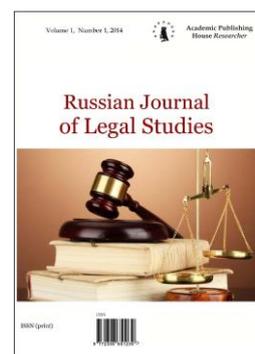


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Provision of Agricultural Land Law in Vietnam: Reality and Petition for Changes

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Abstract

This article analyzes legal issues related to agricultural land in Vietnam such as which kinds of land is defined as agricultural land, land use term, quotas of accumulating and concentrating agricultural land, base for establishing the agricultural land use rights, rights and obligations of agricultural land users. Especially, the article does not only evaluates the reasonable points of those issues, but also figures out the insufficiencies and drawbacks with a view to changing those limits, improving land law then contributing in the development of agriculture in Vietnam nowadays.

Keyword: Vietnam; Land Law Act; agricultural land use rights; land using term; land using quotas; right and obligation of agricultural land user.

1. Introduction

Currently, adjustment of matters concerning to agricultural land of Vietnam are mostly written in Land Law Act 2013 ([Land Law Act, 2013](#)) and particularly stipulated in important by-law document – Decree 43/2014/ND-CP ([Decree 43/2014/ND-CP](#)) of government about detailed principle in applying some articles of Land Law Act, 2013. In general, those are the inheritance of the former Land Laws, which are Land Law Act 1987 ([Land Law Act, 1987](#)), Land Law Act 1993 ([Land Law Act, 1993](#)), Land Law Act 2003 ([Land Law Act, 2003](#)) and have been modified as well as supplied so as to be suitable for establishment and development objective of the economics pursuing Socialist Republic direction. Hence, the provisions of agricultural land types, land use term, quotas of accumulating and concentrating agricultural land, base for establishing the agricultural land use rights, rights and obligation of agricultural land users are among the main content to be indicated as following.

2. Document and methods

This research is executed on the base of currently law provisions in Vietnam about agricultural land and further studying result which had been published as: “Agricultural development and land policy: Summary” ([Marsh, 2007](#)); “The Legal Nature of Land Use Rights in Vietnam” ([Luan Thanh Nguyen, 2018](#)); “Land Law Act alteration to impulse firmly development of Vietnam – Summary of recommendation in priority policy inferred from World Bank researches” (World Bank, 2012); “Policy summary 06/2012: Small division of household’s land and between agricultural households in Vietnam” ([Markussen, 2012](#)).

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It's completed by simultaneously using different research techniques such as analysis, general, dialectical materialism, interpretation, comparison, history, to dissect and comment those problems relating to agricultural land in Vietnam.

3. Discussion

Land Law Act, 2013 classifies all land types in Vietnam into three main parts which bases on theirs using objective:

- (i) agricultural land,
- (ii) non-agricultural land,
- (iii) unused land. In this law, while there is no general definition for agricultural land.

It is stipulated by listing particular land types which belong to agricultural land as follow:

- (i) Land for cultivation of annual crops, including paddy land and land for cultivation of other annual crops;
- (ii) land for cultivation of perennial trees;
- (iii) land for production forests;
- (iv) land for protection forests;
- (v) land for special-use forests;
- (vi) land for aquaculture;
- (vii) land for salt production;
- (viii) other agricultural land, including land used to build greenhouses and other building types for cultivation purpose, including fanning not directly on the land, or to build breeding facilities for cattle, poultry and other animals as permitted by law; land for cultivation, breeding and aquaculture for the purpose of learning, research or experimentation; land for planting and nursing seedlings and breeders, and land for growing flowers and ornamental plants.

While comparing to agricultural land definition in Article 42 Land Law Act, 1993 or further point of view about agricultural land types of Food and Agriculture Organization of the United Nations (FAO, 2013). It's undoubtedly that the agricultural land types stipulated in Land Law Act, 2013 are much wider as consisting both agricultural land and forestry land (this law distributes forestry land to three kinds: land for production forests; land for protection forests; land for special-use forests). This is marked as fit to the model of combining agricultural productions: cultivation and breeding, which are popular in Vietnam (Thuy Thi Thu Pham, 2014). However, it could make some misunderstandings or complexity for foreigners when first approaching Land Law to invest in agricultural and forestry fields of Vietnam.

Accompanying with agricultural land types are term of using as well as quotas of accumulating and concentrating agricultural land. They contain specific content of legal provision for agricultural land in Vietnam.

Firstly, term of using agricultural land is the time determined by law that all individuals, households, organizations are allowed to utilize agricultural land from the moment being authorized by government.

Proceeding from priority policy for protecting and developing forest in the context of climate change, in which Vietnam is predicted as one of the countries to bear the tough consequences (Jina Architects, 2015), land for protection forests, land for special-use forests and land for production forests are natural forest and agricultural land used by residents (mostly forest land) which have long use term without being limited in a specific point of time. Surprisingly, agricultural land use term can reach to seventy years for investors who execute the projects of investing agriculture and forest production, aquaculture, salt making while the speed of taking back capital is slow or carrying out the project in difficult socio-economic area, especially difficult socio-economic area which are stipulated in Decree 118/ND-CP (Decree 118/ND-CP) about detailed provision and direction for utilize Investment Law Act, 2014 (Investment Law Act, 2014). Other agricultural land types are common set to fifty years of using term. This is one of the changes in Land Law Act, 2013.

In the past, Land Law Act 2003 had distinction as it only permitted twenty years as using term for individual, household who directly using land for cultivation of annual crops, land for aquaculture, and land for salt production while using term of agricultural land for economical organization was fifty years. This alteration of Land Law Act 2003 is clearly reasonable because it can not only base on the method of cultivating short-day trees or long-day ones, individuals, households, economic organization to stipulate land using term. In many cases, investment on

annual trees or aquaculture may cost more than perennial trees so that too short land using term probably makes farmers hesitate to invest in land or even over exploit it which leads to exhaustion of agricultural land. On the other hand, long land using term will create an attached mindset for users along with boost investment on land cultivation, from that to bring about higher productivity and effective economics result.

Although some changes have been applied, agricultural land using term still concludes some disadvantages, specifically:

(i) Land Law Act, 2013 Art.37 written that the period of land use master plans is 10 years whereas agricultural land using term is fifty years which might cause a situation of an alteration in new land using plan when old land using one comes to end. Hence, land users will find difficulty in asking government for extending land usage when term is finished because their using of land is not appropriate to new stipulated land using plan (Tuyen Quang Nguyen, 2012);

(ii) the difference between agricultural land using term and residential land or land for business is the long-term stability which lead to a consequence that property rights of farmers will be less guaranteed and easily be taken back by The State (Nghia Duy Pham, 2015).

Moreover, is it necessary to maintain stipulation of agricultural land using term or not? As a matter of fact, this stipulation has not been implemented as following: the transference of agricultural land to individual, household to cultivate annual trees and aquaculture in response to Land Law Act, 1993 and Decree 64/CP (Decree 64/CP) instructing to implement Land Law Act, 1993, has a term of twenty years, however, when the term is about to end, Land Law Act has been edited to upgrade it to fifty years, which means lengthening for thirty years concerned with instability and disorder may happen in socio-economic life.

This lengthening is truly a situational solution when there is not enough determination to do away with agricultural land using term. In the future when thirty years lengthened end, similar concern will once again happen in more complex level as the value of agricultural is on the increase as well as fast growing speed of economic development (World Bank, 2017). Simultaneously, Land Law Act 1993 stipulate that when agricultural land using term has ended, if any of the users still have demand to use the land will be considered to grant of land use rights by government. Agricultural land users definitely always has a need to continue utilizing the land until the term ends because the advantages associated with property are their main livings that is not easily to give up. In the context of land embezzlement in Vietnam is taking place so popular and complicate (Khai Manh Pham, 2011), this may be the reason for negative behavior from competent authorities to harass people who want to keep using agricultural land.

Secondly, it's about quotas of accumulating and concentrating agricultural land.

It is one of the most complex issue and always at the topic of argument throughout establishing and developing process in Vietnam's Land Law Act (Trang Thu Ngo, 2017). In general, the objective of Vietnamese legislators is to enhance land accumulation in a logical way to serve wide scale of agricultural production at one side, another one is to prevent the negative way in land concentration which causes monopoly in land using, excessive labor exploitation and decrease in land using effectiveness.

On that basement, from Land Law Act, 1993 has brought about provision of agricultural land use quotas for individual, household following the guideline which controls maximum area of land for each groups to use in any forms (including transferred land). In Land Law Act 2003, the land using term's concept has changed into inbound land using area but minimizing of land granted by government or transferred from others. This provision seems to be more flexible and logical in comparison with controlling land using area in reality, specifically, an individual or a household who has an incentive for longer time using than that term, may move to the decision of renting and take higher financial obligation with government than using land in term. As a result, agricultural land users must be conscious in calculating, finding solution to make the most advantage of land exploitation, have higher productivity and lastly prevent accumulating and concentrating land.

The allocation quotas for agricultural land is prescribed in Land Law Act, 2013 as follows:

(i) Not exceeding 3 hectares for each type of land in provinces and centrally run cities in the southeast region and Mekong Delta region; Not exceeding 2 hectares for each type of land in other provinces and centrally run cities (including Hanoi, Hai Phong, Da Nang);

(ii) The allocation quotas for land for perennial crops for each household or individual in a delta commune, ward or township must not exceed 10 hectares and must not exceed 30 hectares for each household or individual in a midland or mountainous commune, ward or township;

(iii) The land allocation quota for each household or individual does not exceed 30 hectares for each of the following land categories: Land for protection forest, land for production forest.

On the other hand:

(i) In case a household or individual is allocated with land of different categories including land for cultivation of annual crops, land for aquaculture and land for salt production, the total quota for all categories must not exceed 5 hectares;

(ii) if the household or individual is additionally allocated with land for perennial crops, the land allocation quota for perennial crops must not exceed 5 hectares in a delta commune, ward or township and must not exceed 25 hectares in a midland and mountainous commune, ward or township;

(iii) if the household or individual is additionally allocated with land for production forest, the land allocation quota for production forest must not exceed 25 hectares.

Overall, the allocation quotas for agricultural land in Land Law Act, 2013 is just a result of legalization those provisions in Article 69, Decree 181/2004/NĐ-CP ([Decree 181/2004/NĐ-CP](#)) which has instructed Land Law Act, 2003. Instead of only giving the bare limitation of allocation quotas for land and relying on detailed provisions about land allocation quotas for each land types and areas in Decree prescribed at Article 70 Land Law Act, 2003, by government, Land Law Act 2013 has let National Assembly directly stipulate it. This is understandable because after ten years applying Land Law Act, 2003, it has been proven that allocation quotas for land in Decree 181/2004/NĐ-CP are suitable in reality. Hence, it must be toughly prescribed in law like a more effective legal guarantee for agricultural land allocation nowadays.

Land allocation quotas or quotas for receipt of transferred agricultural land use rights: Land Law Act, 2013 prescribes that the quota for acquisition of land use rights by households or individuals must not exceed 10 times of the allocation quota for agricultural land for households or individuals applicable to each type of land. This marks a breakthrough movement of Land Law Act, 2013 while permitting the quota for acquisition of land use rights not to surpass 10 times of the allocation quota for land. In comparison with Resolution N^o 1126/2007/NQ-UBTVQH11 ([Resolution N^o 1126/2007/NQ-UBTVQH11](#)) of National Assembly Standing Committee, the quota for acquisition of land use rights by households or individuals has grown up from three to five times (depending on land types and areas), which extends possibility as well as opportunities of land accumulation in order to raise up cultivation standard and economic effectiveness. In the past, Land Law Act, 2013, Art. 71 about the quota for acquisition of land use rights were prescribed by government submitting for National Assembly Standing Committee approval. However, it is now stipulated in Land Law Act, 2013 and National Assembly delegates to government for specifically giving provisions over each area and period with a view to ensuring the flexibility of land accumulation policy. Though, along with that firmly quota for acquisition of land use rights, only if Land Law Act, 2013 was modified so that the quota might be upgraded, or else it could only decrease or stay standstill. Consequently, the demand of exploiting agricultural land in large scale of many individuals, households has not been totally anticipated by Land Law Act, 2013. Actually, numerous individuals are able to effectively take advantage of hundred hectares of agricultural land. Provisions of quotas for receipt of transferred agricultural land use rights seriously need a more flexible change and add some exception allowing it to outrun the legal regulation. Another drawback is that Decree 43/2014/ND-CP, Art. 44 ([Decree 43/2014/ND-CP](#)) proposes such a maximization in the quota for acquisition of land use rights with Land Law Act, 2013 Art. 130.

Apart from the quota for acquisition of land for production forest use rights (forest in delta commune) which is five times over the allocation quota for land, the rest allocation quotas for land for annual crops, aquaculture and salt production are all ten times over the allocation quota for land in Land Law Act, 2013, Art. 129 prescribed by Decree 43/2014/ND-CP. This will loosen almost adjustment role into real estate market. In theory, it must be higher step by step. However, Decree No.43/2014/ND-CP has immediately boosted this quota to increase many times compared to the old one, which brings implicit threat of disordering the real estate market.

Unlike other countries, Vietnamese legal only recognizes land use rights of individual, household, organization in accordance with maintaining public land system under the name “ownership by the entire people” (Luan Thanh Nguyen, 2018). Land use right in Vietnam is assessed as “supposedly land definition in many countries has approved land property for individual. Land users can enjoy the whole advantage from using it and pay a small sum of obligational tax for The State (World Bank, 2013).

First of all, to be set up agricultural land use rights, The State must grant land use rights to individual, household and organization or land users have to be given legally transference from other subjects.

The way The State granting land use rights to individual, household and organization is a kind of implementing the representation of national land property rights in dividing land. Generally, this is a unilaterally power work from competent authorities so that it is quite hard to prevent some negation such as embezzlement and bribery. The awareness of that problem has let the legislators trying to diversify kinds of The State granting land use rights. Specifically, Land Law Act, 1987 only has the form “The State granting land use rights”, Land Law Act, 1993 has new form of “lending land”, then Land Law Act, 2003 and Land Law Act, 2013 has some more formats:

(i) The State granting land use rights without collect using fee is when it enforces official decision to give the land use right. This form presents the most unilaterally power The State in allocating land, which applies in these circumstances: Firstly, individual, household who directly cultivate agriculture, forestry, aquaculture, salt production in land quota being granted; secondly, residential community who use agricultural land; thirdly, people who use land for production forests and land for protection forests.

(ii) The State lending agricultural land use right (includes of collecting land using fee annually or gathering fee at once for the whole time renting) is the way it decides to grant land use rights by means of lending land use right contract. The mentioned form along with State’s unilaterally power also presents the equality inland allocation in Land Law Act, 1993. It can be applied with any subject who has demand for using agricultural land consisting all individual, household, economic organization, Vietnamese who live abroad, enterprises with foreign capital.

(iii) The state conceding agricultural land use rights is the way it grants land use rights for currently land users whose land does not have the origin of being granted or lent by conferring land use rights and other properties certificate attached with the first land. Basically, this form is an approval of The State to the agricultural land which individual, household and residential community has long been using without conflicts. On one side, it aims to unite the land administration throughout the country while the other side is about to recognize and ensure benefit for agricultural land users. Significantly, except for economic organization, Vietnamese who live abroad, enterprises with foreign capital, granting land use rights is applied to both household and individual.

Simultaneously, the granting land use rights method through public auction prescribed in Land Law Act, 2003 and more completed in Land Law Act, 2013 which is mostly applied in the way The State lending agricultural land use rights has partly prevented some mentioned negation as well as creates more equal opportunities for people to approaching agricultural land. The granting land use rights also have to be suitable with ratified land using plan based on landing using demand which proves in investment plan, granting and lending land application following procedure specifically stipulated in Decree 43/2014/ND-CP, Art. 68.

Confirmation in agricultural land use rights by means of receiving land use rights transference from other individual, household, organization through exchange transaction (swapping land), transference (land trade), inheritance, giving land use rights or contributing capital by land use rights. Naturally, those are civil transaction so that contains the free, voluntary and equal nature between parties in setting land use rights. However, transferring agricultural land use rights is constrained by its quota which has been presented above and it is not under all circumstances does any parties has agricultural land use rights allowance. Therefore, these following individual, household, organization are not allowed to transfer agricultural land use rights:

(i) Economic organizations may not acquire the rights to use paddy land, protection forest land or special-use forest land from households or individuals, except the case of change in land

use purpose in accordance with the land use master plan and plans approved by competent state agencies;

(ii) households and individuals not directly engaged in agricultural production may not receive the transfer or donation of paddy land use rights, households and individuals may not receive the transfer or donation of residential land use rights and agricultural land use rights with regard to the land located in the areas of protection forests, strictly protected zones and ecological rehabilitation zones in special-use forests if they do not live in such protection forests or special-use forests.

Besides, transferring of land use rights must follow procedure specifically stipulated in Decree 43/2014/ND-CP, Art. 79 to be confirmed of land use rights among individual, household and organization. Approval of establishing agricultural land use rights by transferring it is a huge movement in Vietnamese Land Law while former Land Law Act, 1987 prohibited all land transaction. This is as a result of innovation from subsidy period to socialist-oriented market economy.

Second of all is about rights and obligations of individual, household, organization. Individual, household, organization being granted land use rights or legally transferred land use rights are called agricultural land users and they have rights and obligation prescribed in Land Law Act, 2013 as follows:

General rights of agricultural land users are stipulated in Land Law Act, 2013, Art. 166 which consist of:

(i) to be granted the certificate of land use rights, houses and other land-related assets ownership is the way The State certified land use rights and other property attached to land of people who have the rights to use agricultural land through being granted or legally transferred;

(ii) to enjoy the results of the labor and investment on land;

(iv) to enjoy the benefits derived from facilities constructed by the State for protecting and improving agricultural land;

(iv) to receive the State's guidance and assistance in the improvement and fertilization of agricultural land;

(v) to be protected by the State against others' infringements of their lawful rights and benefits related to land;

(vi) to receive compensation when land is recovered by the State to serve in defence and security objective, socio-economic development for national advantage;

(vii) to complain about, denounce or file lawsuits over violations of their lawful land use rights and other violations of the land law.

General obligations for land users are stipulated in Land Law Act, 2013, Art.170 which consist of:

(i) to use the land for proper purposes, in accordance with the land parcel boundaries, in compliance with regulations on use of the depth beneath and the space above the parcel while protecting underground public facilities and in accordance with other relevant laws;

(ii) to declare and register land; to complete all related procedures upon exchange, transfer, lease, sublease, inheritance, donation of land use rights; mortgage or contribution of land use rights as capital in accordance with law;

(iii) to fulfill financial obligations in accordance with law;

(iv) to take measures to protect the land;

(v) to comply with regulations on environmental protection and not to cause damage to the lawful benefits of related land users;

(vi) to comply with the law on discovery of underground objects;

(vii) to return the land upon the State's decision on land recovery or at the expiry of the land use term without being permitted to extend the land use term.

Obligations of using agricultural land in right aim is considered to decrease the flexibility of land users in exploiting agricultural land potential. Especially, prohibition of changing land for rice cultivation into other objectives ([Land Law Act, 2013, Art.57](#)) which helps guarantee national food security is unnecessary in the context of dependence on application of science and technology in production. Simultaneously, Vietnam has a huge redundant food and eating habit has limited rice using and replaced by other kinds of food ([World Bank, 2012](#)). Hence, provision about changing

agricultural land using objective needs an adjustment to provide more flexibility for agricultural land users in maximizing agricultural land usage.

Besides above rights and obligations, agricultural land users have their own rights bases on the form The State granting land use rights and financial obligation which users must obey. One of the significant progresses in Land Law Act, 2013 is to create equality in rights and obligations of land users while allowing them to choose either paying at once for the whole time rent or annual payment depending on financial ability and corresponding with it are the rights they can implement.

As a whole, users of granted land by The State with confirmation of agricultural land use rights, users who are transferred land use rights or even ones who pay at once for the whole time rent have the right to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and contribute land use rights as capital. Apart from Organizations to which the land is allocated by The State without land use levy or having paid but the origin of that money coming from State budget will not have those mentioned obligations as well as are not entitled to compensation upon land recovery by The State.

Agricultural land users whose land is allocated by The State with annual land payment have the difference is that they may not exchange, transfer, donate, lease land use rights; mortgage, contribute land use rights as capital but sell, inherit, lease, contribute capital with their own property attached to agricultural land.

Conditions for the exercise of the above rights are prescribed in Land Law Act, 2013, Art. 188:

- (i) Having the land use rights certificate;
- (ii) the land is dispute-free;
- (iii) the land use rights are not distrained to secure judgment enforcement;

(iv) within the land use term. Especially, the right to exchange agricultural land is applied for individual, household in the same town, district in order not only to make agricultural production better but also implement "gathering land to take field" which surmounts small agricultural land division – a noticeable hurdle for agricultural production in large scale of Vietnam nowadays (Markussen, 2012).

Comparison of agricultural land use rights in Land Law Act, 2013; Land Law Act, 1987; Land Law Act, 1993; Land Law Act, 2003 has affirmed that user's rights are becoming broader. Specially, law permits and makes more opportunities for transaction relating to agricultural land with simplified procedure (Tuyen Quang Nguyen, 2006). Specifically, Land Law Act, 1987; prohibits all land transaction in general and agricultural land transaction in particular; Land Law Act, 1993 allows agricultural land users to operate five transactions: exchange, transfer, lend, inherit, mortgage; Land Law Act, 2003 and Land Law Act, 2013 continue to apply those five transactions of Land Law Act, 1993 and add new rights as following: lease, sublease, donate, mortgage land use rights and contribute land use rights as capital.

By and large, agricultural land users rights stipulated in Land Law Act, 2013 are sufficient and suitable in exploitation demand, utilization of land in market economy. However, the provision of the right to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and contribute land use rights as capital in enumerating way which is only limited in those rights scope, seems to be unreasonable in dynamic market economy. On the other hand, agricultural land rights are mostly restricted by provisions of land using term, quotas of accumulating and concentrating agricultural land, establishment of agricultural land use rights. Hence, with a view to broadening rights of agricultural land users, Land Law Act, 2013 needs to be edited following these directions:

Firstly, raising up agricultural land use rights (may reach to 99 years) or deleting provisions of agricultural land use rights. Besides, we also need to focus on building long-term plan in order to ensure stability of agricultural land users.

Secondly, broadening quota of accumulating agricultural land step by step which following the form of an increase in acquiring land use rights quota.

Thirdly, implementing rights to agricultural land of agricultural land users must be more flexible without being completely limited in land using objective which has been prescribed in law.

Fourthly, extending transference of agricultural land use rights in individual, household, organization and takes it as basement for setting up land use rights which aims to create an explicit and dynamic agricultural land market.

Fifthly, widening more land use rights of users. Therefore, it's advisable not to continue the provision of the right to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and contribute land use rights as capital in enumerating way. Land users should be able to carry out all transactions in Civil Code prescribing to property. This will guarantee unification of law in adjusting property relationship as well as fix the situation of some land transactions happened in reality but Land Law Act has not prescribed such as borrowing, mortgaging agricultural land use rights (Sua Van Le, 2017).

4. Results

All things considered, this article has gained some research results as follows: cites out the difference in defining land types, specifically agricultural land; clearly explains land using term, quotas of accumulating and concentrating agricultural land; analyzes basements for setting up agricultural land use rights; rights and obligations of users in currently Land Law Act of Vietnam and gives out 5 suggestions to change Land Law Act, 2013 with a view to broadening rights of users, from which boosts the agricultural development in the future.

5. Conclusion

Legal system to agricultural land in Vietnam nowadays is relatively complicate which contains many contents and scatters in different law documents. On the whole, it is quite completed by inheriting the rationality from former Land Law Act and has been editing and adding new provisions in which broaden land users rights, thus becomes suitable with exploitation, utilization demand of Vietnam's market economy. However, under the effects of socio-economic development, legal system to agricultural land need to change about land using term, quotas of accumulating and concentrating agricultural land, broaden land users rights so as it can be possible to impulse the development of Vietnamese agriculture in the future.

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