set by the state (Article 112, 114 Land Law 2013). Moreover, when land users carry out transactions of land use rights of a property nature, the problem of determining the value of land use rights in the transaction is always based on the value of the transaction land plot. It is these things that highlight the commodity nature of the land.

*Thirdly*, the current land law makes no distinction (if not identical) between land price and land use rights price (Clause 19, 20, Article 3 of the 2013 Land Law). Therefore, it is time for us to have a change in the concept of goods, because this concept is set by people, people have the right to change. Land is a special commodity regardless of the land ownership regime. This speciality is reflected in its unusual properties compared to ordinary goods and in the condition that the land is owned by the entire people in Vietnam, the movement of land goods is done through transactions of land use rights.

In summary, distinguishing the land market from the land use rights market on the basis of the land ownership regime is unreasonable and unnecessary. The terms "ownership" or "use rights" are just concepts used to refer to the "rights" of people to property in different degrees. Moreover, land use rights in accordance with the law of Vietnam does not stop at the level of the right to exploit and use it as usual, but also includes the right to trade it as a commodity<sup>11</sup>. Thus, the comparison in this case would be appropriate if the objects of comparison were the "ownership rights market" and the "use rights market" for land, not the "land market" and "land-use rights market". Besides, in the conditions of the commodity economy moving according to the market mechanism, when the right to use is often separated from the ownership of the means of production (including land), the above distinction is only formal and has no practical value. The core issue lies in the market nature of land relations in particular and relations on means of production are generally respected and promoted to the extent necessary to help building a market economy with healthy development.

### 3. Land use rights market in Vietnam

#### 3.1. Classification of the land use rights market

The classification of the market for land use rights is important for analyzing market participants and their characteristics so that appropriate adjustments can be made. This classification can be based on many different factors.

##### *Based on the composition of the market participants*

Based on this factor, the market for land use rights can be divided into two types: primary market and secondary market.

##### \* The primary market

This is a market arising between two types of subjects, the State and the land users. In this market, the State, as the land owner, provides goods to its land use customers. In other words, land transactions mainly take place between the State and the entities that have the need to use land. The primary land use rights market therefore has the following important characteristics and meanings:

*Firstly*, through this market, the State decides which part of land will be involved in the land use right market in particular and the real estate market in general. This decision is made both in terms of quantity and purpose of land use. These factors are addressed in the State's land use master plans and plans. It is this that makes the primary land use rights market play a decisive role for the entire quantity of goods in the land use rights market in general and the real estate market in particular.

*Secondly*, the primary market determines the number of participants in the general land use rights market. This feature comes from the position and role of the State in land relations.

<sup>11</sup> See more: Luu Quoc Thai, *Legal issues on the market of land use rights in Vietnam*, Ha Noi, Hong Duc Publishing House, 2016, p.28 - 34; Luu Quoc Thai, *Public ownership of land and its impact on the socialist-oriented market economy in Vietnam*, Bucharest, Cogito, Vol.XIV, no.4/December, 2022, p. 160 - 175.



The State is not only a mere supplier of goods according to the needs of the market, but also has the right to decide who its customers are through direct transactions with the State and also those who can get land use through transactions with other land users. Therefore, the type of customers of the State identified in the primary market is the same type of subject that is allowed to use the State's land through any channel. Therefore, expanding the type of subjects that are customers of the State in this market will enrich the type and number of land users in the land use rights market in general.

*Thirdly*, the transaction relationship in the primary land use rights market is not only of property but also of an administrative imperative. This characteristic comes from the position of the State as the bearer of public power and is expressed through the land distribution procedures of the State in the allocation and lease of land. According to current law, the State grants land use rights to land users through land allocation and land lease activities. When land is needed for public purposes, the State recovers land from land users. All these activities are carried out by an administrative decision by the competent administrative authority. Land prices for determining financial obligations of land users or calculating compensation when the State recovers land are decided by administrative agencies. So, it is difficult to completely remove the administrative nature of this relationship. This can distort asset relations in terms of market conditions. Therefore, how to reduce the administrative nature in the relationship between the State and land users in the primary market is very necessary.

\* The secondary market

This is the market in which land users conduct transactions on their land use rights. Unlike the primary market, the suppliers of land use rights in this market are the land users. At this time, land use rights have been officially recognized as a property right of land users and they can "freely" put them into circulation on the market. It can be said that the secondary land use right market has the following characteristics:

*Firstly*, the secondary market is very dependent on the primary market in terms of traded goods. If the State's land distribution in the primary market is quick and highly efficient, the quantity of goods in the secondary market will be abundant and transactions will be active.

*Secondly*, the secondary market will not develop, supply and demand imbalance due to shortage of goods. Especially for the activity of granting land use right certificates, a state management activity to legalize land use rights of land users after land distribution is also of great significance. It determines the amount of land use rights eligible to participate in the secondary market.

*Based on the type of land use rights transaction*

According to the current law, land users can perform seven types of land use rights transactions, including: conversion, transfer, lease, inheritance, donation, mortgage, joint venture capital contribution by land use rights (Clause 1, Article 188 of the Land Law 2013). In these types of transactions, although conversion, inheritance, and donation are not market-oriented, they are the basis for establishing land use rights and putting them into market relations. Thus, based on the type of land use rights transaction, Vietnam currently has the following types of markets:

\* The market for transferring land use rights

Transfer of land use rights is the transfer of land use rights by a land user completely to another person in exchange for a sum of money. This form has the nature of buying - selling and it will not be wrong if we call it "selling land use rights". Legally, the law also has provisions on auction of land use rights - that is, a special form of transfer by auction method.

The transfer of land use rights is therefore the most popular form of transaction in Vietnam today. *Firstly*, through this transaction, land use rights as a special means of production are redistributed according to social needs. *Secondly*, through this market, land can be accumulated and concentrated in the hands of those who have the need and ability to do business on a large scale. *Thirdly*, the transfer of land use right is a prerequisite for the formation and development of the real estate market in the condition that the land is owned

by the entire people, because all real estate is attached to land, the transfer of real estate ownership in principle must also transfer the land use right to the new owner.

\* The market for leasing land use rights

Leasing of land use right is the transfer of land by the land user to another person (lessee) for a certain period of time. In return, the land user will be paid a certain amount according to the agreement. Leasing land use rights is only a form of temporary transfer of land use rights, the land use rights does move in reality but does not terminate the land use right of the lessor.

The fact that land users have the right to lease land use rights contributes to the formation of the rental market. This rental relationship has both helped land users get income without losing their land use rights, at the same time can save land if they have not or have no need, ability to use. In addition, this lease on the one hand contributes to bringing land into market relations, creating a supply for production and business activities. On the other hand, the fact that business owners have land to serve their needs at a lower cost is less than establishing the land use right for themselves, because they only have to pay for land use for a certain period of time rather than having to pay for the establishment of new land use rights. In fact, the market for leasing land use rights has proved to be very suitable for infrastructure business activities in industrial parks, high-tech zones, and economic zones in Vietnam, because through infrastructure business (by leasing land use rights associated with infrastructure) has contributed to the specialization in production and business, creating quickly and effectively for investors who need land to use.

\* Mortgage market for land use rights

Mortgage and guarantee with land use rights (generally referred to as mortgage of land use rights) is the use of land use rights by land users to secure the performance of civil obligations, which are mainly loan payment obligations. This is one of the important property transactions that land users are allowed to make.


In the context of a commodity economy, expanding scale and increasing investment in production are indispensable for survival and development. To do this, investors need to have more capital, one of the most important sources being loans. Borrowing capital for production and business normally requires assets to secure the loan and one type of property that is allowed by law to be used in security transactions is the land use rights.

Thus, land use rights is not only recognized as a commodity, but also considered as an asset used to secure the performance of obligations. It can be said that this is an ideal asset to use in security transactions, because it is attached to land - an asset of great value and durability. The fact that the law allows the use of land use rights as collateral to borrow money has created the mortgage market for land use rights - an important factor linking the real estate market with the capital market. Through mortgage of land use right in particular and mortgage of real estate in general, investors in particular and land users in general have more capital to expand their investment, production and business. This activity, on the other hand, can help the money business of credit institutions to develop more and more, so the capital market also develops accordingly. Reality has shown that mortgage of land use rights in particular and real estate in general to borrow capital to invest in production development has been successfully applied in many countries around the world and in Vietnam in recent times.<sup>12</sup> Therefore, healthy development of the mortgage market for land use rights is one of the conditions for a strong economy.

\* Market for joint venture capital contribution by land use rights

Contributing capital to a joint venture by land use right is the use of land use right by land users as a source of capital to cooperate in production and business with other entities. In the context of the market economy, this is a very important right for land users. With this

<sup>12</sup> Thai Ba Can - Tran Nguyen Nam, *Real estate market - theoretical and practical issues in Vietnam*, Ha Noi, Finance Publishing House, 2003, p. 36.



right, land use rights have become an important source of capital for investment cooperation and business expansion on the land under their right to use, even in difficult financial conditions.

Contributing capital to a joint venture by using land use rights is an economic transaction and therefore also creates a kind of market for land use rights. The formation of a market for joint venture capital contribution by land use right in particular and by real estate in general brings many benefits, especially for developing countries like Vietnam. In the investment cooperation relationship with foreign countries, allowing the use of land use rights to contribute capital to joint ventures gives domestic economic organizations the opportunity to access, attract capital, and absorb modern technology and learn business management experience from foreign investors in the condition of limited capital. In recent years, when foreign investment in Vietnam has increased sharply, the formation of joint venture enterprises in which the Vietnamese party contributes capital with land use rights has become more and more popular.

### **3.2. Participants in the market for land use rights**

These entities include suppliers of land use rights goods; demanders for land use rights (customers) and market intermediaries. Each type of subject has a different position and role in the existence and development of the land use rights market.

#### *Supplier of goods to the land use rights market*

This is one of the subjects affecting the existence of the market, because without this type of subject, the land use rights market will not have goods to trade. There are two types of entities that provide land use rights goods to the land use right market: the State and the land users.

The State is the largest supplier of goods in the land use rights market. As the representative owner of the entire land, it can be said that the State holds a "monopoly" position in the distribution of goods and land use rights in the primary market. In addition, as the unified manager of all land, the State's management activities have more or less influence on the quantity of land use rights goods in the market. Specifically, through land use master plans and plans established by the State, the amount of land use rights goods in each field (use purpose) in the future will be determined; Through regulations on conditions for land use rights to become a commodity, the State will decide the quantity of goods in the secondary market.

However, an even more important issue is the state's status when participating in market relations. In the condition that it is both an owner and a holder of public power, it is easy for the State to abuse power or confuse its role in land relations. In order to avoid distortions in the market relations of land use rights, when participating in the market as a supplier of goods, the State should only consider itself the owner of the property and put itself in an equal relationship with the customer. The State should not use state power in transactions, because if so, the inherent equality of market relations will be lost, instead it will be administrative imperative - a fearsome enemy of the market.

Land users are the type of entity providing goods for the secondary land use rights market. Unlike the State, land users are diverse in number and types, including domestic and foreign households, organizations and individuals who are allowed to use land in Vietnam. Besides, because they are ordinary subjects who do not hold public power like the State, participation in the market as a supplier of goods by land users takes place normally as when participating in other markets. However, land users can only be considered as a supplier of goods and land use rights when their land use meets certain conditions prescribed by law (of the State).

#### *Customers of the land use rights market*

This is the remaining subject that affects the existence of the market, because without customers, land use rights cannot be traded as a commodity. In fact, the customers of the land use right market are potential land users. They are people who have demand for land use and want to establish land use rights through transactions on the market. Therefore, in order for

the land use rights market to be active, the people who are considered to be customers of the land use rights market, especially in the secondary market, must be very diverse and rich. An entity that is considered a "customer" of the State in the primary market should also be entitled to receive land use rights from other land users in the secondary market. Only then can the equality and freedom of the market bring into full play its positive side.

#### *Market intermediaries*

These are the actors who play the role of "bridges" between "sellers" and "buyers" in the land use rights market or as a "catalyst" for land use rights transactions to be established quickly, easily and conveniently. In terms of building a healthy real estate market - an important element of Vietnam's market economy, entities performing functions such as consulting, brokerage, valuation, trading floor... about real estate in particular and land use rights in general are indispensable. Practice shows that the level of development and maturity of the market economy is reflected in the development level of all types of markets, especially the real estate market with land use right playing the core role. In order for the market to achieve the highest development, the specialization and professionalism of each type of subject must be promoted to the maximum extent. The formation and development of a team of market intermediaries is one of the important manifestations of the above specialization requirements.<sup>13</sup>

### **3.3. The development process of the law governing the operation of the Vietnamese land use rights market**

The land market in Vietnam (or the market for land use rights since the all-people ownership regime for all land was established) has changed a lot since the country's unification. The actual situation of the land market depends greatly on the State's land law policy - a factor that has always lacked stability and consistency for a long time. Due to subjective perception, there are certain historical periods when the State does not accept land transactions and therefore the land market does not exist. Although the country was reunified in 1975, due to many difficulties in political stability, country management organization and social life in the early years, the market problem in general and the land market in particular has not been paid attention by the State. The characteristic of the land policy in the period from 1976 to 1979 was the large-scale "cooperation-collectivization" of agriculture on a national scale, plus the establishment of an average land regime, so it was impossible to a market for land. This model soon failed and severely affected the entire socio-economic system.

Therefore, within the scope of this section, the author only focuses on describing and analyzing land law policies starting from the 1980s, when the State has had enough time to stabilize politics and society, thereby planning and implementing land policies for economic construction and development. Based on the changes in land policy, the process of formation and development of the law regulating the land use right market from 1980 up to now can be divided into two phases:

#### *The period from July 1, 1980 to before October 15, 1993*

This is the period when the market for land use rights in Vietnam does not exist legally. This period was marked by Decision 201/CP dated July 1, 1980 of the Government Council at that time on unifying land management and strengthening land management throughout the country. According to the provisions of this Decision, all land shall be uniformly managed by the State; Land users may not distribute, rent, pledge or sell land in any way.

It can be said that although the entire people's ownership of the entire land was officially established on December 18, 1980, but with Decision 201/CP mentioned above, the State considered itself as the owner of the entire land from July 1, 1980. Constitution 1980 - The first Constitution of the unified Vietnam was adopted, which stipulates that all land nationwide

<sup>13</sup> Institute for Research & Dissemination of Polytechnic Knowledge, *Great dictionary of market economy*, Ha Noi, Encyclopedia Publishing House, 1998, p. 114.





is owned by the entire people and uniformly managed by the State (Article 19), actually just to have an official statement on the issue of land ownership with legal documents higher legal value. The key problem is that, the 1980 Constitution did not recognize the market economy, so no market existed and of course the land use rights market had the same fate. The Land Law 1987, the first land law built on the basis of the all-people ownership of land, also played a significant role in eliminating the seeds of the land use rights market by the refusal to recognize the value of land goods and the prohibition of buying and selling land in any form (Article 5 Land Law 1987). Land at that time was considered a common welfare with no economic value and land users were allocated land by the State without paying any money for land use.

All the above actions of the State in this period are subjective and completely go against the general economic laws, showing weak thinking and limited vision. The negative socio-economic consequences of this period were comprehensively revealed, especially in the land sector. *The first was inefficient land use:* Although Vietnam was an agricultural country, it was chronically short of food and had to import over one million tons of food every year.<sup>14</sup> *Secondly, the state management of land was weak, illegal transactions in land were beyond the control of the State.* The law on land at that time did not allow the transfer of land use rights, but allowed (or could not prohibit) the purchase and sale of properties on the land and the purchaser of the property recognized the right to use the land (Article 17 Land Law 1987). This regulation has created favorable conditions for land transactions disguised as buying and selling properties attached to land. State ownership of land becomes meaningless when the owner's economic rights are not exercised at all, and state revenues from land are almost nonexistent. The relationship between the State and land users in this period was merely an administrative relationship, without any property or market factors.

The highlight that is considered as progress in land policy during this period is the "allocation of products to labor groups and workers in agricultural cooperatives" according to Directive 100/CT-TU dated 13/01/1981 and the "renovation of economic management mechanism in agriculture" under Resolution 10/NQ-TW (also known as contract 10) of the Politburo. These regulations effectively created agricultural production at that time, whose mark was the first shipment of 1.2 million tons of rice exported in 1989.<sup>15</sup>


The above advances was not enough to help form a land market in Vietnam because land use rights was still not considered a commodity. Faced with that situation, the 7th National Party Congress (1991) affirmed the socialist-oriented reform and development of the market economy. After that, the 2nd Plenum of the 7th Central Committee (March 1992) affirmed that: "The conversion, transfer, lease, mortgage, inheritance of land use rights must be regulated by law so that farmers can rest assured in production". However, it was not until April 15, 1992, when the Constitution 1992 was adopted to replace the Constitution 1980 that the initial legal mechanism for the market for land use rights began to appear, with the provision that land users can transfer land use rights. Though, it was not until the Land Law 1993 came out with specific regulations that the legal environment for the land use rights market really became a reality. This is the moment marking a new phase of land policy and land relations in Vietnam.

#### *The period from October 15, 1993 to present*

The Land Law 1993 was passed on July 14, 1993 and took effect from October 15, 1993. The introduction of the Land Law 1993 (replacing the Land Law 1987) completely changed the nature of land relations. Land has been determined to have a price (Article 12) and land users have begun to transfer land use rights (Clause 3, Article 73). Land users, from being allocated or allocated land for free, must change to the form of land allocation with collection of land

<sup>14</sup> Nguyen Tan Phat, *Land policy in Vietnam in the renewed period*, Ha Noi, Economic Research Journal, 332 (01), 2006, p. 42-57.

<sup>15</sup> Nguyen Tan Phat, *Land policy in Vietnam in the renewed period*, Ha Noi, Economic Research Journal, 332 (01), 2006, p. 42-57.



use levy or land lease. Commodity-monetary properties in land relations began to appear and develop. All these have made the market for land liberated and developed as expected by society. The reality has proven that this is the right change and this change has been further promoted through the openness of the legal mechanism to make land transactions easier and more flexible.

Although there are many fundamental changes compared to the Land Law 1987, the provisions of the Land Law 1993 still have many limitations, especially not allowing economic organizations and tenants to transfer land use rights. More seriously, the Ordinance dated October 14, 1994 stipulating the rights and obligations of domestic economic organizations forced economic organizations to use land for production and business other than agriculture, forestry, aquaculture, and salt production to change to lease land and not be allowed to transfer land use rights. This regulation had put them at risk of "losing" their property "after just one night of waking up". Fortunately, these irrationalities were promptly corrected in the Ordinance dated August 27, 1996 on amending and supplementing a number of articles of the Ordinance dated October 14, 1994.

On December 2, 1998, the Law amending and supplementing a number of articles of the Land Law 1993 was passed, which officially stipulates the right to transfer land use rights of economic organizations and tenants. This regulation, in addition to creating equality, has contributed to enriching transactions of land use rights in terms of participants and traded goods. The Land Law 1993 was revised and supplemented again on June 29, 2001. This amendment and supplement only focuses on the state management of land, so the issues related to the market for land use rights are not new.

Since the Land Law 1993 was amended and supplemented for the second time until before the Land Law 2003 was born, the provisions of the land law still have many inappropriate and inadequate contents. *Firstly, the authority and administrative procedures for land were still too complicated*, land users are regulated to have the right to transfer land use rights, but when exercising the right, they must seek permission from the state management agency and get permission to do so. *Secondly*, the land use right market - an important element of the real estate market has not been institutionalized. *Thirdly*, foreigners were still discriminated against a lot in land use, especially they were not allowed to transfer land use rights like domestic organizations and individuals;...

The above limitations were a great obstacle to the construction of a market economy in Vietnam and a disadvantage for Vietnam to integrate into the world, especially the accession to the WTO. Therefore, it was necessary to comprehensively amend the Land Law, especially with the Communist Party's policy: "*forming and developing the real estate market, allowing the transfer of land use rights in accordance with the law.*"<sup>16</sup>

The birth of the Land Law 2003 on November 26, 2003 is an inevitable part of the process of perfecting the land law in the direction of synchronous construction of markets to complete the socialist-oriented market economy institution. Replacing the previous Land Laws, the Land Law 2003 has quite a lot of progress. The most significant is the official recognition and regulation of the land use right market in the real estate market. In addition, the rights of land users are expanded, from 05 (five) initial forms of land use rights transactions which are conversion, transfer, lease, inheritance, mortgage, from this time, land users have two more transactions: contributing capital and donating to land use rights. In particular, the right to transfer land use rights of foreign organizations and individuals has also been recognized. In addition, the "ask - give" mechanism in exercising the rights of land users was officially abolished along with the appearance of the Land Use Rights Registration Office - a public service agency in the state management apparatus on land use rights. This is an important legal basis for the formation and development of the land use right market in particular and the real

---

<sup>16</sup> Le Thanh Khuyen, *Discussing the theoretical and scientific basis for the organization and management of the real estate market in Vietnam*, Ha Noi, Cadastral Magazine, (12), 2001, p.10-12.

estate market in general.

However, after many years of implementing the Land Law 2003, it must be acknowledged that the current land market in particular and the real estate market in general in Vietnam today is very abnormal and extremely chaotic. The phenomenon of “untransparent land transactions” was still common, land speculation was serious, and land prices were unusually high at an alarming rate.<sup>17</sup> This shows that the land law at this time was still not complete enough to ensure the healthy development of the land use rights market. Therefore, the introduction of the Land Law 2013 (effective on July 1, 2014) is an inevitable step in the process of perfecting the law governing land relations in general and the relations of land use right market in particular.

Even so, the provisions of the Land Law 2013 on the land use right market, especially the regulations on land use right allocation, seem to only “legalize” the provisions under the law of the previous period, but there has been no significant change. After nearly 10 years of implementation, the current Land Law has revealed many limitations. Corruption in the land sector is becoming more and more serious<sup>18</sup>. According to the Communist Party’s assessment, land policies and laws are still limited, inadequate, overlapping, inconsistent, affecting the effectiveness of land management, creating loopholes for many individuals and organizations to take advantage of, corrupt, take advantage of, cause losses and waste state property<sup>19</sup>. This is the reason why the State of Vietnam planned to change the Land law again. According to the plan, the Land Law 2023 will be passed in October 2023 to replace the current Land Law 2013<sup>20</sup>. This shows the instability in Vietnam’s land law policy, which has a negative impact on the market for land use rights

## CONCLUSION

Vietnam’s land use rights market has been officially recognized since the Land Law 1993 came into force. With a 2-tier structure formed on the basis of the entire people’s ownership of land, this market has special differences from a normal land market in terms of private ownership of land. However, the market for land use rights in Vietnam has also made significant contributions to the socio-economic development. However, due to the limitations of the land law, the land use rights market in particular and the real estate market in general in the country is still unstable.

After nearly 30 years of existence and development, along with the innovations of land policies and laws, this market has made significant contributions to the economic development of the country. However, the innovation of land law related to the market for land use rights seems to be still quite “passive” and indecisive compared to the requirements of social life.

At the first level, the law on the market for primary land use rights is still heavily administrative - imperative. The market factor in the relationship between the State owner and land users, especially with production and business investors, is still fuzzy and sometimes “overwhelmed” by administrative factors. The underlying cause of this situation is that land

<sup>17</sup>Tran Du Lich, *House prices have exceeded the tolerance of the economy*, VietNamNet, <http://vietnamnet.vn/kinhte/thitruong/2005/10/503639/>, 2005, accessed January 29, 2023. 27/03/2008; Ho Chi Minh City Institute of Economics, *Transactions without transparency in the real estate market*, <http://www.vienkinhte.hochiminhcity.gov.vn/xemtin.asp?idcha=3107&cap=3&id=3989>, 2007, accessed on 28/01/2023.

<sup>18</sup> See more: Luu Quoc Thai, *Legal issues on land corruption in Vietnam*, Bucharest, Cogito, Vol.XIV, no.1/March, 2022, p. 91 – 114.

<sup>19</sup> Central Committee - Communist Party of Vietnam, *Resolution 18-NQ/TW on "continuing to renovate and perfect institutions and policies, improve the effectiveness and efficiency of land management and use, creating a driving force for our country to become a high-income developed country"*, Ha Noi, 2022.

<sup>20</sup> Government portal, *Law and ordinance development program in 2023*, <https://xaydungchinhsach.chinhphu.vn/chuong-trinh-xay-dung-luat-phap-lenh-nam-2023-119220630113322814.htm>, Ha Noi, 2002, access 01/28/2023.

ownership is still not separate from state power. The fact that administrative agencies are still the ones who decide to distribute land directly to investors makes this relationship impossible to achieve the desired transparency. In relation to compensation when the State recovers land, the element of state power also makes this market unfair. This is also the reason that makes it difficult for investors to access land in the primary market, when the legal rights of those whose land is acquired are not guaranteed. The only bright spot in this market is the first time the State accepts to allocate land to foreign investors for housing business.


At the second tier, the legislation governing the secondary land use rights market is almost unchanged. The provisions of the Land Law 2013 and the implementing documents related to this market are almost nothing new compared to the legal regulations of more than 10 (ten) years earlier. Foreign investors have not yet been able to have the "position" as domestic economic organizations to establish land use rights in this market while unnecessary discrimination still exists. In addition, the lack of consistency between the Land Law, the Law on Housing and the Law on Real Estate Business also makes the application of the law difficult.

The financial factor on land has changed, in the direction of "marketing" the land relationship, especially the innovation in land price regulations. Unfortunately, the mechanism for determining and applying land prices still has administrative elements, and the mechanism for collecting information and controlling market land prices has not yet been shaped. This makes land valuation very difficult. The basic reason can be said that the cash payment method in real estate transactions in Vietnam is still accepted.

In general, the legal framework for the market for land use rights has not changed fundamentally. Therefore, according to the author, in order to have a really healthy market for land use rights, legislators need to be more independent and more professional in their legislative activities in the next land law adjustment.

## REFERENCES

- [1] Bui Thi Tuyet Mai, (2005), *The market for land use rights in Vietnam*, Ha Noi, Labor - Society Publishing House.
- [2] Central Committee - Communist Party of Vietnam, (2022), *Resolution 18-NQ/TW on "continuing to renovate and perfect institutions and policies, improve the effectiveness and efficiency of land management and use, creating a driving force for our country to become a high-income developed country"*, Ha Noi.
- [3] Government portal, (2022), *Law and ordinance development program in 2023*, <https://xaydungchinh sach.chinhphu.vn/chuong-trinh-xay-dung-luat-phap-lenh-nam-2023-119220630113322814.htm> , access 01/28/2023.
- [4] Ho Chi Minh City Institute of Economics, (2007), *Transactions without transparency in the real estate market*, <http://www.vienkinhte.hochiminhcity.gov.vn/xemtin.asp?idcha=3107&cap=3&id=3989> , accessed on 28/01/2023.
- [5] Ho Chi Minh National Academy of Politics - Faculty of Economic Management, (2001), *Economic Management Textbook*, Ha Noi, National Political Publishing House.
- [6] Hoang Viet (Ed), (1999), *The issue of land ownership in the multi-sector commodity economy in Vietnam*, Ha Noi, National Political Publishing House.
- [7] Institute for Research & Dissemination of Polytechnic Knowledge, (1998), *Great dictionary of market economy*, Ha Noi, Bach Khoa Publishing House.
- [8] Institute for Research & Dissemination of Polytechnic Knowledge, (1998), *Great dictionary of market economy*, Ha Noi, Encyclopedia Publishing House.
- [9] Le Thanh Khuyen, (2001), *"Discussing the theoretical and scientific basis for the organization and management of the real estate market in Vietnam"*, Hai Noi, Cadastral Magazine, (12);

- 
- [10] Le Thanh Khuyen, (2001), *Discussing the theoretical and scientific basis for the organization and management of the real estate market in Vietnam*, Ha Noi, Cadastral Magazine, (12).
- [11] Luu Quoc Thai, (2016), *Legal issues on the market of land use rights in Vietnam*, Ha Noi, Hong Duc Publishing House.
- [12] Luu Quoc Thai, (2022), *Legal issues on land corruption in Vietnam*, Bucharest, Cogito, Vol.XIV, no.1/March.
- [13] Luu Quoc Thai, (2022), *Public ownership of land and its impact on the socialist-oriented market economy in Vietnam*, Bucharest, Cogito, Vol.XIV, no.4/December.
- [14] Ngo Van Luong, (2001), *Marxist-Leninist political economy*, Ha Noi, National Political Publishing House.
- [15] Nguyen Quang Tuyen, (2003), *Some thoughts on inheritance of land use rights in accordance with current law*, Ha Noi, Journal of State and Law, (2).
- [16] Nguyen Tan Phat, (2006), *Land policy in Vietnam in the renewed period*, Ha Noi, Economic Research Journal, 332 (01).
- [17] Nguyen Xuan Trong, (2001), *Exploring some legal and practical issues of land-related transactions in Vietnam*, Ha Noi, Journal of State and Law, (4).
- [18] Thai Ba Can - Tran Nguyen Nam, (2003), *Real estate market - theoretical and practical issues in Vietnam*, Ha Noi, Finance Publishing House.
- [19] Tran Du Lich, (2005), *House prices have exceeded the tolerance of the economy*, VietNamNet, <http://vietnamnet.vn/kinhte/thitruong/2005/10/503639/>, accessed January 29, 2023.
- [20] Vu Van Phuc - Tran Thi Minh Chau, (2003), *Perspectives of the Vietnamese Party and State on the development of the real estate market in the socialist-oriented market economy*, Ha Noi, Cadastral Magazine, (4).