

# PUBLIC OWNERSHIP OF LAND AND ITS IMPACT ON THE SOCIALIST-ORIENTED MARKET ECONOMY IN VIETNAM

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**Abstract:** Vietnam established public ownership of land from the Constitution 1980 in the context of a centrally planned economy. After many changes to the Constitution, the public ownership of land is still maintained, even though the market economy has been officially recognized since the Constitution 1992. In Vietnam, only the State has the right to own land. Other entities only have land use rights through the State granting land use rights or acquiring land use rights by transaction with others. The State can compulsorily acquire the land of any subject to carry out its land planning by an administrative decision. Along with the centralized regime, where only one political party, the communist party, is allowed to operate and lead the country, public ownership of land in Vietnam is seen as a barrier to the development of the country and healthy market economy. Therefore, this article will clarify the nature and relationship between land ownership and Vietnam's market economy to have a more objective view on this issue.

**Keywords:** Public, land, ownership, market, economy, Vietnam.

## Introduction

Vietnam is one of the very few countries in the world that has built a socialist-oriented country, along with China, Cuba, North Korea and Laos. Located in Southeast Asia, the country that has experienced many fierce wars in its more than 4000 years of history<sup>1</sup>. 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)<sup>2</sup>. By 1975, Vietnam had been reunified. 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

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<sup>1</sup> Vietnam Overview, 2021, *History of Vietnam*, <https://www.insidevietnamtravel.com/travel-guide/history-of-vietnam.html>, accessed 09/11/2022.

<sup>2</sup> See more the Agreement at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/KH-LA-VN\\_540720\\_GenevaAgreements.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/KH-LA-VN_540720_GenevaAgreements.pdf), accessed 09/11/2022.

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 Constitution 1980) 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 instability<sup>3</sup>. 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 land use rights in Vietnam to assess its effects on the socialist-oriented market economy.

### **Methodology**

The article is based on the theory of property ownership, especially Alchian (1965)<sup>4</sup>, theory of market economy and the separation of powers theory. On this basis, the article uses historical method (based on the development of Vietnamese law), legal analysis method, comparative method (between Vietnamese and Chinese laws – a socialist country on the issue of land ownership and other countries'). 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.

### **Literature reviews**

On the international level, there are two outstanding internal research projects:

- Research project “The mystery of capital” of Hernando de Soto<sup>5</sup>, analyzed how each country turns land into an asset and a huge source of domestic capital. The author points out that: In Western countries, land is capitalized very successfully because they have a record of property

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<sup>3</sup> See more: Yves Duchère, 2020, *Urbanization and land disputes in vietnam: compromises and protests*,

<https://halshs.archives-ouvertes.fr/halshs-02443021/document>, accessed 09/11/2022.

<sup>4</sup> Reference source: Phan Thanh Tu, Vu Manh Chien, Pham Van Kiem, Luu Duc Tuyen, Nguyen Thi Hong Nga, 2019, *Property rights*,

<https://hochuyetdoanhnghiep.edu.vn/dinh-nghia-cau-truc-phan-loai-quyen-so-huu/>, accessed 09/11/2022.

<sup>5</sup> Hernando de Soto, 2000, New York, *The Mystery Of Capital: Why Capitalism triumphs in the West and fails everywhereelse*, Basic Books, 198.

ownership of land (registration, registration of ownership and rights related to each plot of land). Therefore, these property rights have an invisible life, parallel with the physical life of the land, which makes property rights form capital, easily transferable.

- Author Robin Rajack in the article "Does Public Ownership and Management of land Matter for Land Market Outcomes?" commented that: many developing cities have large amounts of suboptimal managed public land that has failed the land market. Transferring use or ownership rights to the private sector will improve land use conditions and increase revenue for the state budget, while reducing corruption<sup>6</sup>.

In Vietnam, research works related to land ownership and market economy include:

"Land capitalization in a socialist-oriented market economy in Vietnam" by Tran Thi Minh Chau. The author believes that: clearly delineating the rights of owners, rights of users and rights of the state in the field of land, if not properly institutionalized, will prevent the process of commercializing land and that impedes land capitalization. In order to facilitate the commercialization of land, it is necessary to institutionalize the whole-people ownership regime in the direction that land transactions in the private sector are carried out according to market principles<sup>7</sup>.

In the research work "Legal regime of ownership and property rights to land"<sup>8</sup>, author Pham Van Vo said that the form of state ownership in the regime of all-people ownership of land was officially recognized. The establishment of the form of state ownership is the method of exercising the people's right to ownership of land. In order to exercise ownership rights over land, the state also has to go through state agencies and through competent individuals to transfer land use rights to individuals and organizations for these entities to directly exploit and use as land users.

Author Luu Quoc Thai in the article "Market factors in land relations between the state and land users in the primary land use rights market"<sup>9</sup> argues that bringing the land relationship into compliance with the market

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<sup>6</sup> Robin Rajack, 2009, "Does Public Ownership and Management of land Matter for Land Market Outcomes?", Somik V.Lall, Mila Freire, Belinda Yuen, Robin Rajack, Jean-Jacques Helluin (2009), *Urban Land Markets, Improving Land Management for Successful Urbanization*, Springer, [https://link.springer.com/chapter/10.1007/978-1-4020-8862-9\\_12](https://link.springer.com/chapter/10.1007/978-1-4020-8862-9_12), 09/11/2022.

<sup>7</sup> Tran Thi Minh Chau, 2013, Ha Noi, *Land capitalization in the socialist-oriented market economy in Vietnam*, National Politics Publishing House.

<sup>8</sup> Pham Van Vo, 2012, Hochiminh city, *Legal regime on ownership and property rights to land*, Labor Publishing House.

<sup>9</sup> Luu Quoc Thai, 2007, Ha Noi city, "Market factors in land relations between the state and land users in the primary land use rights market", State and legal journal No. 11/2007, p. 68.

principle is objective. The relationship between the State as the owner of land and the land user is the relationship of the primary market, through this relationship the land use right of the land user is established or terminated. The relationship of land allocation and land lease is the relationship aimed at establishing or giving land use rights to land users. These relations arise during the exercise of state ownership of land and can be considered as a part arising in the process of exercising state management rights. Therefore, the land relationship between the state and land users is also a property relationship, even if it is mixed with state power.

In the study of “the Law on the market for land use rights - the current situation and directions for improvement”<sup>10</sup> Author Luu Quoc Thai said that: the recognition of land use right as a commodity shows the compliance with economic laws before the need for land circulation to realize the commodity economy. This circulation is done through the exchange of land use rights as a commodity, generating and forming the market for land use rights. The land use rights market is characterized by being formed on the basis of a special, local land ownership regime, being an imperfect, cyclical, sensitive and intimately related market with other markets.

Authors Dang Hung Vo, Nguyen Van Thang, T&C Consulting in their research on improving land governance in Vietnam said that<sup>11</sup>: Public land in LGAP (Land Governance Assessment Framework) research is understood as all types of land owned by the state. In most countries with multiple forms of land ownership, public land is understood as land that has not yet been transferred to the private sector. In Vietnam, the right to use land when the state recognizes the land use right or allocates land for public use is the ownership of the state like most other countries.

Dang Hung Vo said that the concept of land use rights in Vietnam is equivalent to ownership rights in other countries. With the state mechanism for land recovery, land valuation and compensation, support and resettlement in the period from the Land Law 2003 to the current Land Law 2013, there are many shortcomings and is the cause of corruption in land management that is not under control, and at the same time makes people's complaints about land high. In terms of institutions, there are still unclear points between the authority to decide on public property on land (under the Ministry of Finance) and authority to decide

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<sup>10</sup> Luu Quoc Thai, 2009, Ho Chi Minh City, *Law on the market of land use rights - status and direction of improvement*, Doctoral thesis in jurisprudence Ho Chi Minh City University of Law.

<sup>11</sup> Dang Hung Vo, Nguyen Van Thang, T&C Consulting, 2013, *Land Governance Improvement in Vietnam, Implementation of the Land Governance Assessment Framework (LGAF)*, The World Bank.

on land (under the People's Committee of the province), as well as the fact that the People's Committee has both authority to decide on land as a representative of the owner and decision-making authority as a land management agency. Therefore, the legal system on land in Vietnam will certainly be revised to be more suitable with the market mechanism.

In general, through studying the scientific works on land ownership in Vietnam related to the market economy, some general comments can be drawn as follows:

Firstly, due to the specificity of land, whether land is under public or private ownership, the state still plays the role of manager and regulator of land resources for economic development. The land market in any country is very tightly regulated by the state.

Secondly, the land ownership rights are separated between the land use rights already given to the land users and the land use rights not yet given to the land users which are still public property (called public land). Countries with developed market economies have their own legal regulations to manage and regulate public land to participate in business activities according to the market mechanism, ensuring the effective use of land for economic development.

Thirdly, Vietnam needs to research and have appropriate policies to manage this public property flexibly according to the market mechanism, so that land becomes one of the resources to create wealth for the society.

## **Discussion and results**

### **Structure of land ownership in Vietnam**

In Vietnam, all land is nominally owned by the entire people, and managed by the State on behalf of the owner and uniformly managed (Article 53 of the current Constitution 2013). The State can grant land use rights to land users to use according to the will of the State through the policy of land law. Land use right is an asset and the State gives it to land users in the form of land allocation, land lease and recognition of land use rights.

The State's land ownership under the Vietnamese Land Law 2013, at the State regulatory level, has 8 powers: (i) To decide on land use planning and plans, (ii) To decide on land use purposes, (iii) To prescribe land use quotas and land use durations, (iv) To decide on land acquisition and expropriation of land use rights, (v) Decision on land price, (vi) Decision on granting land use rights to land users, (vii) Decision on financial policies on land, (viii) Regulation on rights and obligations of land users.

The second level is property rights, in terms of economic resources, including "the right to use, the right to enjoy economic benefits of entities

in society and the state".<sup>12</sup> At this level, the land use right is the right to exploit the utility, to enjoy the yields and profits from the property (Article 189 of the current Civil Code 2015). At this level, land use rights are divided into land use rights with a term of use corresponding to the lease term and land use rights with a stable and long term use term. Corresponding to each type of land use right is the content of owning different land use rights. Except for land users who have the form of land use with annual rental payment, the land law establishes the rights of land use right owners including the right to collect yields, profits, the right to transfer, donate, pledge, mortgage, exchange, capital contribution and the right to compensation.

In order to keep up with the rapid changes of the market, it also contributes to making land use rights similar to property rights in other countries, The Civil Code 2015 added two new rights: "use right" separated from land ownership in Article 257 Civil Code 2015 and "surface right" separated from land use rights in Article 267 Civil Code 2015.

Usufruct right is the right to exploit the utility and enjoy the yields and interests of property owned by another subject for a certain period of time. The property subject to the usufruct must be returned to the owner upon termination of the usufruct. The separation of usufruct right from land ownership shows that the property owner still has the right to dispose of the property but must not change the established usufruct right (Article 263 of the Civil Code 2015).

A new structure of land use rights is the "surface right" which is the right of an entity to the land, water surface, space above ground, water surface and subsoil to which that land use right belongs to the other body. The holder of surface rights has the right to exploit and use the ground, water surface, space on the ground, water surface and underground land belonging to other people's land use rights to build works, plant trees, cultivate crops. Surface rights holders have title to the property created. When the surface right ends, the surface right holder must return the ground, water surface, space above ground, water surface and underground to the land use right holder. In case the surface right holder does not handle the property before the surface right terminates, the ownership of such property belongs to the land use right holder from the time the surface right terminates.

The construction of usufruct rights is aimed at the state retaining the ownership of land for the purpose of reallocating future land use, without having to go through the act of expropriation or expropriation or exercise the right of preemption to purchase the land use rights granted to the land

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<sup>12</sup> Nguyen Van Suu, 2010, Ha Noi city, *Renovating land policy in Vietnam – From theory to practice*, National Political Publishing House, p. 42.

user as in some countries around the world. The separation of land use rights from land ownership and the separation of property rights from land use rights creates the distinction of land use rights assets between land owners and land use rights owners.

Author Nguyen Ngoc Dien said that Vietnam accepts the French-style ownership concept, but builds private property law on real estate based on land use rights, not land ownership. Land use right is a derivative asset from land ownership. To determine the rights of land users, legislators have used tools of civil law to describe the rights of owners to their property. In that way, land use rights are considered as limited land ownership<sup>13</sup>.

Compared with the theory of land ownership, land ownership in Vietnam was built according to a group of rights, when the land was still owned by the entire people. This group of rights is divided into two main groups, One group of the State keeps it for the purpose of State management, the other group can give it to the land users or it can keep it for public uses.

### ***Land ownership and the issue of building and developing a market economy***

Since the early 90s of the 20<sup>th</sup> century, many countries in the world, especially those that are transforming economic models, developing countries have been focusing on building and developing the land markets. This is a central and indispensable element for a developed market economy. An underdeveloped real estate market, whose core is the land market, will pose many obstacles to market-oriented reforms.<sup>14</sup> Under the sponsorship of the World Bank, many research projects on reforming the land management system to build a market economy have been carried out, But so far, fundamental changes in the land markets of many countries have not been achieved.<sup>15</sup> The biggest obstacle today to building a healthy land market is the disagreement in views on the issue of land ownership within countries, which is private or public ownership (most

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<sup>13</sup> Nguyen Ngoc Dien, 2007, Ha Noi city, *"Technical structure of the legal system of real estate ownership in Vietnam: A French perspective"*, Journal of Legislative Research No. 6 (101) Jun/2007, pp.19.

<sup>14</sup> Dinh Trong Thang, 2002, *Private ownership of land or land use rights: international experience and some links to Vietnam*, Financial Review No. 7, 2002, p. 47-50.

<sup>15</sup> Examples of studies on land reform in Eastern European countries. See: Renee Giovarelli & David Bledsoe, *Land Reform in Eastern Europe (Western CIS, Transcaucuses, Balkans, and EU Accession Countries)* - Research Paper within FAO's programs, <ftp://ftp.fao.org/docrep/fao/007/AD878E/AD878E00.pdf/>

commonly state ownership) of land, which is more appropriate for a market economy?<sup>16</sup>

In the view of liberal neo-economists, privatization is a necessary condition (*sine qua non*) for a healthy market economy. This view, sanctified in the "Washington Consensus", has become the guiding principle for many reform programs funded by the World Bank and the International Monetary Fund for the former socialist countries of Central, Eastern Europe and the countries of the former Soviet Union.<sup>17</sup>

In fact, in the aforementioned socialist countries, from the view that class conflict and capitalist exploitation can be avoided by socializing the means of production by placing them under public ownership, where these assets are determined by the whole people organized in the form of a collective or state,<sup>18</sup> the privatization of the means of production, including land, took place very quickly. The degree of this publicization varies by socialist economies. For example, East Germany and Hungary practiced collective ownership of most of the arable land, while Poland and (former) Yugoslavia actually maintained private ownership of most of the farmland. Until the fall of the Berlin Wall in 1989, about 70% of arable land in Hungary and 86% of this land in East Germany was collectively owned. In contrast, (former) Yugoslavia and Poland show a completely different picture, with 68% and 76% of agricultural land, respectively, still privately owned.<sup>19</sup> When the system of socialist countries in Central, Eastern Europe and the Soviet Union disintegrated, A very important issue facing politicians is how to balance market pressure and state intervention; and whether privatization of land is a precondition for economic development and maximum functioning of the market as defined by the economists of the "new liberal" doctrine. However, the issue of choosing the ownership regime in the context of economic transition from centralization of subsidies to the market is in fact different depending on each country.

Several former Soviet Union countries such as Albania, Armenia and Kyrgyzstan opted to privatize all land in the early to mid-1990s to promote land markets. Much later, after years of delay in reform, Moldova finally

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<sup>16</sup> In the case of Russia, for example, the land reclamation was at one point a real "war" between the President (then Yeltsin) and the National Assembly (Duma). See: Wegren, Stephen K, Belen'Kiy & Vladimir, 1998, *The political economy of the Russian Land market*, Problem of Post - Communism Magazine.

<sup>17</sup> 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.

<sup>18</sup> On the characteristics of property rights and the socialist legal system, see: Zweigert and Kotz, 1993, Oxford, *An Introduction to Comparative Law*, Clarendon Press.

<sup>19</sup> FAO (Ed.), 1994, Rome, *Reorienting the Cooperative Structure in Selected Eastern European Countries: Summary of Case Studies. Central and Eastern Europe Agriculture in Transition Series*, FAO, tr. 9, 17, 29, 41.



passed its land reform process. In contrast, China, Vietnam, and Uzbekistan are examples of transition economies that do not choose to privatize land but still maintain supreme control over this property for the state.<sup>20</sup> As for Russia, although it is not a slow country to implement land reform and privatization, but the country was rather cautious in "liberalizing" the land market during phases of the reform process throughout the 1990s. The Russian Duma Parliament passed a law allowing the sale of agricultural land in May 2002. However, in order to alleviate concerns about foreign investors' land speculation, President Putin tightened the issue by passing an amendment law not long after. Under this amendment, foreigners are no longer allowed to buy and sell agricultural land, but they can only lease this land for a maximum term of 49 years.<sup>21</sup>

Thus, choosing which land ownership regime is suitable for the conditions of building a market economy in addition to referring to theories and lessons learned through implementation results in transition economies, countries also need to consider their actual conditions.

First of all, it must be acknowledged that private ownership of land has significant advantages. *First, private ownership of land helps to unambiguously define land ownership.* This is a good condition for the formation and development of the land market in particular and the real estate market in general - very important factors for capital market development - an important factor to support investment, increase expand production and business. *Second, private land helps ensure basic civil rights related to land, thereby encouraging large and long-term investments in land, creating sustainable development.*

However, the regime of private ownership of land is also likely to cause some limitations and difficulties for the implementation of socio-economic policies. *First, private ownership of land may lead to excessive accumulation and concentration of land.* This factor, although necessary for the production of goods, has a negative impact on society, In particular, the fact that farmers lose their land is inevitable and the "rich - poor" gap in society is increasingly difficult to narrow. *Second, the absolute privatization of land will make it difficult for the state to acquire land to implement land use planning, especially for the construction of public works.* These limitations can be solved by the state ownership of land, in which by its power, combined with the rights of the owner, the state will certainly be able to intervene, eliminate the above limitations.

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<sup>20</sup> In fact, North Korea recently had a similar regulations. See: Reuters, A.P., 2002a, *North Korea restricts the old Planning Economy*, NRC Handelsblad.

<sup>21</sup> Peter Ho & Max Spoor, *Ibid*, p. 584.

Moreover, the public ownership of land in which the state is the (representative) owner also has certain limitations. *Firstly*, it creates uncertainty about the owner, which in turn leads to many land disputes that are difficult to resolve. *Secondly*, it is difficult for this land ownership regime to create a formal and efficient land market. The reason is that land use rights are difficult to guarantee absolute safety and the risk of interference in the market from the public side is great..

From the above analysis, it can be seen that any land ownership regime has certain advantages and disadvantages. Therefore, the core problem that needs to be solved is, how can a healthy market be built without disturbing land relations, because it would be very dangerous for social stability and economic development. This risk is very great if rapidly changing the land ownership regime in an impatience and inconsiderate manner. To avoid this situation, first of all, we need to summarize and evaluate the experience of land reform of transition economies with similar conditions and circumstances to Vietnam as well as what Vietnam itself have been doing. It must be recognized that, in addition to the issue of land ownership, political institutions also play a decisive role.

The process of economic mechanism transformation from planned - centralized to market took place quite strongly in the socialist countries of Central and Eastern Europe when this bloc disintegrated. Accompanying this process is also the process of privatizing land as mentioned above. However, not any change in land ownership following this trend has resulted in success, with Belarus being a case in point.<sup>22</sup> To implement the reform process, the country adopted private ownership of land and this private ownership is recognized and protected through the land registry system. Even so, a study of the time showed that Belarus' agricultural output fell by as much as 50% and labor productivity by 30% during the first nine years of privatization. Besides, the average GDP growth rate in the period 1999 - 2001 was only about 0.8%.<sup>23</sup>

Contrary to the image of Belarus are Uzbekistan and China. These two countries have eliminated or minimized private ownership of land, except for small customary land plots that are privately owned. Especially in China now there is no longer private ownership of land. Beyond ideological and practical reasons, fear of land speculation and social conflicts have seen state and collective ownership of land as an important principle enshrined in the Constitution and guaranteed to be thoroughly enforced in other legal documents. At the same time, it can be said that Uzbekistan

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<sup>22</sup> See: UNECE, 2000, London, *A Study on Key Aspects of Land Registration and Cadastral Legislation*, United Nations Economic Commission for Europe.

<sup>23</sup> See the 2003 World Resources Institute economic index section at <http://earthtrends.wri.org>

and China are ranked among the countries with the most successful transition economies in terms of economic growth of the post-socialist period. In 1997, Uzbekistan's agricultural output was higher than that of any former Soviet country and only slightly below the Central and Eastern European averages.<sup>24</sup> In the case of China, according to the World Resources Institute, the Chinese economy has shown the highest rate of economic growth in recent world history, with an average annual GDP from 1991 to 2000 was about 10.1%.<sup>25</sup>

Thus, through the experiences, failures and successes of some of the above transition economies, we see that there cannot be an invariable "recipe" for all reform cases. Lessons learned from the above facts show that private ownership of land has not proven itself effective for all economies and land market development.

In the case of Vietnam, the maintenance of land ownership by the whole people together with the economic reform process shows no significant contradictions or conflicts. The land reform process was marked by Directive 100-CT/TW dated January 13, 1981 of the Party Central Committee on contracting products to labor groups and workers in agricultural cooperatives. This was followed by Resolution 10-NQ/TU of the Politburo dated April 5, 1988 on renovation of agricultural economic management, which created autonomy in production for households and individuals. The reform that can be considered as a breakthrough in the land sector is the recognition of a market for this particular commodity in the Constitution 1992. Since then, the whole people's ownership of land has continued to be maintained, but the agricultural economy has grown steadily. Vietnam has become one of the leading exporters of rice, along with a number of other agricultural products, in the world, with an average economic growth rate of over 8%.<sup>26</sup> Besides, the real estate transaction market, especially housing and residential land, is constantly increasing, showing that the real estate market is still developing well in the condition that the land is owned by the entire people.<sup>27</sup>

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<sup>24</sup> Jerome, Z., *The Uzbek growth puzzle*, 1999, Washington, DC., IMF Staff Paper 46 (3), tr. 274 - 292.

<sup>25</sup> World Resources Institute, 2003, *Earthtrends*, <http://earthtrends.wri.org>

<sup>26</sup> Quy-Toan Do - Lakshmi Iyer, 2003, *Land Rights And Economic Development: Evidence From Vietnam*,

[http://www.williams.edu/Economics/neudc/papers/do\\_ayer\\_july02.pdf](http://www.williams.edu/Economics/neudc/papers/do_ayer_july02.pdf)

<sup>27</sup> For example, the number of transactions in housing and land in Ho Chi Minh City increased from 5,114 cases in 1994 to 32,856 cases in 2001. See Dr. Tran Du Lich (director), 2005, Hochiminh city, *Mechanism for operation and development of the real estate market in Ho Chi Minh City*, Scientific research project, Institute of Economics HCMC, p.18.

### ***The position and role of the State of Vietnam in land relations and some legal issues***

The State of Vietnam participates in land relations with two statuses: both the owner and the subject of land management. With such an advantage, the State of Vietnam has the right to intervene in all land relations it desires to achieve its goals. However, this is the main cause leading to some cases of abuse of power causing injustice to land users. With a centralized power structure, there is no political competition, The judicial system in Vietnam lacks the independence necessary to deal with corrupt land practices by state officials, as well as to protect the legitimate rights and interests of land users.<sup>28</sup> This is the basic cause of reducing the internal resources of the land, causing many limitations for economic development and ensuring social justice.

Since the official establishment of the whole people's ownership of land in the Constitution 1980, land relations in Vietnam have experienced certain ups and downs. In the most difficult period, when economic efficiency in exploitation, land use is weak, socio-economic life is difficult, the whole people's ownership is blamed as the main culprit. However, starting from the time the land use right was officially considered a commodity on October 15, 1993, The economic value obtained from land is constantly increasing, making a very decisive contribution to the economic development of the country even though the land is still "owned by the whole people". This means that, under the system of ownership of the land by the whole people, the economy can still develop normally, the land can be used efficiently. Discussing this issue, author Pham Duy Nghia said that: "Ownership by the whole people does not contradict and hinder private property rights; Legislators can completely increase the rights of land users and minimize or eliminate State interference in that property".<sup>29</sup> Therefore, it is completely unnecessary to ask the question of changing the current land ownership regime, on the contrary, it can cause instability in land relations, thereby causing instability in socio-political life.

This point of view does not mean that "the whole people's ownership" of the land is completely "innocuous" in the face of difficulties, weaknesses, and negativity in land relations in Vietnam. The vague, abstract generalization of land ownership in the long run has at times transformed land owners from a lot of people into derelict. In such conditions, the land is wasted, torn as a public welfare. The concept of ownership by the whole people is "politicized", causing the economic value

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<sup>28</sup> See more: Luu Quoc Thai, 2022, Bucharest, *Legal issues on land corruption in Vietnam*, Cogito, Vol.XIV, no.1/March, p. 91–114.

<sup>29</sup> Pham Duy Nghia, 2004, Ha Noi city, *Land Law 2003 in terms of legal policy*, Legislative Research No. 6/2004, p. 26-29.

of land to be forgotten. An important source of budget revenue for the country is denied and this kind of important input for all production and business activities cannot be accumulated under the market mechanism to realize the production of goods.

The official identification of the State as the representative of the land owner under Articles 1 and 4 of the Land Law 2013 is a decisive step that clearly demonstrates the State's stance on land ownership. From here, the State is officially confirmed to play the role of land owner, not just "unifying management" in a general way as before. It can be said that this is a concrete step to strengthen the land ownership regime in Vietnam, contribute to the stability of land relations to serve the construction and socio-economic development of the country.

However, a long-standing problem in land relations in Vietnam has not yet been resolved well: the position and role of the State in each relationship. As the owner (representative), the State has the rights to possess, use and dispose of land, and has the right to decide who is entitled to use its land. In other words, in this case the State is the supplier of goods in the primary market. As a subject of public power, the State has the right to promulgate laws and use its coercive apparatus to ensure order in land relations, and to orient the exploitation of land use to suit the requirements of the socio-economic life.

The above two statuses of the State complement each other and create favorable conditions for the State to fulfill its "role". Because at the same time as the holder of public power and the rights of land owners, the State has great "power" in participating in and intervening in land relations. This is an advantage for the State in performing its functions, but it is a "disadvantage" for society, in case abuse or confusion in the use of power or representation of the role of the State occurs. In fact, this has happened, which manifests itself in the unfair treatment of the State towards land users. This is the main reason why the state of lawsuits against the cases of land expropriation by the State are increasing and becoming more complicated<sup>30</sup>. Therefore, a very important issue is how the State can properly perform its role in each type of relationship. In particular, the State must not use State power in purely property relations and the State must not neglect its power in performing the function of state management of land.

For property relations, the State is an equal party with land users in establishing, changing and terminating rights and obligations. The state should consider itself only the owner of land - a special commodity, and

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<sup>30</sup> Thanh Tung, 2022, *Complicated complaints and denunciations mainly related to land acquisition*, <https://baotainguyenmoitruong.vn/cac-vu-khieu-nai-to-cao-phuc-tap-chu-yeu-lien-quan-den-viec-thu-hoi-dat-343646.html>, accessed 09/11/2022.

the land user as its customer, in which both sides need each other, not just thinking that only land users need the State. To ensure that market factors promote self-regulation, the State should temporarily "forget" public power in property relations with land users. Only then can the State behave more properly and fairly; The market factor in land relations is respected and that is a prerequisite for a healthy land use right market in particular and a healthy real estate market in general.

For management relations, the State uses administrative decisions to force land users to comply for the common benefit of society. Only this clarity can ensure the normal and healthy operation of land relations in accordance with the requirements of the market economy.

### **Conclusion**

The establishment and implementation of the all-people ownership of land in Vietnam is not a barrier to building a market economy in general, including the market for land use rights. Through the above parameters, we can confirm that the formal land market can still exist and function well in the current land ownership regime. The "stumbling steps" of the Vietnamese economy in the past time do not come from the issue of land ownership, but rather from mechanisms and policies to ensure its healthy operation. The important issue is not who owns the land, but who is entitled to own and use it and how these powers are guaranteed is an important issue for the sustainable development of an economy. In addition, in order for Vietnam to have a healthy market economy, political institutions need to be reformed towards competition in order to have an independent judiciary. This requirement has not been done by Vietnam so far and it is very difficult to fulfill with the current political system when Vietnam does not accept multi-party system and separation of powers.

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