

The “Entire People Ownership” Regime on Land and the Nature of Land Use Rights in Vietnam

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Abstract

Since the Constitution 1980, all land in Vietnam has been regulated to be owned by the entire people (Article 19). This issue continues to be affirmed in the Constitution 1992 (Article 17). The current Constitution 2013 continues to declares: “*Land, water resources, mineral resources, resources in the sea and airspace, other natural resources and properties invested and managed by the State are public property owned by the entire people and managed by the State representing owners and unified management*” (Article 53). Under this regulation, the current Land Law 2013 states that the State is powered to perform ownership rights as representative of the whole people. Therefore, No one other than the state can become the owner of the land. Individuals and organizations only have “land use rights” in accordance with the law. However, they may have the right to transfer this right (and also include the land) to others. This policy has caused certain complications in accessing land and exercising land rights, especially for foreign entities in Vietnam. So, this paper will discuss what is called the land use rights under the specialized ownership regime on land in Vietnam to clarify relevant legal aspects.

Keywords: Vietnam, the entire people ownership, land use rights, nature, commodity

Introduction

Vietnam is in Southeast Asia, the country that has experienced many fierce wars in its more than 4000 years of history¹. In 1954, the Geneva Agreement divided this country into two nations: the Republic of Vietnam (the South) and the Democratic Republic of Vietnam (the North)². The South, under the auspices of the United States, adopted the system of private ownership of land, which was a prosperous economy at this time. Meanwhile, the North, following its socialist allies, implemented public ownership of land. By 1975, Vietnam had been reunified after the South lost the battle to the North and then the Socialist Republic of Vietnam was established. By 1980, through the Constitution 1980 (adopted on December 19, 1980), the Socialist State of Vietnam nationalized all land, transforming land from many forms of ownership into the entire people ownership (actually state-owned). From this moment, no one in Vietnam but the State has the right to own land. After that, due to the inappropriate centrally planned economic policy, not recognizing the market economy, Vietnam's economy had been in extremely difficult situation for more than a decade. It was not until the Constitution 1992 was promulgated (replaced the 1980 Constitution) that recognized the market economy, allowing the private economy and foreign investment to operate, that the economy prospered. Land policy since then also has certain changes to suit the new conditions, but the land ownership regime remains unchanged. This makes the land-related rights of many entities still not well guaranteed and not fully and accurately recognized. Vietnam is currently a developing country but faces a lot of land-related social instability³. Foreign investors have also expressed their confuses about using land to implement investment projects in Vietnam. Therefore, this article will clarify the legal issues related to ownership and

¹ Vietnam Overview (2021), *History of Vietnam*, <https://www.insidevietnamtravel.com/travel-guide/history-of-vietnam.html>, accessed 09/6/2021.

² See more the Agreement at: https://peacemaker.un.org/sites/peacemaker.un.org/files/KH-LA-VN_540720_GenevaAgreements.pdf, accessed 09/6/2021.

³ See more: Yves Duchère (2020), *Urbanization and land disputes in vietnam: compromises and protests*, <https://halshs.archives-ouvertes.fr/halshs-02443021/document>, accessed 09/6/2021.

land use rights in Vietnam to show the nature of land use rights in Vietnam, a country that does not recognize private ownership of land.

Methodology

The article is based on the theory of property ownership, especially Alchian (1965)⁴ and the Marxist theory. On this basis, the article uses historical methods (based on the development of Vietnamese law), legal analysis methods, comparative methods (between Vietnamese and Chinese laws – a socialist country on the issue of land ownership). The article also uses the method of referring to the opinions of experts, such as Peter Ho & Max Spoor (2006), Renee Giovarelli & David Bledsoe (2001),... in their works.

Discussion and result

1. The entire people ownership regime on land in Vietnam

In human history, ownership is always the most concerned issue. Under central-planning economy, ownership regime is considered the factor of economic relationship that decides the features, nature over the production relations. Ownership regime even is supposed to be the criteria to appreciate economic standard and socialization.⁵ Naturally, ownerships are relationships between people in possessing, controlling and disposing assets for the purposes of human benefits in a society. Ownership manifests a nature of a social regime.⁶ Under legal respect, ownerships are assemblage of rights: possession, usage and determination of the owner specific asset (Article 186 - 196 of the current Vietnamese Civil Code 2015)⁷. These Judicial capacities also recognized by the law of many nations in the world.⁸ This reason has pushed the owners to the most powerful position in allocating production materials and benefits produced in manufacture processes.

Land is the most precious estate, natural resources of mankind.⁹ Moreover, with labour and capital, land is also one of the indispensable production materials. Consequently, distributing land is always very important issues of every society, because, it decides the benefit, fairness for citizen and success or failure of a political regime. Thus, the matter of who and how own land has caused much social controversiality.¹⁰

Land ownership is an ever complex issues. This particularity come from special characters of land in comparison with other assets. Land is the gift of nature and limited resources whereas demand of land is unlimited. That why there are many different opinions on land ownership regime especially in case of building and developing the market economy and real estate market. The two opposite ownership regimes are public ownership (representative by the State) and private ownership has caused much debate in Vietnam legislation and some countries. Nations chose socialist regime refer to public ownership in which state ownership always superimpose.¹¹

Vietnam, one of few countries chosen socialist way, has established public ownership regime. The process began officially since 18/12/1980, the issued date of the Constitution 1980, in which pronounced all land belong to the entire people (Article 19). The unique form of ownership of land re-confirmed in the Constitution 1992 (Article 17) and now in the current Constitution 2013 (Article 53). Based on this provision, Vietnamese Land law in all stages (Land law 1987, Land law 1993, Land law 2003 and the current Land law 2013) have institutionalized the land ownership regime at the first article.

However, the substance meaning of the notion “entire people” as role of land owner hard to be make clear in a long time. As a result, ownership of land in Vietnam became absence of owner or there were many owners. Every state organizations in all level often acted as the owner of land. The serious outcome is land

⁴ Reference source: Phan Thanh Tu, Vu Manh Chien, Pham Van Kiem, Luu Duc Tuyen, Nguyen Thi Hong Nga (2019), *Property rights*, <https://hochuyetdoanhngiep.edu.vn/dinh-nghia-cau-truc-phan-loai-quyen-so-huu/>, accessed 09/6/2021.

⁵ Nguyen Cuc (2005), *20 years renovation and the establishment of market economic institution with socialist direction (Vietnamese version)*, Political Reasoning Publisher, Hanoi, p. 146.

⁶ Nguyen Cuc (2005), *Ibid.* p.147.

⁷ This law has come into force since January 1, 2017.

⁸ Wang Chenguang and Zhang Xianchu (1997), *Introduction to Chinese law*, Sweet & Maxwell Asia, Hong Kong, p. 544.

⁹ Wang Chenguang and Zhang Xianchu (1997), *Ibid.*3 , p. 541.

¹⁰ Peter Ho & Max Spoor (2006), “*Whose land? The political economy of land titling in transition economies*”, *Land use policy Journal*, Vol. 23, pp. 580-587.

¹¹ Renee Giovarelli & David Bledsoe, *Land Reform in Eastern Europe (Western CIS, Transcaucuses, Balkans, and EU Accession Countries)* - Research Paper within FAO's programs , <http://www.fao.org/3/AD878E/AD878E00.htm>, accessed 05/06/2021.

corruption. Land had been wasted and ineffectively used. As a result, the economy was stagnating. Vietnam in the early stage of applying the entire people ownership of land, despite it was an agricultural country with fertility, but what was made from land did not meet the need of interior consumption. Sometimes, Vietnam had to import million tons of food.¹² The situation caused many difficulties to social and economic life. Reasons were analyzed and land ownership regime was considered to be the main mistake for the above bad results.

The imputation of responsibility of the entire people ownership of land for weakness in Vietnamese social and economic problems has its reasoning, because until the promulgation of the current Land law 2013, there was no officially necessary explaining of the notion of “entire people” in the ownership regime. The ambiguity of ownership form comes from the unclear land owner. In Vietnamese current law, no rules can qualify or quantify what is called “the entire people” with the status of the land owner.

In order to correct the shortcoming, the Land law 2013 has defined the representative of the entire people to perform the land ownership rights in Vietnam. That is the State (Article 1 and Article 4 of Land law 2013). Hence, land in Vietnam belongs to “the entire people” but the State is the only entity who has enough rights of the land owner. Different from former provisions, which is often ambiguous in prescribing the land administration and land owner activities, Land law 2013 has distinguished the role, power of the State in every aspect. The roles of the land owner defined at Article 4 while land administration prescribed separately at Article 13 - Article 21. So, at the present time, the matter of who and how to carry out the land owner rights have been made clearly.

However, the notion of the State and of the entire people hard to be homogeneous even in legality or in practice because the two entities can not be one. So, the “entire people” is just a political notion which has no legal meaning. The State has all rights of the land owner and no one in Vietnam can interfere although he or she provided the “joint ownership”. The slogan “entire people” is only the issue of history, not legality because there is no mechanism to apply this constitutional provision. In Vietnam, the State is the only and actual land owner. It has the power to determine everything related to land uses and land administration.

2. Land use rights

2.1. The concept of land use rights

Although the State is the land owner, it does not use land directly but hand over to other entities that have demands to use. These entities are stipulated land users. But besides the right to directly use land, land users in Vietnam also have the right to transfer land to other person (generally called land use right transaction) in accordance to the law (Article 54 Constitution 2013). Namely, land transactions are allowed to perform under the so-called “land use right transaction”. In other words, “land user rights” but not “land ownership” is commodity circulated in Vietnamese land market. This is the very specific characteristics of land ownership in Vietnam which only brought out the meaning if the concept of “land use rights” is interpreted correctly.

Asset use rights (the right to use), in common, means the right to exploit the utility of, and to enjoy the yields and profits from, the property (Article 189 Civil Code 2015). Land is a kind of property, so land use rights, if considered as a property use rights, is just also “the right to exploit the utility of and to enjoy the yields and profits from, the land”. Of this aspect, land use rights are legal concept which implies one of the rights of the land owner. That is to say, it is the right to exploit usefulness of land.

Yet, the above meaning is just one content of land use rights under current law and just corresponding to former land law which were out of date before 15/10/1993, the valid date of Land law 1993.¹³ Land use rights transfer had been forbidden until this day, though at date of Constitution 1992 - 15/4/1992, land users have been allowed to transfer their land use rights. Pursuant to current law, apart from “the right to exploit the utility of, and to enjoy the yields and profits from, the land”, land use rights also include the right to transact the land use rights with the others (including: exchange; transferring; leasing, bequeath; donating; mortgaging; contributing land use rights) like other property transactions. To be entitled to implement these rights, land users must fulfill defined financial obligations for the State (such as land use fee; fee for land lease...), except special cases that exempted by the law. In this respect, land use rights contain economic issue deeply and it is an economic right.

¹² Nguyen Tan Phat (2006), “Land policy in Vietnam during the renovation period”, *Economic Research*, 332 (01), p. 42-57 (Vietnamese version).

¹³ Vietnam had issued 4 Land law since the Constitution 1980 (the first Constitution of United Vietnam since 1975): Land law 1987 which replaced by Land law 1993, Land law 2003 and the current Land law 2013).

So, under current law, “land use rights” is not only rights but embracing obligations of land users. Moreover, it is not an ordinary power of a property owner, but it also is an asset. While still in hands of the State, land use right is only one power of the owner. But when it is granted to land users, land use rights shall be “converted” to a special type of property. This is an indispensable requirement for “the marketization of land” in the market economy, where the direct land user does not have the right to own land and the land owner does not directly use land.¹⁴ Thus, “land use rights” is a complex concept - it's just a legal concept, and as an economic concept.¹⁵ That is to say, land use rights in the current land law is a concept that the original meaning of the words alone constituted not enough to show all the content and nature of its. This means that the mentioned “land use rights” does not mean only "use", but it must be considered as a whole which cannot be separated from the rights and obligations of land users in accordance with the land law. This overall land use rights become a special type of property that can be shifted between the land users to each other and through which may change subject to possession and use of land.

The regulatory authority as on land use rights can be considered a mode of implementation of the right to represent the land owner of state. As representative of the entire people took possession of the land, the State is responsible for the redistribution of land in a fair and reasonable. Besides, land is an important asset determines the socio-economic development, by both land is a limited resource, an asset of great value and of community. Therefore, land ownership only really significant when the economic benefit of the owner to be ensured. Not achieve this factor, land ownership is only a form and an “empty shell lack of air”.¹⁶ Through the financial obligations that land users must be made to the State, land ownership has shown its true nature and become practical sense. Of course, land users “pay the price” for “land use rights”, they shall reach certain benefits. One of the benefits expressed through their “land use rights” that it is considered as an asset.

In fact, the concept of land use rights as an asset, an important legal regulatory of land law is not only used in Vietnam. China is a successful example of the use of “land use rights” to use the land as a means of coordinating land. After the implementation of nationalization for the entire urban land under the Constitution in 1982, the concept of land use rights officially used by Chinese State. Subsequently, Clause 4, Article 10 of the Constitution (Amendment) 1988 of China has entitled land user to transfer “land use rights”. According to Chinese law, only land use rights can be transferred in the market, and land ownership is “birth” of the state and cannot be separated.¹⁷ With this provision, the scholars agreed that “land use rights” has been separated from land ownership.¹⁸

With the above nature, the phenomenon of land use rights in Vietnam law is absolutely nothing different from similar provisions in Chinese law. The difference here can be said to be very minor, is part of the difference in land ownership regime. While Vietnam applies the entire people ownership regime for the whole land, China regulates state-owned land to urban land and the entire rest of rural is collective-owned. Obviously, the regulations of “land use rights” are an inevitable product of the process of land reform to market-centered and means to control the process of socio-economic development in socialist countries.

In summary, the land use rights in Vietnam is a property right. This property rights are not limited to the right to exploit the useful properties of the soil, but also encompasses the right to trade it as trading various kinds of tangible assets. This is a factor makes land use rights almost “like” land ownership. The implementation of the land use rights transaction behavior accordance to Land law almost “equivalent” or closer to the disposal of the land owner.¹⁹ When researching on the issue of land use rights in China, many scholars have had the idea that: “The tenants’ rights had become *de facto* ownership rights”.²⁰ However, it

¹⁴ Le Van Tu (2003), “The entire people land ownership: some thoughts”, *State and Law Magazine*, (10), p. 9-11 (Vietnamese version).

¹⁵ Le Van Tu (1997), “Land use rights - a legal concept, an economic concept”, *Economic Research*, (9), p. 40-49 (Vietnamese version).

¹⁶ Pham Huu Nghi (2005), “The Role of the State in the implementation of the right to land ownership by the whole people”, *The State and Law*, (1), p. 51-56 (Vietnamese version).

¹⁷ Wang Chenguang and Zhang Xianchu (1997), *Introduction to Chinese law*, Sweet & Maxwell Asia, Hong Kong, tr. 544.

¹⁸ Lawrence Wai Chung Lai (1995), “Land use rights reform and the real estate market in China: a synoptic account of theoretical issues and property rights system”, *Property Management Journal*, (4), Vol. 13, pp. 21-28.

¹⁹ Dinh Dung Sy (2003), “Protecting the whole people ownership of land and land use rights of land users: current status and recommendations”, *The State and Law*, (10), p. 55-6 (Vietnamese version).

²⁰ Jieming Zhu (2004), *From land use right to land development right: Institutional change in China’s urban development*, *Urban Studies*, Vol. 41, No. 7, pp. 1249-1267.

should be noted that the land use rights is an integral part of land ownership and the starting point from land ownership. In fact, even if the land users entitled trading land use rights, but these trading rights are limited by the will of the State - the owner - through trading conditions. Therefore, the land use rights after all is the way to put land relations in market relations in the conditions of ownership by the whole people. "Land use rights" is a property right and is a special type of property "separated" relatively independent from state ownership of land to be able to meet the requirements of the economy market mechanism which has been officially recognized since the promulgation of the Constitution 1992 (and now the Constitution 2013).

2.2. Land use rights as a commodity and acquisition of land use rights

2.2.1. Theory of land use rights as a commodity

The history of human society has shown, economic development, science and technology comes from the motivation for human needs, for a better life. Motivation and also the purpose of this can only be achieved when the production highly specialized, in which man is not and cannot make all of the products to meet the needs of themselves, which is to make the products according to their ability to satisfy the needs of others. Diversified needs of entities in the society will be met through the exchange of items that they made. This exchange process developed from low-level nature exhibits to the high level nature of goods and currency, in which goods are exchanged items, and money is a measure of value, a means of intermediary to ensure the circulation of goods convenient and reasonable, the highest efficiency. The process creates the commodity economy - determinants of the development of human society. Commodity economy grows, the more goods quality, human life will be more comfortable. After all, what all the people we aim to be the items of goods to satisfy the needs of our. Therefore, the identification of an object is good or not has great significance for social life.

Goods, in the simplest common sense, are the items that are exchanged to satisfy human needs.²¹ Right from the period of slavery, the doctrine of the goods has been determined. Aristotle (384 - 322 BC) once wrote about goods that: "An item both for use, and can be exchanged, which means it has two uses. A good use of the material itself, which of course it is worth using. Another advantage does not belong to the object itself, so random, its exchange value".²² That is, goods are items that can satisfy certain needs of people and be able to be exchanged for other items.

Commodity concept that the orthodox view of Vietnam acknowledged is the views of K. Marx, according to which, "commodities are the products of their labor for the satisfaction of human needs through exchange".²³ According to this point of view, in addition to the Aristotelian characteristics, goods must be the product of labor. So, even if a valuable item to use but if it is not the product of labor, no crystallization of human labor is not valid and cannot become a commodity.²⁴

Vietnam after the Sixth National Party Congress²⁵ in 1986 also acknowledged the commodity economy. As a rule of necessity, many types of assets, production materials have been recognized as goods. In commodities, there is a kind of special relativity, which is the land use rights. Resolution 7 Conference of the IXth Party Central Committee has stated: "Land use rights is special goods".²⁶ This is a solution to bring the land into market relations, where the ownership of the entire people is the only form of land ownership in Vietnam.

The land use rights regulated as a commodity shows the development of the Vietnamese legislative activities. From land use right is only the right to perform acts of exploiting the useful properties of land under the Land Law 1987 and the land use rights recognized as an asset, commodity especially since the Land Law 1993 showed innovative thinking on economic management of the State of Vietnam. Based on this ground, there was a view that: "the land use right is a special creative concepts of Vietnam lawmakers".²⁷ In fact, the concept of the land use right as a commodity is not the first inventor of Vietnam

²¹ Nguyen Lan (2000), *Vietnamese word and phrase dictionary*, Hochiminh City Publishing, p.794.

²² Ngo Van Luong (2001), *Marxist-Leninist political economy*, Publisher. National Politics, Ha Noi, p. 37.

²³ Ngo Van Luong (2001), *ibid*, p. 38.

²⁴ Institute for Research & Dissemination of Knowledge Technology (1998), a dictionary of Economics, Publisher. Of Technology, Hanoi, p. 269.

²⁵ In Vietnam, the Communist party is the only recognized political party.

²⁶ Communist Party of Vietnam (2004), *the 7th Conference Document of the IXth Central Committee*, Publisher. National politics, Hanoi, p. 61.

²⁷ Dinh Dung Sy (2003), *ibid*, p. 55-64.

that it has legal presence in China since 1988.²⁸ But no matter who is the inventor of land use right as a special commodity, it is the absolutely right way to be able to build and develop a market economy in such socialist country like Vietnam.

The provisions of the land use right is transferred in the market have separate land use rights from land ownership. This is a manifestation of economic development, in which property owners themselves can directly use the property for business or franchise to another - as described by K. Marx: “*Capital ownership separated from of capitalist activities or property apart from capital function*”.²⁹ This phenomenon has led to the view of the existence of a form of “dual ownership” of land in Vietnam, in which the ownership of the land of the people represented by the State, and land use rights belongs to the land users. “The creation of the concept of “land use rights” of both China and Vietnam seem to have created a dual ownership concept, a multi-layered concept of ownership: land owned by the whole people, but land use right belongs to the individual or organization”.³⁰ This issue was also described by scholars as the separation of legal ownership of land and land ownership in practice,³¹ in which, the State is the legal owner and recognized by law and regulations. However, the State does not use land directly but empower exploiting, using land for organizations and individuals in accordance with the law. When granted land to these entities, the State also awarded the right to transfer it all to them in certain forms. Thus, land users in accordance with law are not the owner, but they have the right to “dispose” land as the owner. This makes the land users seem to have the right to own land in reality.

It can assert that, the land-use right regulations are very important. *Firstly*, it helps the State to intervene in land relations favorably, both to protect the precious resources, both to protect national sovereignty; *Secondly*, holding legal ownership of land help the State facilitating the recovery of land to carry out the planning and land use planning; *Thirdly*, granting the land use rights – “de facto ownership” to the land users gives them more freedom in the use of their land, contributing to market conditions to promote their positive effects in the circulation of land resources - a kind of particularly important production material.

2.2.2. Acquisition and transactions of land use rights

Clause 2 Article 53 of the Constitution 2013 stipulated: “*Organizations and individuals that are allocated or leased land by the State or have land use rights recognized by the State. Land users are entitled to transfer land use rights and exercise their rights and obligations as prescribed by law. The right to use land is protected by law*”. Based on this provision, the current Land Law 2013 specifically stipulates the forms of acquisition of land use rights, including: State allocation of land, land lease and receipt of land use rights through land use rights transactions (at Article 169).

Acquisition of land use rights

Depending on the type of land user, the form of acquisition of land use rights may be regulated differently. For example:

- a) Households and individuals may acquire agricultural land use rights through exchange of land use rights;
- b) Economic organizations, households and individuals may acquire land use rights through receipt of transfer of land use rights;
- c) Overseas Vietnamese may acquire land use rights through receipt of transfer of land use rights in industrial parks, industrial clusters, export processing zones, hi-tech zones or economic zones;
- d) Foreign-invested enterprises may acquire investment capital which is the value of land use rights in accordance with the Government’s regulations;
- e) Organizations, households, individuals and communities may acquire land use rights through receipt of donation of land use rights;
- f) Organizations, households, individuals and communities may acquire land use rights through receipt of inherited land use rights;

²⁸ Wang Chenguang and Zhang Xianchu (1997), *Introduction to Chinese law*, Sweet & Maxwell Asia, Hong Kong, tr. 549.

²⁹ Hoang Viet (ed.) (1999), land ownership issues in multi-component commodity economy in Vietnam, Publisher. National politics, Hanoi, p. 12.

³⁰ Pham Duy Nghia (2004), Monograph Economic Law (graduate program), Publisher. National politics, Hanoi, p. 169.

³¹ Hoang Viet, *ibid.*, p. 61.

g) Overseas Vietnamese who are eligible to own houses in Vietnam under the housing law may acquire land use rights through purchase, lease-purchase, inheritance or donation of houses associated with land use rights, or acquire land use rights in housing development projects;

h) Economic organizations and joint ventures may acquire land use rights through receipt of contribution of land use rights as capital;

i) Organizations, households, individuals, communities, religious establishments and overseas Vietnamese may acquire land use rights through land allocation by the State. Foreign-invested enterprises may acquire land use rights through land allocation by the State to carry out investment projects on construction of houses for sale or for a combination of sale and lease;

j) Economic organizations, self-financed public non-business organizations, households, individuals, overseas Vietnamese, foreign-invested enterprises and foreign organizations with diplomatic functions may acquire land use rights through land lease by the State;

k) Organizations, households, individuals, overseas Vietnamese and foreign-invested enterprises may acquire land use rights through the successful conciliation of land disputes which is certified by a competent People's Committee, the agreement in the mortgage contract to handle the debt, or the decision of a competent state agency on settlement of land disputes, complaints or denunciations, the decision or judgment of a People's Court, the decision on judgment enforcement of the judgment enforcement agency which has been executed, the document recognizing the result of the auction of land use rights in accordance with law, or the document on splitting land use rights for households or groups sharing land use rights in accordance with law;...

Transactions of land use rights

Also according to Land law 2013 (Article 174 – Article 194) and relevant regulations, land users may be able to execute the following forms of transaction:

a) Exchange of land use rights

Exchange of land use rights is the land use right transfer agreement for each land use in accordance with the law. The nature of the conversion land use rights is the “land for land” - a simplest form of land use right transfer. Exchange of land use rights is only specified for households and individuals using agricultural land in order to overcome the fragmentation of agricultural land in Vietnam in the past.

b) Transfer of land use rights

Transfer of land use rights is the transaction that the land users transfer their land use rights to other entities to receive a sum of money corresponding to the value of land use right transfer agreement in accordance with the legal provisions. This is a form of land use right transfer mode “land – money” exchange. The essence of it is the use of “selling” their land use rights to others.

Transfer land use rights is the most important land use rights transaction, because through it, land shall be circulated in the market as a commodity. Since then, the accumulation of land consolidation for large production can be done easily. In addition, the transfer of land use rights is the transaction which decides on the existence and development of real estate market in Vietnam. Because of this importance, transfer of land use rights are widely prescribed by law for a variety of land users, including economic organizations, households, individuals and foreign organizations, individuals, overseas Vietnamese resident who use land to implement investment projects in Vietnam.

c) Leasing of land use rights

Leasing of land use rights is the transaction in which the land users (called the lessor) to transfer their land to other entities (referred to as the lessee) to use in a certain period of time. The lessee must pay rent and return the land to the lessor at the end of the lease term as agreed in the contract.

In essence, leasing of land use rights is the form in which the land users leased to other users of the right to use their land. So, just lease transactions other assets, leasing of land use rights do not transfer “ownership of land use rights” to the lessee, that this transaction does not change the land users.

Similar transfer of land use rights, the right to lease the land use rights is prescribed for a variety of different land users. This provision facilitates land relations become more similar to other property relations, as the system of ownership of land in Vietnam is quite specific.

e) Inheritance of land use rights

Inheritance of land use rights is the transfer of land use right of the dead to their heirs in accordance with the law. Since the land use rights were officially recognized as assets under the Land Law 1993, land use rights also officially regarded as an inheritance of the individual.

Inheritance of land use rights so as is a form of land use right transfer and also as a form of inheritance. Therefore, this transaction has characteristics and compliance with the general provisions of the law of inheritance in general that stipulated by the Civil Code. However, inheritance of land use rights also has its own characteristics on conditions of the subject inherit that are not prescribed by law as heirs other assets. In certain cases, the inheritance of land use rights only receives the value of land use rights of inheritance, not the land use rights.

f) Donations of land use rights

Donation of land use rights is the transfer of land use rights (of the donor) to the donee without compensation requirements and the donee agrees to receive the land use rights under the agreement in accordance with the provisions of the law.

Like inheritance of land use rights, donation of land use rights is a form of land use right transfer non-“commodity currency” because there is no exchange of material between the transferor and transferee. The difference is that donation of land use rights is contractual relationship, while inheritance is unilateral transaction.

Donated assets, including land use rights, is the very common transaction in the life of the Vietnamese people. However, until the 2003 Land Law, this new transaction is first – time recorded. Currently, the rights regulated for a variety of different subjects (except foreign organizations and individuals) with relatively stringent conditions to inherit land use rights (such as land use conditions of the donee).

g) Mortgage of land use rights

Mortgage of land use rights is an agreement between the parties whereby the land user (the mortgagor) shall use his/her land use rights to secure the performance of civil obligations toward the other party (hereinafter referred to as the mortgagee). The mortgagor may continue to use the land during the mortgage term without transferring the land use rights to the mortgagee.

With the right mortgage of land use rights, the law officially considered land use rights is important collateral for secured transactions. This is the important basis for the land use users to borrow capital for production and business development on the land under its use and loan security value of the land.

Conditions for mortgage of land use rights are provided as conditions for the transfer of land use rights. There are some specific issues that the scope of mortgage of land use rights of the subjects is different with others. The treatment of mortgaged land use right has certain differences in comparison with the treatment of other assets in the transaction.

h) Capital contribution with the land use rights

Capital contribution with the land use rights is an agreement between the parties whereby the land user (the capital contributor) contributes his/her capital with the land use right value for production and/or business cooperation with others under the provisions of Civil Code and the Land law.

In essence, this is a form of “investment” in land use rights of the user, not a form of land use right transfer. This transaction is an opportunity for those who have land use rights to expand production but little capital have the opportunity to work with who has the financial resources to make this desirable.

In certain cases, contribution capital with the land use rights may make transferring the land use rights that is the business cooperation capital contribution with the land use rights have to come up with a new legal entity and event land users to contribute capital to the business to become members or shareholders of the business.

2.3. Weakness of land use rights

Although recognized as the property of the land user, the land use rights can be taken away by the State if necessary by expropriation. Clause 3, Article 54 of the 2013 Constitution stipulates: *“The State shall recover land currently being used by organizations and individuals in cases of absolute necessity prescribed by law for national defense and security purposes; socio-economic development for national and public interests. The land recovery must be public, transparent and compensated according to the provisions of law.”*

In fact, regulations on land withdrawal have been established and implemented since the Constitution 1980 (concretized in Article 14 of the Land law 1987). In the period before the recognition of the market economy and land commodities (before the Constitution 1992), the people whose land was recovered were not compensated. The compensation for people whose land is recovered has been officially applied since the Land Law 1993 (replacing the Land Law 1987). Although the current Land law 2013 has many progressive changes in this matter but the land price for calculating compensation for people whose land is recovered is

the land price decided by the State (Articles 74, 114 of the 2013 Land Law). This has made the compensation land price inappropriate, causing many lawsuits in the land administration in Vietnam. In addition, many cases of abuse of land recovery regulations have caused damage and injustice to land users, typically the land recovery to build Thu Thiem urban area, Hochiminh city³². More seriously, some land users have been prosecuted for overreacting to the State due to land recovery³³. Obviously, land use rights are not as well secured as land ownership in the private ownership regime.

3. Conclusion and recommendation

Land use rights in Vietnam is a kind of goods attached to land and only exist when the land attached to it exists in fact. This has made land use rights become a scarce commodity because the supply of land is always limited and irreplaceable. Therefore, the circulation of land use rights requires reasonable efficiency in order to satisfy the diverse needs of society. Under the all-people ownership of land in Vietnam, acknowledging land use rights as a commodity is necessary and correct. It “*is an evolution of the nature of the transition from a centrally planned economy to a market economy with socialist orientation in the field of land.*” Since land is an important input factor for all business activities should the circulation of land reasonably have great significance for the development of economic and social justice. As for the real estate market, land is both a basic platform, the input material to ensure the survival and development of this market. Therefore, to be aware of the nature and characteristics of the land use rights to be legally appropriate adjustment for this commodity market is an indispensable activity. However, the Government needs to make regulations to more respect the property rights of land users to ensure that land use rights is treated equally as other assets. Specifically, the State should remove the regulation on compulsory land recovery to serve its needs and switch to the form of fair negotiation with land users to receive land use rights through the transference according to the agreement in accordance with the market mechanism. Only then can Vietnam meet the integration requirements of the world economy and to protect human rights in accordance with international commitments.

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³² See more: Vu Nguyen (2020), *Completely solve the frustrations of the people of Thu Thiem*, <https://nhandan.vn/tin-tuc-xa-hoi/giai-quyet-dut-diem-nhung-buc-xuc-cua-nguoi-dan-thu-thiem-608175/>, accessed 06/06/2021.

³³ The case in Tien Lang, Hai Phong in 2012 is a typical example. See more at: BBC News (2012), *Overview of the land enforcement case in Tien Lang district*, https://www.bbc.com/vietnamese/indepth/tienlang_land_protest

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