

# A Study on Land Policy and Land Law in Vietnam after 1945

## 1945년 이후 베트남 토지법 및 토지정책에 관한 연구

Lee, Seong Hwa\* · Trinh Thi Kieu Trang\*\*

### ABSTRACT

In every country, land has always been considered a particularly important resource and property. For Vietnam, a populous country with a relatively narrow cultivated land, the land is even more valuable because property is scarce in the process of building and developing the nation. Therefore, land administration is highly valued by the Vietnamese government and is a big priority. The study of land law and land policy in Vietnam from 1945 to present is a comprehensive view of the changes in land administration policy in Vietnam in each historical period. The study also provides the experiences and lessons learned in the field of land law and land administration in a country that has risen from the ashes of war, has accomplished reunification and has transformed from a centrally-planned economy, a feature of the communist economy, to a socialist-oriented market economy.

Keywords: Land, Land administration, Land policy, Land law, Vietnam

### 1. Introduction

Land policy has played an important role throughout the history of Vietnamese Revolution under the leadership of Vietnam's Communist Party from 1930 to present. The August Revolution in 1945 gave birth to the Democratic Republic of Vietnam (North Vietnam), which was the first democratic state in Southeast Asia, and which also laid the foundation for Vietnam's land administration under the new regime. Across history, from the French colonial victory in northern Vietnam to the

complete liberation of southern Vietnam and reunification of the country, Vietnam's land policy has gone through positive changes, gradually adapting and meeting the demands of land management.

Land management policies prior to 1986 strongly contributed to the dramatic improvement of Vietnam's agricultural sector, which has been transformed from a poor and backward one with long-running famine to one of the leading rice exporters in the world. Following the renovation policy in 1986, the land laws were developed to meet

\* 대구대학교 부동산학과 부교수 Department of Real Estate, Daegu University(First author: land@daegu.ac.kr)

\*\* 대구대학교 부동산학과 박사과정 Department of Real Estate, Daegu University(Corresponding author: trinththiekietrang@gmail.com))

requirements of socioeconomic development, reflecting the change of thinking in land management of the State of Vietnam through each period. Approximately every decade, a new land law was introduced, namely Land Law 1987, Land Law 1993, Land Law 2003, and most recently Land Law 2013, rendering a strong shift in the economy and land management mechanism. However, the situation has also put forth a problem of orienting land law development in the future to meet the socioeconomic development and international integration.

Since new Land Law passed by the National Assembly in 2013, this paper is the first research which evaluates the changes and effectiveness of land policy, land law in Vietnam from 1945 to present. This study focuses on land policies of Vietnamese after 1945, analyzes land administration policy of Vietnam through Land Laws. The revision of the Land Law in 2013 led to an unprecedented level of public participation in land policy formation, yet many recommendations from farmers, civil society, and local authorities were not reflected in the final version passed by the National Assembly. In this paper, we analyze the changes of land administration policies and land laws, rights and interests of land users in Vietnam, legal documents and process of building land policy over time.

The study data was collecting by conducting an in-depth literature review and drawing upon qualitative data collection techniques through interviews with Vietnam General of land administration managers, experts, and professors direct experience in land governance coalition building. Based on available data, we also evaluate

the prospects of policy reforms influencing the central government's desire for stricter land management. In the achievements, inadequacies discussion and conclusion sections, we discuss these challenges and policy issues related to land reform in the context of the reforms already undertaken and emerging trends. This paper provides a background for policy analysis and future orients. The second focus is describing and analyzing, establishing timelines that would show the different stages of the land reform and land policy. Research establishes table summarizing the major changes in the land law policy and legal texts over the course of time. The study of land law and land policy in Vietnam from 1945 to present is a comprehensive view of the changes in land administration policy in Vietnam in each historical period. The study also provides the experiences and lessons learned in the field of land law and land administration in a country that has risen from the ashes of war, has accomplished reunification and has transformed from a centrally-planned economy, a feature of the communist economy, to a socialist-oriented market economy.

## **2. Vietnam land policy and land law from 1945 to present**

### **2.1. Land policy in 1945-1954 period**

2.1.1. Implementing policy of reducing land rent, confiscating land of the French colonialists and their supporters to distribute to poor farmers, and public land redistribution

The political platform of the Indochinese Communist Party in 1930 set out the strategic task of the Vietnamese revolution: "Breaking down the imperialist invasion for national independence and eliminate the feudalism, acquiring land for farmers". The success of August Revolution in 1945 marked a new era of independence for the nation, freedom and happiness for the people. It laid the foundation for the land policy of the People's Democratic Republic. The government of the Democratic Republic of Vietnam issued an edict to abolish citizen taxes and excise taxes, reduced land rent, confiscate land from the French colonialists and their supporters to distribute to poor farmers, and public land redistribute. On October 20, 1945, the Government issued a decree that reduced land rent by 25%. On October 26, 1945, the Government issued a decree on tax reduction of 20%.

In January 1948, the Second Conference of the Central Committee of the Communist Party of Vietnam (CPV) set out the land policies during resistance period. In February 1949, the Government issued a temporary decree granting land to the Vietnamese and distributing the land of French colonialists to poor farmers. On July 14, 1949, the Government issued a decree decreasing the rent by 25% compared to that before August Revolution. In March 1952, the Government issued a temporary regulation on public land use. At that time, the number of public lands distributed to farmers from 3,035 communes in northern Vietnam was 184,871 hectares, accounting for 77% of the public land area.<sup>1)</sup>

### 2.1.2. Implementing land reform

In November 1953, the Fifth Conference of the Central Committee of 2nd national CPV congress approved the Land Platform. On October 4, 1953, Land Reform Law was ratified by the National Assembly of the Democratic Republic of Vietnam. Under this Law, the land is distributed among farmers in accordance with the egalitarian principle.<sup>2)</sup>

## 2.2. Land policy in 1955-1975 period

### 2.2.1. Completing land reform and restoring agricultural economy

In September 1954, the Politburo decided to complete land reform and make the Three-year Economic Recovery Plan (1955-1957). In May 1955, eight policies were enacted by the National Assembly to encourage agricultural production and restore the postwar economy (when the war ended, 14,000 hectares of land were fallow, 200,000 hectares were unirrigated). In August 1955, the eighth conference of the Central Committee of 2nd national CPV congress approved the policy of building pilot agricultural production cooperatives.<sup>3)</sup>

### 2.2.2. Pilot agricultural cooperatives (1955-1957)

In 1955, six agricultural cooperatives were established in Phu Tho, Thai Nguyen and Thanh Hoa provinces. In 1956, 26 agricultural cooperatives were founded. By October 1957, this number had gone up to 42.

### 2.2.3. Socialist transformation of individual economic sector of farmers and the pilot of low-level agricultural cooperatives (1958-1960)

In November 1958, the 14th Conference of the Central Committee of 2nd national CPV congress set out the three-years renovation plan and initially developed the economy in Northern Vietnam (1958-1960): "Promote the socialist revolution for individual economic sectors of farmers, artisans, the socialist reformation of private capitalist economic sector, and at the same time develop State-owned enterprises". "Agricultural cooperative is the main stage in the entire socialist transformation in Northern Vietnam. The goal is basically completing low-level cooperatives, i.e. attracting the majority of individual farmers to the cooperatives".<sup>4)</sup>

### 2.2.4. Building low-level agricultural cooperatives (1960-1975)

The 3rd National CPV Congress (September 1960) laid out the way of building socialism in Northern Vietnam: "For agriculture, the direction is to continue attracting individual farmers to low-level cooperatives, and help them grow step by step to higher levels. To expand the cooperative's scale, the Congress combine the improvement of production relations with the development of production force. The process of agricultural cooperation has been rapid with a high concentration of land, labor and production materials. From low-level cooperatives to high-level cooperatives, the land has been collectivized thoroughly, thereby collective ownership of land

has been established."<sup>5)</sup>

### 2.2.5. Building high-level agricultural cooperatives (1960-1975)

In 1965, the 11th and 12th Conference of the 12th Central Committee of 3rd national CPV congress proposed a resolution to change the ideology, economic organization, and defense, while continuing to build socialism nationwide in the condition of war and to consolidate agricultural cooperatives. The size of the cooperative is continually expanding with the model of inter-village cooperative and whole-commune cooperative. The cooperative is the management, while production is undertaken by the contracting unit with 3 types of contract: fixed output, labor contracting, and fixed costing and distribution. The cooperative model has been adapted to wartime conditions, but the administrative was arbitrary, violating the principle of democracy and inhibiting production. Farmers were still uninterested in land use efficiency, production became stagnant, and their life continuously encountered many difficulties. In September 1966, the form of "contracting households" was to assign land use rights to farmers. However, contrary to general regulations, criticism and suspension were prevalent.

In late 1974, the Secretariat issued Directive No. 208/CT-TU on reorganizing production and improving agricultural management. Resolution 24 adopted by Central Committee of 3rd national CPV congress in September 1975 defined the guidelines "thoroughly eradicating feudalism of the feudal-colonial regime on land" with the orientation: "To

closely combine socialism for agriculture with the building of a large socialist agriculture, on one hand to build state-owned farms... on the other hand to implement agricultural cooperative".<sup>1)</sup> In implementing Resolution 24, by 1978, in the central provinces, 114 agricultural cooperatives were formed with 90% of the land, 80% of the cattle and other production materials. In Tay Nguyen, there were main forms of cooperative groups and production groups. In the South, there were pilot building of cooperatives in Tan Hoi (Tien Giang), O Mon (Hau Giang), Long Thanh (Dong Nai).<sup>6)</sup> The model of agricultural collectivization has reached its peak and has completed division of labor in agricultural cooperatives towards specialization.

### 2.3. Land policy in 1976-1985 period

#### 2.3.1. Completing whole-commune cooperative and large agricultural production organization (1976-1980)

The 4th Congress of CPV in December 1976 decided the direction of the socialism development in the whole country. The policy of building district level, the completion of whole-commune cooperative, and the organization of large-scale agricultural production were further affirmed. Centralized land management, land use on cooperative scale is to be implemented. Cooperatives redistributed land to farmers teams by the principle of convenient farming with large-scale, while avoided dispersing or sharing land fragmentation.

Directive No. 57/CT-TU dated March 14, 1978 was adopted by the Politburo "On firmly grasping

and promoting the improvement of agriculture in Southern Vietnam". After that, the Politburo issued Directive No. 43/CT-TU on November 15, 1978 with guidelines "Eliminating exploitation forms of rural farmers, rural capitalists and the remnants of feudalism, truly realizing the ownership of farmers and promoting the socialist reformation with agriculture in southern provinces".<sup>7)</sup>

#### 2.3.2. Improvements in managing agricultural cooperatives (1981-1985)

On January 13, 1980, the Secretariat of the Central Committee of CPV promulgated Directive No. 100. It set out on "Improving the work of contracting and expanding products contracted to groups and laborers in agricultural cooperatives". The directive states that "agricultural cooperatives must strictly manage and effectively use production materials, firstly land, traction, fertilizers, tools and material facilities of collective ownership", "Organizing the allocation of land to the production team, the group and the workers to implement contracted output, preventing the paddy fields from fragmentation, with the area reasonably allocated to the laborers, it can be stabilized for several years so that cooperative members can concentrate on that area".<sup>8)</sup> Directive 100 gives cooperative members the right to use land in a wider, more practical and cohesive manner than the interests of workers, which marks a significant milestone in agricultural land policy in this period.

On May 3, 1983, the Secretariat of CPV promulgated Directive No. 19 on "Complete land adjustment, promotion of socialist transformation with agriculture

in Southern provinces". On November 29, 1983, the Secretariat of CPV issued Directive 29/CT-TW on promoting forest land allocation, forest construction and agro-forestry business organization. The goal of it is to allocate land and forests to farmers to encourage farmers to plant forests on bare land and bare hills. Farmers are entitled to inherit property on afforestation land and perennial industrial crops.

On January 01, 1984, the Secretariat of CPV promulgated Directive No. 35/CT-TW on "Encouraging and guiding the development of family economy". They stated "On land, permitting farmers to take advantage of all land resources that the cooperative, forestry farm has not used up for production". They added "On taxes, the state does not tax production, business on the family economy, only slaughter and land tax, agricultural land is exempt from agricultural tax". "In circulation, farmers have right to sell their products".<sup>9)</sup>

On January 29, 1985, the Secretariat of CPV promulgated Directive No. 56 on strengthening production relations in rural and mountainous areas, which allowed flexible application of various forms of the cooperative economy from low to high. In mountainous areas, it is not necessary to organize a cooperative but to develop a household economy and establish a state-farmer relationship based on village or village level. In the cooperative, the form of the package shall be applied to cooperative members.

#### **2.4. Land policy from 1986 to present**

The policy of "Doi moi" was decided by the State

of Vietnam in 1986 on the principle of adopting a market economy model managed by the State with five economic stakeholders. The breakthrough of the renovation process was to adjust agricultural land policy based on the policy of allocating agricultural land of agricultural cooperatives to households and individuals for stable and long-term use without collection of land use fees. The first Land Law in 1987 enacted this policy in conjunction with legal conditions guaranteeing the rights of land users. It has boosted Vietnam from food-shortages country to one of the top three rice exporters in the world just after over 3 after this Law enactment.

In continuing to abolish self-sufficiency agriculture to build agricultural commodity production, the second Land Law in 1993 allowed households and individuals to have five rights to exchange, transfer, lease, inherit, mortgage of agricultural land and residential land, and prescribe land price determined by the State. This is considered a very important innovation step in understanding economic and political theory of land, creating the initial step to start the market of land use rights. The Land Law 1993 was focused on agricultural land, not for non-agricultural sector, while only half a year later the Party Central Committee issued a resolution on industrialization and modernization of the country. Authorities at all levels did not have enough tools to regulate the process of shifting the structure of land use from the agricultural sector to non-agricultural sector with very large different land rents.

The Standing Committee of the National Assembly

promulgated two Ordinances on the rights and obligations of domestic and foreign organizations using land (1994). The Government also issued a number of decrees to regulate matters relating to land use change, non- agricultural land use, land prices, land use planning, etc. (1994-1998). The main contents of the Ordinance were on Rights and Obligations of Domestic Organizations to which land is allocated or leased by the State. Many Government Decrees have been legalized in Law on Amendments and Supplements to some Articles of the Land Law promulgated in 1998. The most fundamentally new content of this Law was the extension of the rights of domestic economic organizations to which land is allocated or leased by the State.

By 2001, the Politburo decided to summarize 10 years of implementation of the Land Law and prepared for promulgation of a new Land Law. In November 2003, the National Assembly passed the Land Law with main contents focused on the following issues (1) solving old land reclamation, (2) clearly define the rights and responsibilities of the State, the rights and obligations of land users under the regime of land ownership of the whole people, (3) access to land and land conversion to non-agricultural uses for the implementation of investment projects, (4) non-agricultural land use regime, (5) building a more rational land use planning system, (6) renovating the forms of land allocation, land lease, land recovery, change of land use purposes, expand land use, (7) building a land finance system and land use rights in the real estate market, (8) reform administration procedures, (9) renovating the settlement of disputes, complaints

and denunciations on land. The Government has also issued five Decrees to guide the implementation of the Land Law.

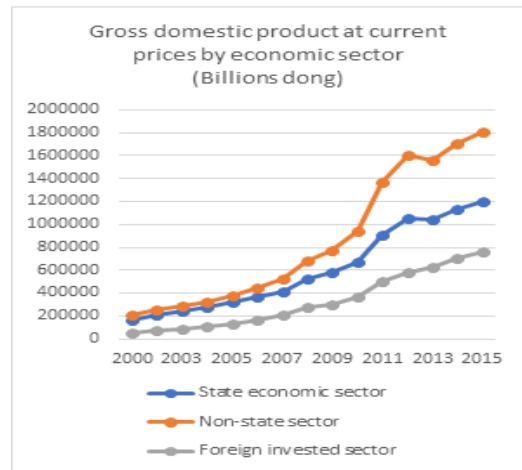


Figure 1. GDP by state economic sector, non-state sector, and foreign direct investment

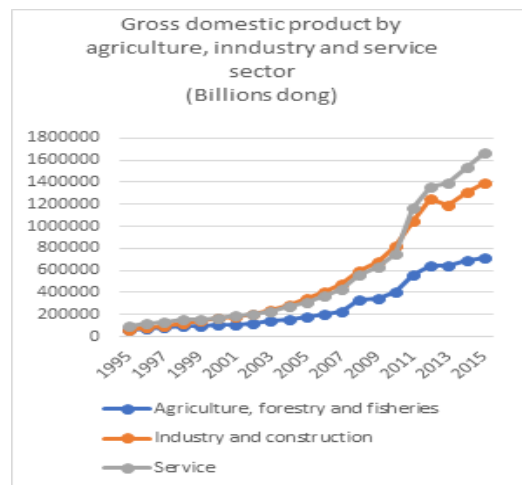


Figure 2: GDP by agriculture, industry and service sector

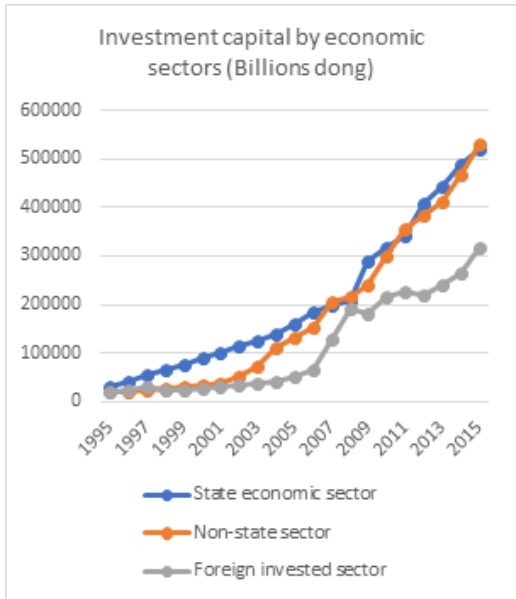


Figure 3: Total investment by economic sectors

*Figure 1: GDP divided by state economic sector, non-state sector and foreign direct investment (FDI) from 2000 to 2015, which has grown strongly in 2003.*

*Figure 2: GDP divided by agriculture, industry and service sector from 1995 to 2015, in which industry and service sector has grown strongly in 2003.*

*Figure 3: Total investment by state economic sector, non-state sector, and FDI from 1995 to 2015, in which non-state sector has grown strongly in 2003 and FDI sector has grown strongly in 2007*

Although the renovation process was slower than the actual demand, the land legislation of Vietnam has contributed positively to the country socioeconomic development. According to statistics, it is possible to graph the gross domestic product (by economic sectors) and the total investment from 1995 to 2015.<sup>10)</sup>

Since the Land Law 2003 was implemented, land management has made much progress compared to before. However, the management and use of land were still weak. The land use planning system has not met the demand of reality, low feasibility. The management of land according to land use planning, plans have not really become an ordinance. Land financial management mechanism was ineffective. Disputes, complaints, and denunciations on land tended to increase. The settlement of complaints and denunciations in land management was not effective. The inspectorate could not handle all the violations of the land law. Land law and relevant legal systems had many overlapping and contradictory points which make the implementation more confusing lacking consistency in many case.

On November 29, 2013, National Assembly passed the Land Law 2013 to overcome these inadequacies. Compared to the Land Law 2003, Land Law 2013 has 14 chapters with 212 articles that increased 7 chapters and 66 articles. Land Law 2013 has continued to inherit the provisions of Land Law 2003, it also amended and supplemented new regulations to remove limitations and inadequacies of the Land Law 2003.

#### 2.4.1. Land law 1987 (1987.01.01-1993.10.1)

Agricultural land used by household and residential land is used according to the allocation norms. The State allocates land to people in need and recovers land from people who no longer need it. Land users are not entitled to participate in the land use rights market. Land users whose land is



recovered by the State shall be allocated other land if they need land to use. The land is not valuable and no prices on the real estate market.<sup>11)</sup>

#### 2.4.2. Land law 1993 and Laws on Amendments and supplements to some articles of the land law 1998, 2001 (1993.01.15-2004.06.31)

##### 1) Land use regime

Agricultural land used by households, individuals with land use terms and allocation norms. Residential land used by households, individuals is indefinite and has area norms for rural residential land but no area norms for urban residential land. Land used by the economic organization in the form of the land leased by the State is land use term and area norm determined in accordance with the investment project.<sup>12)</sup> Residential land or land exchanged for infrastructure by investors is indefinite and allocation norm determined in accordance with the investment project.

##### 2) The State allocates land use right, leases land use right, recovers land

The State allocates agricultural land to households, individuals without land use fee. The State allocates non-agricultural land to economic organizations, households, individuals with land use fee. The State leases land to economic organizations to implement investment projects with two forms of the land lease with full one-off rental payment for the whole lease term or annual rental. The State allocates land with land use fee to domestic economic organizations for implement

investment projects on infrastructure construction, housing building business and land exchange for infrastructure. The state recovers land from the current user to allocate land or lease land to the investment projects.<sup>13)</sup>

##### 3) Rights of land users

Households, individuals shall have the right to exchange, transfer, inherit, lease, mortgage and contribute capital to domestic organizations. Economic organizations allocated land by the State with land use fee or leased land by the State with full one-off rental payment for the whole land lease term or leased land with annual rental, for which the paid duration has remained for at least 5 years shall be entitled to transfer, sublease and mortgage at credit institutions domiciled in Vietnam and to contribute capital. State enterprises are entitled to use leased land to contribute capital to production business with domestic economic organizations and foreign economic organizations. Economic organizations are entitled to receive the transfer, lease and receive a capital contribution in the form of land use rights from economic organizations, households, individuals.

##### 4) Land conversion measure

Implementing only mechanism of land recovery by the State to allocate land or lease land for investors to implement investment projects. All investment projects for profit purposes are covered by the State for allocation land with land use fee or lease land to investors (although investors have received land transfer but stage

agencies consider economic developments are national benefits).

Land users shall be compensated in the form of allocating new land with the same land use purpose with recovered land or shall be compensated in money calculated according to land price stipulated by the State multiplied by the coefficient K, which is more suitable to land price in the market.

### 5) Land finance

The land is valuable. The land price stipulated by the State (usually only about 10%-20% land price on the real estate market). It is adjusted annually according to the coefficient K to be more appropriate to the land price in the market. This land price is applied to calculate all types of financial obligations payable by a land user to the State such as taxes, fees, land use fees and land rental v.v.<sup>14)</sup>

#### 2.4.3. Land law 2003 (2003.07.01-2014.06.31)

##### 1) Land use regime

Agricultural land used by households and individuals with land use terms and allocation norms. Residential land used by households and individuals is indefinite and has area norms for rural residential land but no area norms for urban residential land. Land allocation or lease by the State used by the economic organization shall be a land use terms and area norms determined in accordance with the investment project. Land for investment in housing construction projects used by domestic investors is indefinite and has area norm determined in accordance with the

investment project. The term of allocation to foreigner investors for investment in housing construction projects shall be 70 years, when the term expires if the project has not yet completed is automatically extended, allocation norm is determined according to investment projects.<sup>15)</sup>

##### 2) The State allocates land use right, leases land use right, recovers land

The State allocates agricultural land to households and individuals without land use fee. The State allocates non-agricultural land to economic organizations, households, and individuals with land use fee. The State allocates land with land use fee or leases land with annual land rental payment for domestic economic organizations for implement investment projects and such economic organizations shall be entitled to choose land allocation or land lease.

The State leases land with full one-off rental payment for the entire lease period or with an annual land rental payment to foreign economic organizations for the implement investment project. Foreign economic organizations implement investment projects on housing construction in the form of the land lease with full one-off rental payment for 70 years by the residential land fee, after 70 years if have not yet completed the project, that organization is extended 70 years without additional payment. The State allocates or leases land in the form of direct allocation to investors, auction of land use rights or bidding for projects using the land.<sup>16)</sup>

The State recovers land from the current user to allocate or lease land to the investment projects.

The State recovers land according to the planning (without investment projects) or the land is recovered according to the investment project.

### 3) Rights of land users

Households and individuals shall have the right to exchange, transfer, donate, inherit, lease, mortgage and contribute capital to domestic organizations.

Domestic economic organizations having land allocated land by the State with land use fee payable or foreign economic organizations leased land by the State with full one-off rental payment for the whole lease term shall have their right to transfer, donate for social purpose, lease or sublease in industrial parks, mortgage at credit institutions with domestic legal entities and capital contribution.

Domestic economic organizations have right to receive transferred land use rights, lease and receive contributed capital the land use rights from economic organizations, households, and individuals.

Foreign economic organizations have right to receive transferred land use rights, lease and receive contributed capital the land use right associated with investment projects from domestic economic organizations.<sup>17)</sup>

### 4) Land conversion measure

The State recovers land to allocate or lease land to investors to implement investment projects for the purposes of national benefits, public benefits, national defense, security, economic development projects.

The investors are entitled to receive the transfer of land use rights, lease land use rights, accept the capital contribution in form of land use rights.

Land users shall be compensated in the form of allocating new land with the same land use purpose with recovered land or with the value of land use rights at the time of the recovery decision, shall receive supports in any damage caused when the land is recovered, be resettled where the conditions should be equal or higher than those of recovered residential area.

### 5) Land finance

The land is valuable. Land price stipulated by the State must be close to the actual market price of land use rights transfer in normal conditions. and price stipulated by provincial-level People's Committees published on January every year shall be used as the foundation for determining land use tax, fee and financial obligations for land not allocated, leased by the State, compensation upon land recoveries by the State and equitizing State-owned enterprises.<sup>18)</sup>

Land use fees which the investor must pay to the State upon the land allocation, leasing land, compensation to the person whose land is recovered by the State, value of land use right included in the equitization plan of a State enterprise must be determined in accordance with the actual market price at the time of implementation.

#### 2.4.4. Land law 2013 (2014.07.01 until now)

##### 1) Land use regime

Agricultural land used by households and individuals with land use terms and area norms.

Increase land use term for allocation of agricultural land within the limit for households and individuals from 20 years to 50 years. Allow households and individuals to receive the transfer of agricultural land use rights with an area not exceeding 10 times the agricultural land allocation norm. Encourage the accumulation of land through the mechanism of capital contribution with the value of land use rights, receive transfer of land rental right to facilitate the application of science and technology, mechanization and development of goods production.

The residential land used by households and individuals is indefinite and has area norms. Land used by the economic organization in the form of land allocation or land leased by the State has term and area norm determined in accordance with the investment project. Land for the projects on residential houses for sale or for a combination of sale and rent or for rent-to-own with land use terms and allocation norms determined in accordance with investment projects. At the expiry of the term, if the projects have not yet finished, it shall automatically be extended but shall not exceed the prescribed time.

Public non-financial organizations using the land for construction of non-business works shall be entitled to use the land for a long-term and stable. Public service organizations with financial autonomy, the leased term shall be 50 years.<sup>19)</sup> Additional provisions on land used for the construction of underground facilities must be in accordance with planning for construction of underground facilities, land use planning, plans, and other related planning.

## 2) The State allocates land use right, leases land use right, recovers land

The State allocates agricultural land to households, individuals without land use fee. The State allocates non-agricultural land to economic organizations, households, individuals with land use fee. The State allocates land with land use fee to domestic economic organizations, overseas Vietnamese and foreign-invested enterprises for implement investment projects in construction of residential houses for sale or a combination of sale and lease.

The State leases land with full one-off rental payment for the entire lease period or with an annual land rental to foreign economic organizations for implement investment projects. The term for land allocation, land lease to foreign economic organizations for implementing investment projects in Vietnam is considered, decided on the basis of the investment projects but must not exceed 50 years.

The State recovers land for the purposes of national defense, security, to allocate or lease land to projects for purpose service of socioeconomic development for national, public benefits, due to violations of land legislation. The State recovers land according to land use planning and annual plans or investment projects.

## 3) Rights of land users

Households, individuals shall have their right to exchange, transfer, donate, inherit, lease, mortgage and contribute capital in the form of land use right or in the form of their assets associated with the leased land.

Organizations allocated land by the State without the land use fee are not entitled to exchange, transfer, donate, lease the land use rights, mortgage, contribute capital in form of land use right and not entitled to receive compensation upon land recovery by the State.

Economic organizations allocated land by the State with land use fee, leased land with full one-off rental payment for the entire lease period, economic organizations which receive the transferred land use right, change land use purposes, economic organizations receiving capital contribution in the form of land use rights are entitled to transfer, lease, sublease, donate for common social purposes, mortgage with land use right, land-attached assets under their ownership at credit institutions which are permitted to operate in Vietnam, contribute capital in form of land use right.

Economic organizations, public service delivery units using leased land with annual rental payment are entitled to mortgage, sell or contribute capital in form of their assets associated with the leased land.<sup>20)</sup>

Expand the right to foreign-invested enterprises and overseas Vietnamese in the following directions: Firstly, foreign-invested enterprises shall be entitled to receive the transfer of investment capital in the form of land use right value. Secondly, overseas Vietnamese who are allowed to own residential houses in Vietnam not only receive the transfer of residential land right through the form of purchase, hire purchase, inheritance, donation the house attached to the land use right in accordance with the current regulations, they shall also be entitled to receive residential land use

rights in housing development projects.

#### 4) Land conversion measure

The State recovers lands to allocate or lease land to investors to implement investment projects for the purposes of national benefits, public benefits, national defense, security, economic development projects which are decided by the National Assembly or which are approved by the Prime Minister, investment projects on technical infrastructure for common use, improvement and development of urban and residential areas in the countryside, investment projects of group A, investment projects supported by Official Development Assistance (ODA). Land recovery due to violations of land legislation, due to termination of land use in accordance with provisions of laws, returning land voluntarily.

The investors are entitled to receive the transfer of land use rights, lease land use rights, accept the capital contribution in form of land use rights is encouraged.

Land users shall be compensated in the form of allocating new land with the same land use purpose with the recovered land. If there is no land available for compensation, then the land users receive compensation in money calculated on the specific land price of recovered land. Land users shall receive supports in any damage caused when the land is recovered, support for stabilizing livelihoods and production, support for training, career change and facilitating job searching, support for resettled in case of land recovery from households, individuals.

5) Land finance

The land is valuable. The land valuation must be suitable with the popular market price of transferred land with the same land use. The Government stipulates land price frames once every 05 years for each type of land, for each region. If the popular price in the market increases by 20% or more over the maximum price or

reduces by 20% or more over the minimum price stipulated in land price frames, the Government adjusts land price frames accordingly. The provincial-level People's Committees develops and submits the land price table to the People's Council of the same level once every 05 years and publicized on 01st January of the beginning year of the period.<sup>21)</sup> Land price tables are used as the

Table 1. Summarize new features of land law over time

<b>Before Land law 1987</b>	Land owned by the entire people (Constitution 1980). The State define 7 contents of state management on land (01/07/1980).
1988.01.01-1993.10.14 <b>Land law 1987</b>	The land is valueless and can't be priced in the market The State strictly prohibits the conversion of land in any form. Land users don't have rights to participate in land use right market. The State uses two land management tools are land law and land planning, focus on management of agricultural and forestry land.
1993.10.15-1998.12.31 <b>Land law 1993</b>  1999.01.01-2004.06.31 <b>Laws on Amendments and supplements to some articles of the land law 1998, 2001</b>	Land is property of the whole people. The State shall perform uniform management on land according to the planning and laws (Constitution 1992)  The State allocates agricultural land to households and individuals for stable and long-term use The land is valuable and the land price will be stipulated by the State (regularly equals to 10-20% of the land price in the market) Land users have rights on exchange, transfer, inheritance, lease, and mortgage.
2004.07.01-2014.06.31 <b>Land law 2003</b>  Land users have rights on exchange, transfer, donation, inheritance, lease, sublease, mortgage, guarantee, and contribute as capital	The State uses four land management tools: legal, financial, planning and administration with 13 contents of State management on land. The land is valuable and the land prices which is regulated by the State must ensure its compatibility with the land price in the market, issued the land price table annually. Foreign economic organizations are leased land within 70 years
2014.07.01 Nowadays <b>Land law 2013</b>	The State uses four land management tools with 15 contents of State management on land. The land is valuable. The land price frames and land price tables are stipulated once every 5 years. Specific land prices are evaluated close to the market prices. Foreign economic organizations allocated land, leased land for implement investment projects within 50 years. The rights of foreign-invested enterprises and overseas Vietnamese are expanded.

basis for determination of land use fee when the State recognizes land use right, approves the change of land use purpose within land use norm, individuals, determination of land use taxes, determination of changes and fees in land management, use, penalties for administrative violations. The province-level People's Committee determines the specific land price. Specific land prices are used as basis for determination of land use fee and approves change of land use purpose for the land area in the excess of land use norm, determination of land use fee when the State allocates land, leases land through auction of land use rights, determination of compensation amount upon land recovery by the State

### **3. Achievements and inadequacies in land policy**

#### **3.1. Achievements**

##### **3.1.1. Land administration legal system**

Vietnam is gradually improving the legal system on land and relevant laws. Land use rights became commodities. The Government continues to expand democracy, creates a mechanism for the accountability of management agencies and managers. Land administration system creates mechanisms for people to participate in the State management activities so that organizations and individuals can implement their supervises.

In general, the efficiency of state management on land has been improved significantly. The system of legal documents is issued quite sufficiently. Foreign investors are gradually

expanding their opportunities to access land. The inadequacy of compensation and support when the State recovers land is gradually overcome. The inspection and examination of the implementation of Land Law have been carried out regularly that promptly detecting and handling violations in land management and land use. The formulation, approval, and implementation of land use planning, plans of all levels have gradually become routine. The Land Law of 2013 has achieved remarkable achievements with many positive new features.

##### **3.1.2. Land use efficiency**

By 2015, over 90.25% of the natural area of the whole country shall be exploited and put into use and allocated for socioeconomic development, security, and national defense purposes. 40.8 million certificates issued with a total area of 22.7 million hectares, reaching 93.8%. In 2017, 96% of the area is certified. The total area of land allocated and leased by the State is 24,996,000 hectares, of which households and individuals are using 14,878,000 hectares (59.52%), domestic organizations use 9,735,000 ha (38.95%), foreign organizations and individuals lease to use 56,000 ha (0.22%), 325,000 hectares (1.30%) of the population. The land for agricultural production shall be appropriately arranged on the principle of protecting the land fund for the cultivation of rice, forming specialized cultivation zones suited to the potentials and strengths of each region. The increase in aquaculture land contributes to the increase in aquaculture production, sufficiently supplying raw materials for the processing industry. Vietnam became a major exporter of

seafood in the world. Forest land has increased continuously in the last 10 years, increasing the forest coverage from 35.2% in 2000 to 39.5% in 2010 and 41% in 2015.<sup>22)</sup>

Land fund for industrial development, service, infrastructure construction, urban residential development is expanded. The area of industrial parks and industrial clusters is nearly 100 thousand hectares in the 2006-2010 period, an average increase of 9.4 thousand hectares per year.<sup>23)</sup> The unused land area of the whole country shall be gradually exploited put into afforestation in a rational manner, ensuring ecological balance and environmental protection.

### 3.2. Inadequacies in land law policy

In addition to the achievements, the number of issues relating to land policy and the land law is still inadequate. According to a World Bank survey in 2010, over 63 provincial people's committees, 3 ministries, 24 District People's Committees and 117 commune People's Committees, Land Law 2003 and other legal documents had quite a lot of content done at a very low rate.<sup>24)</sup> Completing the basic issuance of land use right certificates after many extensions has not been completed yet. According to the social survey conducted by the Government Inspectorate and the World Bank on November 20, 2012, speculation land was over the limit, corruption in land management was assessed in the first group, complaints and denunciations related to land accounted up to 70-80% of the total number of complaints, denunciations of citizens.<sup>11)</sup> From analyzing the

implementation of land policies and land laws, the following inadequacies can be clearly seen.

#### 3.2.1. The speedy amendments, supplements of Land law create complexity to deployment

Over the past few years, almost all localities have suggested that the progress of land policy and legislation reform in Vietnam is quite fast, showing a very dynamic spirit, wrong accepting and correcting the wrong things, but this situation has caused many difficulties in law enforcement in the local. All levels have to change the law building way, have to start with theoretical political economy and practical needs analysis combined with experience deployed abroad, from which the legislative framework and the policy formulation are implemented.

#### 3.2.2. Inadequacies in land use planning

Up to now, the land use planning and plans system of the whole country and the provincial level has been quite stable, but at the district and commune level only 70% - 80% of the plans have been approved on time. The quality of land use planning was not high, was not synchronized with the specialized planning. Connectivity inter-regional, inter-provincial and management planning is weak. Many decisions on land use planning and plans are not feasible. The methodology of land use planning remains unreasonable, must to consider to land use space, integrated land use and environmental interaction in land use planning.



### 3.2.3. Inadequate policies on land allocation, land lease, land recovery in the process of international economic integration

The land use structure conversion in the industrialization and modernization period is an indispensable requirement. Land Law provides a mechanism to create land for an investment project by the State to recover land or the investor negotiates with the current land user. The mechanisms of allocation land and lease land for investment projects are land auction, project bidding using land and direct allocation land. In most of the cases, the State recovers land from land users for direct allocate to Investors. Limiting the application of this mechanism would be limiting corruption.

### 3.2.4. Inadequate in the system of rights and obligations of investors in the direction of international economic integration

At present, domestic investors and foreign investors have different rights and obligations for land. Creating equality among investors is an urgent need, not only to comply with WTO rules but also to solve the problem of land in the market relationship between investors. The renewal of this mechanism is of particular importance in order to develop the market towards real integration with the international economy.

### 3.2.5. The lack of completeness of the land price management system

According to the Land Law 2013, land prices are

determined to be suitable for the market price, but it has not created the basis for land valuation in line with the market. Tax policies have not yet properly implemented the role of regulating the real estate market. The non-agricultural land use tax is very low. The use of land in many places is wasteful, low efficiency. The provisions of the land law do not ensure the harmonious settlement of benefits between the State, land users and investors.

### 3.2.6. Pressing in the implementation of compensation, support, and re-settlement when the State recovers land

Compensation claims currently account for 90% of the total claims, which tend to increase more. Compensation should be fully charged for any damage suffered by land recovery, including damage calculated in cash, damage not counted in money, immediate damage and long-term damage. The benefits of the project must be linked to the benefits of land users whose land is recovered.

### 3.2.7. Land ownership issue

The Constitution recognizes land belongs to the entire people, granting some of the land use rights to land users. The constitution of most other countries recognizes limited private ownership of land in which landowners are not required to implement all the right to dispose of land. The issue of land ownership is only a term and defines the term. Thus, the problem of land tenure in our country can remain without any obstacle in economic development. However, this term should

be redefined in line with the legal practice of most other countries to facilitate the integration process.

#### 4. Conclusion

As every country, in Vietnam, land is a particularly important resource and property. Land administration is highly valued by the Vietnamese government and has been realized very early. The process of building and improving land policies, land laws in Vietnam has been initiated since the 1980s and lasted until now. The study of land policy and land law in Vietnam from 1945 to present analyzed changes in land administration policy in Vietnam in each historical period. In order to gradually improve the efficiency of land management in the new period, Vietnam government should consider to implement of specific solutions:

Firstly, continues to complete legal system, land policy and land law. At the same time the Sate agencies should intensify the inspection, examination, and supervision.

Secondly, four land management tools (law, planning, finance and administration) should be used simultaneously in land administration. Land administraion agencies continuously intensify the application of economic measures (taxes, fees, and other financial mechanisms, etc.).

Thirdly, the land administration agencies have to renovate the planning, have to improve the quality of land use planning, plans in the direction of advanced approaches. Economy, society and environmental protection are must be concerned.

Advance and modern technologies should be use to survey and evaluate the quantity of land, land inventory, land price mapping, monitoring of land resources. The State must to complete the land information system as soon as to serving multi-management purposes.

Fourthly, land valuation system should be strongly improved. Land price is suitable with reality, which shall serve as a basis for calculating taxes, fees, rents, and damages.

Fifthly, the State has to continues to completing the policy and law, ensuring the harmony of interests of the State, land users and investors.

Sixthly, the regulations should be continuously completed and fully implement the mechanism of gathering comments from the people on the formulation and adjustment land use planning, plans.

Seventhly, the effective land administrative system would be ensured good performance of state management and land-related public services for the people and enterprises. Improvement the dispute settlement mechanism and complaints about land will able to solve land-related complaints and disputes prolonged period.

---

주1. Nguyen Dinh Bong. 2012. Land administration in Vietnam (1945-2010). Hanoi. National Political Publisher, p.35-49.

주2. The National Assembly of the Democratic Republic of Vietnam. 1953. Land Reform Law of 1953. [Internet]. [[http://moj.gov.vn/vbpcq/lists/vn%20bn%20php%20ut/view\\_detail.aspx?itemid=1106](http://moj.gov.vn/vbpcq/lists/vn%20bn%20php%20ut/view_detail.aspx?itemid=1106)]. Last accessed 3 October 2017.

주3. Nguyen Dinh Bong, Le Thanh Khuyen. 2010. Land administration in Vietnam in 1945-2010. Scientific reports, 65 years of land administration in Vietnam

- (1945-2010), Ministry of Natural Resources and Environment of the Socialist Republic of Vietnam, General Department of Land Administration. Hanoi. p.37-45.
- 주4. The Government of the Socialist Republic of Vietnam. Achievement policy content in 1955-1975 period. [Internet]. [<http://www.chinhphu.vn/portal/page/portal/chinhphu/noidungchinhsachthanhtuu?categoryId=797&articleId=10001575>]. Last accessed 3 October 2017
- 주5. Nguyen Dinh Bong. 2012. Land administration in Vietnam (1945-2010). Hanoi. National Political Publisher, p.58-70.
- 주6. The Government of the Socialist Republic of Vietnam. Achievement policy content in 1955-1975 period. [Internet]. [<http://www.chinhphu.vn/portal/page/portal/chinhphu/noidungchinhsachthanhtuu?categoryId=797&articleId=10001576>]. Last accessed 3 October 2017.
- 주7. The Communist Party of Vietnam. 1976. The 4thCongressofCommunistPartyofVietnam.[Internet]. [<http://dangcongsan.vn/tu-lieu-van-kien/tu-lieu-ve-dang/dai-hoi-dang/lan-thu-iv/doc-392620158394946.html>].Lastaccessed04October2017.
- 주8. The Committee Communist Party of Vietnam. 1980. Directive No. 100 on "Improving the work of contracting and expanding products contracting to groups and laborers in agricultural cooperatives". [Internet]. [<https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Chi-thi-100-CT-TW-1981-Cai-tien-cong-tac-khoan-mo-rong-san-pham-den-nhom-la-o-dong-hop-tac-xa-nong-nghiep-247358.aspx>]. Last accessed 4 October 2017.
- 주9. The Secretariat of the Communist Party of Vietnam. 2006.
- 주10. General Statistics Office. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. Statistics Yearbook of Vietnam. Statistics Publishing House.
- 주11. The National Assembly of the Socialist Republic of Vietnam. 1987. Land Law. [Internet]. [[http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=2568](http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=2568)]. Last accessed 4 October 2017.
- 주12. The National Assembly of the Socialist Republic of Vietnam. 1993. Land Law. [Internet]. [[http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=10810](http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10810)]. Last accessed 4 October 2017.
- 주13. The National Assembly of the Socialist Republic of Vietnam. 1998. Laws on Amendments and supplements to some articles of the land law. [Internet]. [[http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=7351](http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=7351)]. Last accessed 4 October 2017.
- 주14. The National Assembly of the Socialist Republic of Vietnam. 2001. Laws on Amendments and supplements to some articles of the land law. [Internet]. [[http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=23312](http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=23312)]. Last accessed 4 October 2017. Last accessed 4 October 2017.
- 주15. The National Assembly of The Socialist Republic of Vietnam. 2004. Land Law. Hanoi. National Political Publisher. p. 150-239
- 주16. The National Assembly of The Socialist Republic of Vietnam. 2004. Land Law. Hanoi. National Political Publisher. p. 79-109
- 주17. The National Assembly of The Socialist Republic of Vietnam. 2004. Land Law. Hanoi. National Political Publisher. p. 240-279
- 주18. The National Assembly of The Socialist Republic of Vietnam. 2004. Land Law. Hanoi. National Political Publisher. p. 133-147
- 주19. The National Assembly of The Socialist Republic of Vietnam. 2014. Land Law. Hanoi. Finance Publishing House. p.255-338
- 주20. The National Assembly of The Socialist Republic of Vietnam. 2014. Land Law. Hanoi. Finance Publishing House. p.339-400
- 주21. The National Assembly of The Socialist Republic of Vietnam. 2014. Land Law. Hanoi. Finance Publishing House. p. 225-250
- 주22. Land survey and planning center, Ministry of Natural Resources and Environment. 2005. Renovation of the land management system to form the real estate market in Vietnam. The State level independent project.
- 주23. General Department of Land Administration, Land Administration Research Institute. 2000. The Scientific basis for policy-making and rational use of land funds. The State level independent project.
- 주24. Dang Hung Vo. 2010. Developing the land law to meet the needs of international integration. Scientific reports, 65 years of land administration in Vietnam (1945-2010), Ministry of Natural Resources and Environment of the Socialist Republic of Vietnam, General Department of Land Administration. Hanoi. p.46-57

## 참고문헌

## References

- Dang Hung Vo. 2010. Developing the land law to meet the needs of international integration. Scientific reports, 65 years of land administration*

- in Vietnam (1945-2010), Ministry of Natural Resources and Environment of the Socialist Republic of Vietnam, General Department of Land Administration. Hanoi. p.46-57.
- General Department of Land Administration, Land Administration Research Institute. 2000. *The Scientific basis for policy-making and rational use of land funds*. The State level independent project.
- General Statistics Office. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. *Statistics Yearbook of Vietnam*. Statistics Publishing House.
- Land survey and planning center, Ministry of Natural Resources and Environment. 2005. *Renovation of the land management system to form the real estate market in Vietnam*. The State level independent project.
- Nguyen Dinh Bong, Le Thanh Khuyen. 2010. *Land administration in Vietnam in 1945-2010*. Scientific reports, 65 years of land administration in Vietnam (1945-2010), Ministry of Natural Resources and Environment of the Socialist Republic of Vietnam, General Department of Land Administration. Hanoi. p.37-45.
- Nguyen Dinh Bong. 2012. Land administration in Vietnam (1945-2010). Hanoi. National Political Publisher.
- The Committee Communist Party of Vietnam. 1980. Directive No. 100 on "Improving the work of contracting and expanding products contracting to groups and laborers in agricultural cooperatives". [Internet]. [https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Chi-thi-100-CT-TW-1981-Cai-tien-cong-tac-khoan-mo-rong-san-pham-den-nhom-lao-dong-hop-tac-xa-nong-nghiep-247358.aspx]. Last accessed 4 October 2017.
- The Communist Party of Vietnam. 1976. The 4th Congress of Communist Party of Vietnam. [Internet]. [http://dangcongsan.vn/tu-lieu-van-kien/tu-lieu-ve-dang/dai-hoi-dang/lan-thu-iv/doc-392620158394946.html]. Last accessed 04 October 2017.
- The Government of the Socialist Republic of Vietnam. Achievement policy content in 1955-1975 period. [Internet]. [http://www.chinhphu.vn/portal/page/portal/chinhphu/noidungchinh sach/thanhtuu?categoryId=797&articleId=10001575]. Last accessed 3 October 2017.
- The Government of the Socialist Republic of Vietnam. Achievement policy content in 1955-1975 period. [Internet]. [http://www.chinhphu.vn/portal/page/portal/chinhphu/noidungchinh sach/thanhtuu?categoryId=797&articleId=10001576]. Last accessed 3 October 2017.
- The National Assembly of the Democratic Republic of Vietnam. 1953. Land Reform Law of 1953. [Internet]. [http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\_detail.aspx?itemid=1106]. Last accessed 3 October 2017.
- The National Assembly of the Socialist Republic of Vietnam. 1987. Land Law. [Internet]. [http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\_detail.aspx?itemid=2568]. Last accessed 4 October 2017.
- The National Assembly of the Socialist Republic of Vietnam 1993. Land Law. [Internet]. [http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/vi

ew\_detail.aspx?itemid=10810]. Last accessed 4 October 2017.

The National Assembly of the Socialist Republic of Vietnam. 1998. Laws on Amendments and supplements to some articles of the land law. [Internet]. [http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\_detail.aspx?itemid=7351]. Last accessed 4 October 2017.

The National Assembly of the Socialist Republic of Vietnam. 2001. Laws on Amendments and supplements to some articles of the land law. [Internet]. [http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\_detail.aspx?itemid=23312]. Last accessed 4 October 2017.

The National Assembly of The Socialist Republic of Vietnam. 2004. Land Law. Hanoi. National Political Publisher.

The National Assembly of The Socialist Republic of Vietnam. 2014. Land Law. Hanoi. Finance Publishing House.

The Secretariat of the Communist Party of Vietnam. 2006.

---

2017년 10월 10일 원고접수(Received)

2017년 11월 21일 1차심사(1st Reviewed)

2017년 12월 5일 2차심사(2nd Reviewed)

2017년 12월 8일 게재확정(Accepted)

---

## 초 록

각국에서 토지는 항상 중요한 자원과 재원으로 간주되어 왔다. 베트남의 경우와 같이 상대적으로 인구는 많고 경작지가 협소한 나라에서 토지는 건설과 개발과정에서 토지의 부족으로 더욱 가치가 높아진다. 따라서 베트남 정부에서는 토지행정을 가장 우선순위에 두고 이유를 확인할 수 있었다.

1945년부터 현재에 이르기까지 베트남의 토지법과 토지정책 연구에 대한 각 역사적 시기별 토지 관리 정책의 변화를 확인할 수 있었으며, 본 연구에서 베트남이 통일을 이루면서 전쟁의 재해에서 나타난 국가의 토지법과 토지행정분야에서 얻은 교훈과 경험을 검토하였으며, 베트남이 통일을 이룩하는 과정에서 공산주의의 특징인 중앙 계획경제에서 사회주의 중심의 시장경제의 도입에 따른 토지법과 토지행정분야의 변화를 통해 중앙계획경제에서 탈피한 경험을 확인하였다.

---

주요어 : 토지, 토지관리, 토지정책, 토지법, 베트남