

# Current Law on General Rights of Agricultural Land Users in Vietnam: Reality and Issues that Need Modification

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## ABSTRACT

This paper focuses on analyzing and commenting on the content and practice of the current legal provisions on the general rights of land users in Vietnam, including: (i) the right to exploit and enjoy results brought from land, with the State creating maximum favorable conditions for land users realize the benefits from the land; (ii) the right towards adjoining immovable property; (ii) the State's protection of land use rights. The article shows the good results that have been achieved, the constraints which remain and the shortcomings of the current legal provisions. On that basis, the article puts forth a number of proposals to amend and supplement these legal provisions to expand and further ensure the rights of entities in the exploitation and use of land in Vietnam, in accordance with the market economy.

**Keywords:** *agricultural land, Land Law 2013, land users, agricultural land use rights, Vietnam*

## 1. INTRODUCTION

In Vietnam, land in general and agricultural land, in particular, belongs to the entire people and this ownership is represented by the State. In general, the land ownership regime of Vietnam and China is similar, because both countries have a socialist political regime led by the Communist Party [1]. Under this ownership regime, the legal status of entities (individuals, households, organizations) is also different from those of countries that practice private ownership of land. Hence, individual owners do not have ownership of agricultural land, but only the right to use it through the State allocation, lease of land and recognition of land use rights or transfer of land use rights from other people (transfer, donation, inheritance...). As the representative of the entire owner of the land, the State holds the right to specify the content of common rights, obligations and separate rights and obligations in the form of using agricultural land. The general right of the land user is simply understood that all the owners are able to enjoy and exercise these rights by themselves without restriction. The general rights of agricultural land users in Vietnam will be outlined in the article.

## 2. DISCUSSION

### ***2.1. The right to exploit and enjoy results brought from land, the right to get the maximum favorable conditions from the State in order to achieve the benefits from agricultural land and the right towards adjoining immovable property***

According to the provision in Article 166.2 of the Land Law 2013, the owner of agricultural land use rights is entitled to exploit the characteristics of the agricultural land and enjoy the results of the labor and investment on agricultural land. The results of the labor and investment on agricultural land are the property of the owners who have agricultural land use rights, and they have full rights to possess, use and dispose of these assets according to the regulations of the Civil Code 2015. However, if only stipulating that the owners who have agricultural land use rights shall enjoy the fruits of labor and the investment results on the land as stated in Article 166.2 of the Land Law 2013, this will be incomplete. Because agricultural land is a kind of land by which may create yield and income which are not necessarily the fruits of labor or the results of investment on the land of agricultural land users. Therefore, the Land Law 2013 needs to supplement the right to receive yield and benefit brought by agricultural land for agricultural land users.

Unlike non-agricultural land, in order to effectively exploit agricultural land, it is necessary to have an irrigation system and agricultural land after the using process has degraded in quality. Therefore, according to the provisions of Article

166.3 and Article 166.4 of the Land Law 2013, the owners of agricultural land use rights are entitled to the benefits of the State works in service of the protection and improvement of agricultural land and would be guided and assisted by the State in fostering and renovating agricultural land. This is a particularly important right for agricultural land use rights holders, enabling them to fully exploit the benefits of agricultural land. Especially, due to its location in the tropical monsoon climate, Vietnam suffers many typhoons every year with strong intensity and heavy rains that cause extensive floods which devastate agricultural activities [2]. Therefore, when the State invests to build an irrigation system, the users of agricultural land will be directly benefitted in great way. It must be affirmed that, in recent years, this common right of agricultural land users has been taken into consideration and guaranteed to be effectively implemented by the State. The most obvious evidence for this is that Vietnam - from having to import food to meet the needs of people, has grown to become a leading food exporter in the world [3].

In order to make the parcels of agricultural land which are surrounded by or adjacent to another immovable property (including other land plots, houses, other construction works attached to land ...) to be conveniently and effectively exploited by the owners, Vietnamese law has recognized these agricultural land plots with the right to have walkways; the right to have water supply and drainage, irrigation, drainage in farming on the surrounded and adjacent immovable property under the name "right to adjoining immovable property" in Article 245 of the Civil Code 2015. In essence, "the right to adjoining immovable property" is based on the relationship between the two properties; therefore, one property bears the burden to serve the exploitation of the remaining property, which is owned by another person.

In general, the "right to adjoining immovable property" has the similar characteristics to "easement" (an easement is a nonpossessory right to use and/or enter onto the real property of another without possessing it) in civil law of countries under the Roman-German legal system [4]. For a long time, Vietnam was a French colony (from 1884 to 1945) [5], one of the important colonial policies of France was that: "The French regime regarded the imposition of its civil legislation as an effective instrument to culturally integrate vassal states" [6]. Hence, Civil Code of the North Vietnam in 1931 and Civil Code of the Central Vietnam in 1936 were issued basing on the copying of almost all the contents of the French Civil Code. Until the Civil Code 1972 of the Republic of Vietnam [7], although the French were no longer here, the influence of the French Civil Code was still in the legal thinking and legal techniques so that "easement" was still an institution which is accepted in this Code. However, until the reunion of the country (the Republic of Vietnam declared surrender unconditionally on April 30, 1975) [8], with the desire to eliminate the "remnants" of the old regimes and build a particular Civil Code of an independent state, Vietnamese lawmakers did not accept the concept of the easement. Therefore, they built a new concept under the name "the right to the restricted use of adjacent real estates", and "the right to adjoining

immovable property". Eventhough, one certain thing is that the "right to adjoining immovable property" in Vietnamese civil law today had been influenced by the French Civil Code.

Vietnamese lawmakers' use of the concept of "the right to the restricted use of adjoining immovable property" and "the right to adjoining immovable property" is not the optimal solution. Although Vietnamese lawmakers have recognized the mismatch of the concept of "the right to the restricted use of adjoining immovable property": (1) in this concept, the word "use" plus the word "right" combined as "the right to use" may easily lead to misunderstandings as "the right to use" in the connotation of ownership right (in Vietnam, ownership rights comprise 3 components: rights to possess, to use and to dispose of property), hence the word "use" should be removed, so as not to cause confusion; (2) using the word "limited" is not necessary because the content of these rights have shown a narrower scope in compared to ownership right [9], therefore, it is replaced by the concept of "the right to adjoining immovable property".

However, it should be frankly admitted that the current concept of "right to adjoining immovable property" is not sufficient to fully express the characteristic of "the easement" as well as to make an unnecessary difference of Vietnamese laws compared to the world. Therefore, lawmakers need to abolish the prejudice in legislative thinking to accept the concept of the easement because this is the knowledge, achievements of legal science of mankind which has had a long process of development and is proved by its outstanding efficiency.

On the stipulation of Land Law 2013, Article 171 stipulates the right to adjoining immovable property under the name "limited use rights to the adjacent land parcel" with provisions relating to the right to access path, water supply and drainage, irrigation and drainage in cultivation, gas supply, power lines, communication, and other reasonable needs of the adjacent land parcel. In terms of time, since the Land Law 2013 was promulgated before the Civil Code 2015, the concept of "limited use rights to the adjacent land parcel" is still used. In order to ensure the consistency of the legal system, the Land Law 2013 needs to amend the provisions of Article 171 to "the right to the adjacent land parcel".

It can be seen that a limitation of the Land Law 2013 is the absence of regulations on the ownership rights (the right to hold and manage the property both legally and practically) of the owners towards agricultural land, even though this is a pre-requisite for the owners to exercise their rights to exploit and enjoy the benefits from the land. The reason for this problem is that Vietnamese lawmakers think that agricultural land users do not have ownership of agricultural land, so the regulation does not stipulate the right to own agricultural land. This shows the confusion in identifying the legal nature of agricultural land use right of Vietnamese lawmakers these days. The right to possession is extremely important for agricultural land users because it allows land users to apply measures to manage and protect agricultural land plots. Once a land plot is on hand, a land user can carry out agricultural activities. Therefore, the Land Law 2013

needs to supplement this right. However, in order to do this, Vietnamese lawmakers need to absorb the theory of rights in rem - also an especially important institution in civil law of countries under the Roman-German legal system [10], recognizing the right to use agricultural land as a kind of limited right in rem to have a solid scientific basis, solving the confusion in defining the right to possession towards agricultural land [11]. Along with that, Land Law 2013 need to supplement the right to lend land of individuals and households. The reason is, in addition to conducting transactions of transferring, giving, contributing capital, etc., it is common for individuals and households to lend agricultural land to each other for production when they do not have a demand for cultivation for a certain period of time.

## ***2.2. The right to a State certificate of agricultural land use rights and ownership rights of properties attached to agricultural land (hereinafter called Certificate)***

Certificate is a legal certificate for the State to certify agricultural land use rights of agricultural land users when they are allocated or leased land by the State and recognize agricultural land use rights or agricultural land users receive/ transfer agricultural land use rights in accordance with the law. The rights to be granted certificates by the state have the following meanings to agricultural land users:

- In terms of legal and economic aspects: The State issues a Certificate meaning that the State's official recognition of agricultural land use rights belongs to a certain owner, other entities are obliged to respect and have no action of infringing upon that agricultural land plot. A certificate is a mandatory condition for the owners to fully exercise their rights to agricultural land. In particular, it is also a mandatory condition for agricultural land users to participate in the official market of agricultural land (with the rights to transfer, contribute capital, mortgage ...) to gain economic benefits from agricultural land [12].

- In terms of gender equality in society: in case the State issues a certificate to a household, the display of the woman's name on the certificate will further ensure the equal rights of women in the use and determination of common property of the household than just specifying the representative of household head which is defaulted to be male according to customs and traditions [13].

In general, the Land Law 2013 has clearly and specifically stipulated cases where the State issues Certificates and the order and procedures of issuing Certificates in a simpler and faster way comparing to the Land Law 2003. Specifically:

First, about the cases of being granted the Certificate.

Under the provisions of Article 99 of the Land Law 2013, Certificates are granted to subjects in the following cases:

- Agricultural land allocated or leased by the State;
- Persons who are permitted to convert, transfer, inherit or donate land use rights or receive land use rights as capital contribution;

- The recipient of land use rights when dealing with mortgage contracts by land use rights to recover debts;
- People are entitled to use land according to the results of successful conciliation of land disputes;
- According to the judgments or decisions of the People's Courts, the judgment-executing decisions of the judgment-executing agencies, or the decisions on settlement of disputes, complaints or denunciations about land by competent state agencies, which have already been carried out;
- Winning bid of land use rights; land users of separate or consolidate parcels;
- Groups of land users or members of households, husband and wife, organizations using land for division or consolidation of existing land use rights;
- Land users apply for replacement or re-issue of the lost Certificate;
- Current land users who are eligible for Certificate of land use rights, possessing the papers prescribed in Article 100 of the Land Law 2013 or without papers but having used the land stably, without disputes and in accordance with the plan of using land, etc.

Along with that, Article 19 of Decree No. 43/2014/ND-CP dated May 15, 2014 of the Government, detailing the implementation of a number of articles of the Land Law 2013, has clearly stipulated the cases where the State does not issue the Certificate, including the following:

- People who are managing and using agricultural land belonging to public land fund of communes, wards, and towns;
- People who rent or sub-lease land from land users; people who receive land allocation from farms, forestry farms, agroforestry enterprises, protective forest boards of management or special-use forest boards of management;
- Current land users not eligible for the Certificate; land users eligible for the Certificate, but where a notice or decision on land recovery has been issued by the competent state agency...

Second, about the order and procedures of issuing Certificates

The most remarkable feature of the order and procedures for issuing a Certificate is that the time for issuing the Certificate has been greatly shortened. Earlier, according to the provisions of Article 135.2.d of the Government's Decree No. 181/2004/ND-CP dated October 29, 2004, on the implementation of the Land Law 2003, the time for granting certificates for households and individuals who are currently using land in communes and townships, was not exceeding fifty-five (55) working days (excluding the time of publicizing the list of cases of application for certificates and the time of land users to fulfill their financial obligations) from the date the commune/town People's Committee received a complete and valid dossier, till the date the land user receive the Certificate; the time for issuing certificates to organizations currently using land as prescribed in Article 137.2.c of the Government's Decree No. 181/2004/ND-CP dated October 29, 2004, on the implementation of the Land Law 2003 was also no more than fifty-five (55) working days (excluding the time for land users to fulfill their financial obligations) from the date

when the land use rights registration office received complete and valid dossiers, till the date when land user received the certificate.

Currently, according to the provisions of Article 2.40 of Decree No. 01/2017/ND-CP dated January 6, 2017 of the Government amending and supplementing a number of decrees relating to the implementation of the Land Law 2013, the time for the State to issue certificates to entities is no more than 30 days, while it is only 15 days in cases such as issuing certificates when changing properties attached to land and no more than 07 days for renewal of certificates. The time for issuing the certificate is capped at 50 days only in cases of simultaneous renewal of multiple land users due to the redrawing of the map. The shortening of the time for issuing the Certificate has contributed to the subjects' rights granted in the Certificates being guaranteed in practice.

It should be emphasized that the granting of land use rights certificates in general and agricultural land use rights certificates in particular to entities has been stipulated throughout the Land Law 1987, Land Law 1993 and Land Law 2013 and has received special attention from the Government during the implementation of these laws. Specifically, together with the allocation of agricultural land in accordance with Decree 64/CP September 27, 1993 of the Government on assigning agricultural land to households and individuals for stable and long-term use for agricultural production purposes, the Government has emphasized the issuance of agricultural land use rights certificates through the promulgation of the Prime Minister's Directive No. 10/1998/CT-TTg dated February 20, 1998 on speeding up and completing land allocation, issuance of agricultural land use rights certificates, followed by Directive No. 18/1999/CT-TTg dated July 1, 1999 on a number of measures to promote the completion of agricultural land use rights certificates, forestry, and rural land, in 2000. The achieved results are as follows: "Up to now, the agricultural land allocation under Decree 64/CP dated September 27, 1993 of the government has been completed nationwide, but only 73% of households with nearly 71.5% of agricultural land have been granted certificate of land use rights" [14].

During the implementation of the Land Law 2003, the issuance of Certificates to subjects was also implemented in practice by the State, especially vide Resolution No. 07/2007/QH12 12/11/2007 of the National Assembly on the 2008 economic development plan, which determined that the completion of granting certificate nationwide was an urgent task, to be implemented positively by the targeted time of 2010. Specifically: "Agreeing to issue one type of certificate of land use rights along with the ownership of houses and other land-attached assets on the basis of Land Law, assigned to an agency to implement; simplified dossiers and procedures for granting certificate of land use rights; strived to basically complete the granting of land use right certificates to all land categories nationwide by 2010" [15].

Based on the Resolution of the National Assembly, the Prime Minister issued two Directives: 1) Directive No. 1474/CT-TTg August 24, 2011 on the implementation of a number of urgent tasks and solutions to expedite the

granting of land use rights certificates, ownership of houses and other land-attached assets and building a land database and 2) Directive No. 05/CT-TTg April 4, 2013, focusing on directing and strengthening measures to complete the granting of land use right certificates, ownership of houses and other land-attached assets in 2013. With this directive from the top, the strong guidance of the Government and the efforts of localities to implement solutions to promote the assignment of granting certification, the following results were achieved: "Regarding agricultural land for production: The whole country has granted 17,367,400 papers with an area of 8,147,100 ha, reaching 82.9%, 33 provinces reached over 85%, 30 provinces were below 85%; of which 12 provinces account for less than 70%... Regarding forestry land: The whole country has granted 1,709,900 certificates with an area of 10,357,400 ha, accounting for 86.1%. There are 20 provinces reaching over 85%, 41 provinces level less than 85%; of which 25 provinces have less than 70%" [16].

Until Land Law 2013, due to the above-mentioned amendments and supplements, the right to be granted a Certificate by the State has been executed better in practice, which is reflected by the following results: "Up to now, the country has basically completed the first certification for most of the land users based on different types of maps (topographic maps, image maps, diagrams, cadastral metering, cadastral map ...) reached 96.9% of the area to be allocated; including 92.9% of agricultural land, 98.2% of forestry land, 86.1% of aquaculture land, 96.1% of rural land, 98.3% of urban land, 86.9% of special-purpose land, 83.6% of religious establishment" [17].

Although the State has made every effort to ensure granting of certificates to land users, in some localities, the "indifference" of many households and individuals has impeded the process. For instance,

In Thai Binh Province, according to the statistics of the Department of Natural Resources and Environment, as of mid-March 2018, there are 71,252 certificates including certificates of agricultural land use rights have been signed but not yet delivered to land users, because land users refused to receive them [18].

In Tuy Phuoc district, Binh Dinh province, up to the beginning of 2016, this district still has an "inventory" of 20,400 certificates, comprising 14,826 certificates for residential land and 5,574 certificates for agricultural land, as people declined to receive them [19].

In Tien Yen district, Quang Ninh province, since 2012, the renewal and change of certificates of agricultural land use rights has been implemented. From 2015 to the present, the district has handed over 10894 Certificates to the people, while the remaining 3,104 households refused to receive the certificates, most of whom were people in the three communes of Phong Du, Dai Duc and Dai Thanh. Many households are not interested in the certificate [20].

The reason for such refusal to receive certificates is the people who are issued the certificate for the first time need to pay land use fees in accordance with the current law. Accordingly, in the following cases, the household or individual must pay a land use fee or land rent when granted a certificate by the State: in cases of land assignment with

the collection of land use levies; permission to change land use purposes; or recognition of land use rights subject to payment of land use fee; renting land from the State, etc. Reluctance to pay the amount leads to a refusal to accept the Certificate. Along with that, due to lack of legal knowledge, many households and individuals believe that the land is being used by them without any dispute for long without any transfer of land use rights to other people so it does not need a certificate. Specific evidence of this can be found in Binh Phuoc province:

By the end of 2014 the whole district of Bu Dop had been measured and Certificate procedure for completed for people with a total area of 3,525 ha of agricultural land. However, only 742 Certificates covering 1,014 hectares were received by people, out of which, 279 certificates covering 382.4 were issued in the form of land allocation by the State, without land use fees. Most certificates with the form of land lease from the State are not well received.

Bu Gia Map district, by the end of December 31, 2014, still had up to 3,267 certificates left, as people refused to receive them. Out of 937 certificates in the form of land allocation without land use fees, 633 certificates were received by people. In particular, out of 3,045 certificates relating to the State leasing the land, only 82 certificates were received by the people, while the remaining 2,963 certificates were lying in the district Department of Natural Resources and Environment [21].

Further, Government Decree No. 45/2014/ND-CP dated May 15, 2014 relaxing the conditions relating to the collection of land use fees has created favorable conditions for households and individuals to be granted a certificate even in the case of financial difficulties, by debiting the land use levy payable on the certificate after the application enclosing with dossiers of application for certificates; or the dossier of application for change of land use purpose; or dossier of allocating resettlement land; or application for a debt, when receiving notice of land use levy payment. Households and individuals are allowed to pay their debts gradually within a maximum period of 05 years; after 05 years from the date of debt payment, if the land use levy has not been fully paid, the family household or individual must pay the remaining land use fee at the land price at the time of debt payment. In cases where households and individuals pay the debt before the due date, they will be entitled to deduct from the payable land use fee at the rate of 2%/year for the early repayment term, based on the land use fee paid before the due date. However, households and individuals are still "indifferent" to the certificate issued by the State, which shows the need to raise awareness of households and individuals about the Land Law.

However, it can be seen that though the time for issuing the certificate has been shortened, it is still too long in general and needs to be reduced further. Accordingly, the time limit for issuing certificates to entities should be no more than 20 days, in cases of changing properties attached to land, it should be no more than 10 days and for cases of simultaneous renewal for many land users due to redrawing the map, it should be 30 days. The Land Law needs to be amended accordingly.

### ***2.3. The right of State protection of agricultural land use rights from violations of land law***

According to Article 12 of the Land Law 2013, acts such as encroaching, occupying and destroying land and obstructing the exercise of rights by land users in accordance with the law are strictly prohibited because they directly infringe upon the lawful rights and interests of land use right holders. Subjects are not allowed to perform these acts, and can, in the event of violation be punished by the State with civil, administrative and criminal sanctions. This is particularly important for preventing and minimizing violations in order to protect agricultural land use rights of entities.

First of all, the State protects agricultural land use rights through the settlement of land disputes.

Under the provisions of Article 3.24 of the Land Law 2013, land dispute means a dispute over the rights and obligations of land users among two or more parties in a land relationship. When a land dispute occurs, there are conflicts of benefits between the parties; so, the full implementation of the content of agricultural land use rights in accordance with the law will certainly be limited. For example, for exercising the rights to convert, transfer, lease, sublease, inherit, donate, mortgage and contribute capital with agricultural land use rights as prescribed at Point b, Clause 1, Article 188 of the Land Law 2013, the absence of any dispute is a mandatory pre-condition. Article 166.7 of the Land Law 2013 stipulates that land users have the right to sue for violations of their lawful land use rights and other violations of the land law. Therefore, the State protects the lawful agricultural land use rights of these entities by resolving land disputes among entities.

The first stage of the State's settlement of land disputes between these entities is the conciliation of land disputes at the commune-level People's Committee. If the parties to the land dispute exercise self-conciliation or through conciliation at a smaller level agency, but still fail to achieve results, they shall file an application to the commune-level People's Committee for conciliation. Upon receiving the application, the President of the People's Committee of the commune shall be responsible for organizing the conciliation of land disputes in his locality; in the course of organizing the implementation, they must coordinate with the Vietnam Fatherland Front, its member, as well as other social organizations. The procedure for land dispute conciliation at the People's Committee of the commune shall be conducted within 45 days (previously the Land Law 2003 provided a shorter period of 30 days) from the date of receipt of the application requesting resolution of a land dispute. In case of successful conciliation, if there is any change in the status quo of the land parcel's boundaries and land users, the commune-level People's Committee shall send a reconciliation report to the Division of Natural Resources and Environment in case of a land dispute between households, individuals and communities and to the Department of Natural Resources and Environment in other cases. The Division of Natural Resources and

Environment and the Department of Natural Resources and Environment shall submit to the People's Committee of the same level for the decision on recognition of the change of land parcel's boundaries and the grant of a new certificate of land use rights.

The next step for the State to resolve the land dispute is when the conciliation at the People's Committee of the commune fails and when the parties have the right to request a dispute settlement by a court or a state administrative agency.

In case the litigant holds a certificate or one of the documents specified in Article 100 of the Land Law 2013, the Court is the dispute settlement agency in accordance with the order and procedures of the Code of Civil Procedure 2015. In case the litigant does not have a certificate or one of the documents specified in Article 100 of the Land Law 2013, the Court can be selected as an agency to resolve the dispute.

For dispute resolution at an administrative agency, if the applicant does not have a certificate or has one of the papers specified in Article 100 of the Land Law 2013, he/she may choose an administrative agency to resolve the disputes. Accordingly, in case of disputes between households, individuals and population communities, the President of the district-level People's Committee shall resolve; if they disagree with the settlement decision, the disputants may lodge a complaint with the President of the Provincial People's Committee or initiate a lawsuit at the People's Court in accordance with the law on administrative procedures. In case of a dispute involving one of the parties as an organization, a religious establishment, a Vietnamese residing overseas, or an enterprise with foreign-owned capital, the President of the Provincial People's Committee shall resolve it; if the settlement decision is not accepted, the disputants may lodge a complaint with the Ministry of Natural Resources and Environment or file a lawsuit at the People's Court in accordance with the law on administrative procedures.

At a higher and stricter level of protection of agricultural land use rights, the State deals with violations of the land law through administrative handling or criminal prosecution.

According to Article 206 of the Land Law 2013, violators of the land law, depending on the nature and seriousness of their violations, will be administratively sanctioned or examined for penal liability in accordance with the law. Article 11.1 of the Government's Decree No. 102/2014/ND-CP November 10, 2014, on handling administrative violations in the field of land, stipulates the administrative sanction for obstructing the use of other people's land is a warning or a fine ranging from VND 500,000 to VND 1,000,000 in rural areas, and VND 2,000,000 to VND 5,000,000 in urban areas for acts of putting wastes, toxic substances, construction materials or other things on other people's land plots or on their own land plots, thereby obstructing other people's use of land. In addition, the violator may also be subjected to remedies like confiscation of material evidence and means that are used to commit the violation and be forced to restore the status quo ante of the land prior to the violation. According to

Article 228.1 of the Criminal Code 2015 (amended in 2017), any person who appropriates land, transfers land use right or uses land against regulations of law on management and use of land despite the fact that he/she has incurred an administrative penalty or has an unspent conviction for the same offense shall be liable to a fine ranging from VND 50,000,000 to VND 500,000,000 or a penalty of up to three years' community sentence or 06–36 months' imprisonment. In addition to being administratively handled or examined for penal liability, if a person commits an act of violation of the land law and causes damage to another person, he/she must pay compensation at the actual quantum of damage to the victim.

In fact, in recent years, the State has made great efforts to protect land use rights in general and agricultural land use rights in particular, making an important contribution to the stability and socio-economic development of the country: "The trial and settlement of disputes, lawsuits over the use and management of land, have ensured the legal rights of land users. Many court judgments and decisions of Court are supported by the people and guaranteed to be effective (according to the report of the Supreme People's Procuracy of Vietnam, from July 1, 2004 to August 30, 2010, Courts at all levels have settled and handled according to the first instance procedure at about 307,912 civil cases, of which the number of disputes related to land is 69,806 cases, accounted for 22.70%)" [22].

Especially, for the first time in the Vietnamese legal system, Clause 2, Article 4 of the Civil Code 2015 stipulates that the competent State agencies including the Court, are not allowed to refuse to handle civil cases on the grounds that there is no law to apply. This is an important step that demonstrates the State's protection of agricultural land use rights in particular, because it is the State's commitment that, in any case, even in the absence of laws to regulate, if entities have conducted lawful exploitation and use of agricultural land, benefiting themselves and the society, then their rights and benefits will also be protected by the State through all measures [23].

However, the practical process of implementing the provisions of the Land Law 2013 is posing some problems that need amendments and supplements as follows:

First, on the conciliation of the land dispute at the commune-level People's Committee:

Though the Land Law 2013 extended the time for conciliation of land disputes at the commune-level People's Committee as analyzed above, it inherited almost the entire provisions of the Land Law 2003. A significant shortcoming of the 2003 Land Law is its failure to indicate the legal responsibilities of the parties in implementing the results of land dispute conciliation. Therefore, in reality, the parties involved do not comply with the orders of land dispute conciliation. The commune-level People's Committees also do not have the powers to enforce their orders or impose sanctions. There is no stipulation as to the number of conciliation efforts to be carried out at smaller-level agencies after which the effort would be considered unsuccessful so that the parties can submit their applications to the People's Committee of the commune where the disputed land is placed with a request for conciliation.

These shortcomings were not remedied through amendment and supplementation to the Land Law 2013.

The effectiveness of conciliation efforts relating to a land dispute at the commune-level People's Committee in the practical implementation of the Land Law 2003 is not high, due to the following reasons: "Conciliation at small-level agency only plays a role in new born land disputes, which are of a simple nature and the value of disputed properties is not large (under VND 05 million). For land disputes related to inheritance of houses, land or related to contracts of sale, transfer of land use rights... with a large value from several hundred million to several billion, even up to tens of billions (VND), the conciliation of disputes in the procedure and outside the procedure often brings little success" [24]. Meanwhile, along with socio-economic development, the value of agricultural land use rights, in particular, is constantly increasing and the conflicts of benefits between the parties are larger and more complex. If the parties have failed to self-conciliation and conciliation at a small-level agency, then conciliation at the commune-level People's Committee will be very unlikely to achieve success. Hence, Land Law 2013 continuing to stipulate conciliation at the commune-level People's Committee as a compulsory step in resolving land disputes among entities is not appropriate or practical. This may just result in the dispute dragging on, with the conciliation being a matter of mere formality.

Therefore, Land Law 2013 needs to be amended in such a way as to do away with the requirement of conciliation at the commune-level People's Committee for all land disputes. Accordingly, conciliation of land disputes at the commune-level People's Committee can be conducted only when both parties are agreed.

Second, comparison and review have shown the lack of synchronization between the Land Law 2013 and the Criminal Code 2015 (amended and supplemented in 2017) on violations of the land law. This can lead to difficulties in handling legal violations in practice, as indicated below:

According to Clause 1, Article 12 of the Land Law 2013, encroachment and appropriation of land are two different violations and Article 3 of Decree No. 102/2014/ND-CP November 10, 2014 of the Government on handling administrative violations in the field of land has clearly defined these two acts as follows:

“Article 3. Interpretation of terms

1. Encroaching land is an act whereby a current land user himself/herself moves a landmark or boundary of a parcel of land to expand the land area.

2. Occupying land means the use of land without permission of a competent state agency or the use of land allocated or leased by the State but the date of being allocated or leased has expired and it is not extended by the State, however the entities still do not return the land to the State or they use land without executing procedures for land allocation or land lease in accordance with the land law.”

Article 228 of the Criminal Code 2015 (amended and supplemented in 2017) groups these two different violations of law into one act, as “appropriate”:

“Article 228. Offences against regulations on land us

1. Any person who appropriates land, transfers land use right or uses land against regulations of law on management and use of land ...”

Correspondingly, for this restriction, it is necessary to amend the provisions of Article 228 of the Criminal Code 2015 (amended and supplemented in 2017), clearly dividing the omnibus term “land appropriation” into encroachment of land and occupying of land, providing a basis for sanctioning for administrative violations and to investigate penal liability for subjects who violate the law.

#### ***2.4. The right for State protection of agricultural land use rights from violation of the land law committed by persons on duty in the field of land***

Similar to China, Vietnam maintains an entire-people-ownership regime on land, entrusting state agencies with the exercise of the power of land owners. If it is lack of the open and transparent mechanism under close supervision of the people, it will be a favorable condition for law enforcement officials in the field of land to commit law violations for self-benefiting purposes [25]. Moreover, there is also similarity in the mechanism of political power deployment. In Vietnam there has been corruption in the crony capitalism model [26]. This happens with agricultural land that mainly takes advantage of the provisions of the Five-year Land Law on the acquisition of low-cost agricultural land to carry out projects on construction of new urban areas and rural residential areas, urban embellishment, which earns huge profits [27]. Aware of these risks, Vietnamese lawmakers have recognized that agricultural land use rights of agricultural land users are protected by the State from violations of the law on land by law enforcement officials by clearly defining acts that are considered illegal, those who are considered to violate the law and sanctions applied to law enforcement officials and ways to detect law violations. Specifically:

According to Article 97 of Decree No. 43/2014/ND-CP dated May 15, 2014 of the Government detailing the implementation of a number of articles of the Land Law 2013, acts in violation of the land law committed by persons on duty in the field of land include:

- Violations of regulations on administrative boundary dossiers and markers include the following acts: distorting the position plans, coordinates table and written records of the handover of administrative boundary markers, and planting administrative boundary markers at wrong positions in the field.

- Violations of regulations on land use master plans and plans include the following acts: failing to organize the formulation and adjustment of land use master plans and plans in time under regulations, failing to strictly comply with regulations on public consultation in the process of land use planning, failing to publicize land use master plans and plans, failing to publicize the adjustment or cancellation of the recovery or change of purpose of land areas indicated in land use plans, for which no land recovery decision is

issued or no permission is obtained for land use purpose change after three years and failing to report on the implementation of land use master plans and plans.

- Violations of regulations on land allocation, land lease or change of land use purpose include the following acts: allocating, re-allocating or leasing land at incorrect positions and with incorrect areas in the field, allocating, re-allocating or leasing land or permitting the change of land use purpose *ultra vires*, to or for improper subjects, or not in conformity with annual district-level land use plans approved by the competent state agencies, re-allocating or leasing land in hi-tech zones, economic zones or civil airports or airfields not in conformity with construction master plans approved by the competent state agencies.

- Violations of regulations on land recovery, compensation, support, and resettlement include the following acts: failing to give prior notice to persons whose land is recovered under Article 67 of the Land Law, failing to publicize compensation, support, and resettlement plans, failing to strictly comply with regulations on consultation on compensation, support and resettlement, paying compensations to, providing support and organizing resettlement for improper subjects or for incorrect areas and with incorrect compensation, support and resettlement levels, distorting land recovery dossiers, identifying incorrect positions and areas of recovered land in the field, recovering land *ultra vires*, from improper subjects, not in conformity with land use master plans or plans already approved by competent state agencies;

- Violations of regulations on land requisition include the following acts: paying compensations to improper subjects, for incorrect areas, at incorrect levels, or not according to compensation time limits, to persons whose land is requisitioned, requisitioning land other than in the cases prescribed in Clause 1, Article 72 of the Land Law.

- Violations of regulations on management of land allocated by the State for management include the following acts: letting persons, who are allowed by law to temporarily use land, use land for improper purposes, using land for improper purposes, letting land be encroached upon, occupied or appropriated.

- Violations of regulations on the order and administrative procedures in land management and use include the following acts: failing to receive complete and valid dossiers, failing to give specific instructions when receiving dossiers, causing trouble to dossier submitters, receiving dossiers without recording in the monitoring register, imposing additional administrative procedures against general regulations, causing trouble to persons seeking performance of administrative procedures, settling administrative procedures not according to the prescribed order, delaying the handing of papers already signed by competent agencies to persons requesting performance of administrative procedures, settling administrative procedures beyond prescribed time limits, refusing or failing to perform administrative procedures for which, under the land law, all conditions have been complied with, performing administrative procedures *ultra vires*, issuing decisions, writing opinions in or certifying dossiers against regulations, causing, or creating conditions for persons

requesting performance of administrative procedures to cause damage to the State, organizations or citizens and causing loss of or damage to, or distorting, dossiers.

Persons on duty who commit violations of land law shall be dealt with according to Article 96 of Decree No. 43/2014/ND-CP May 15, 2014 of the Government, detailing the implementation of some articles of the Land Law 2013, including:

- Heads of organizations, heads of agencies competent to decide on land management who commit violations of the land law.

- Cadres and civil servants of land administration agencies at all levels and cadastral officers of communes, wards, and townships who commit violations of regulations on the order and procedures in land administration.

All acts of violation of the land law by officials on duty in the field of land shall be handled according to the nature and seriousness of the violations, so that they may be disciplined or examined for criminal liability in accordance with the Criminal Code 2015 (amended and supplemented in 2017). For example: According to Clause 1 Article 229 of the Criminal Code 2015 (amended and supplemented in 2017), any person who abuses his/her position or power to allocate, lease out land or permit transfer of land use right or permit land repurposing against the law in any of the following circumstances shall face a penalty of up to 03 years of community service or imprisonment for 06–36 months.

In order to protect the agricultural land use rights of entities from violations of land law committed by persons on duty in the field of land, the guarantee of the right to lodge complaints, lawsuits, and denunciations of subjects in the land field is particularly important. In general, these are the basic rights of citizens provided in the Constitution 2013 and are provided by separate laws such as the Law on Complaints in 2011, the Law on Administrative Procedure 2015, the Law on Denunciations 2018. The Land Law 2013 continues to stipulate these rights of land users, people with rights and obligations related to the use of land, individuals, which creates a legal basis for them to request the competent state agencies to implement measures to protect their agricultural land use rights. Recent practice has proved that the exercise of the rights to lodge complaints, lawsuits and denunciations is the main basis for the State to handle violations of the land law by officials on duty in the field of land, which is expressed as follows: “From 2012 to 2017, the Ministry of Natural Resources and Environment had welcomed 2,672 citizens visiting and received 20,813 complaints, denunciations and land disputes of 10,162 cases” [28]. Along with that, through this time, the State has also taken the initiative and strengthened the handling of violations of land law by people on duty in the field of land, in order to protect land use rights in general, agricultural land use rights in particular, to fight against corruption and create a healthy environment for the economic development of the country. This has brought about the following results: “In 03 years (2014–2016), the whole sector of natural resources and environment had conducted 6,028 inspections and examinations (including 3,388 inspections and 2,640 examinations) for 4,061 organizations and 580 individuals. As a result, there were administrative violations

of 541 organizations and individuals using land with the total amount of VND 21,657 million; collect arrears and collect money of VND 1,005,485 million to submit to the State's budget from 55 organizations; petition to recover 16,755 ha of land from 250 organizations; withdrawing 228 certificates of land use rights, ownership of houses and other land-attached assets for 18 organizations" [17]. It can be affirmed that these are very good results, contributing to ensure the rights and interests of agricultural land users and this result also shows the efforts of the Vietnamese State in fighting against corruption, creating a healthy investment and business environment [29].

Nevertheless, the handling of violations of the people on duty in the field of land arises mainly from the complaints and the denunciations of the subjects. The State's inspection and examination work have not achieved the desired effect [30].

However, in the context that Vietnam's corruption is still complicated in all economic and social fields [31], the violation of law by law enforcement officials in the field of land in general and agricultural land in particular is inevitable. Therefore, in order to protect the agricultural land use rights of the subjects against the violations of the law enforcement officials, in the coming time, Vietnam needs to step up the inspection of official duties by competent individuals and agencies. At the same time, the most effective solution to prevent law violations committed by law enforcement officials in Vietnam is that the State must strengthen the operation of democratic institutions

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[32], to ensure the wide and positive participation of the people in supervising and criticizing the performance of official duties in order to detect law-breaking acts so as to promptly handle, avoid serious consequences for socio-economic development. .

## 3. CONCLUSION

From all the above, it can be concluded that the Land Law 2013 has provided quite a full set of common rights for holders of agricultural land use rights. In general, this facilitates the subjects to maximize the use and exploitation of the benefits of agricultural land. The achievements of Vietnam's agricultural sector over the past years are the clearest evidence of the positive impact of the Land Law on the common rights of land use rights holders. However, due to the confusion in receiving legal achievements of mankind and having not kept up with the development of economy and society, there are still some limitations. Therefore, the legal provisions on the common rights of agricultural land users need to be amended and supplemented to further promote the development of Vietnam's agricultural sector in the coming time.

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