

# LAND PRICE DETERMINATION IN VIETNAM: THE SITUATION AND RECOMMENDATIONS

Phan Trung Hien,  
Dr. Chau Hoang Than \*

## I. INTRODUCTION TO LAND PRICE, LAND PRICE DETERMINATION, AND FACTORS AFFECTING LAND PRICE DETERMINATION

Land is an excellent means of production. It is a decisive factor in the development of industries and agriculture.<sup>1</sup> The economic value of land is quantified using land price.

### A. Land Price

Land prices have the following essential characteristics. First, land price is the amount of money paid for a particular commodity or service.

---

\* As. Prof. Phan Trung Hien, Can Tho University, Vietnam; Dr. Chau Hoang Than, Can Tho University, Vietnam.

<sup>1</sup> HERNANDO DESOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (2000) at 88.

Land price is the market price for a means of production, which affects the cost of goods or the production process of social materials and fortunes. This is expressed by land price fluctuations on the market and economic management. It also is the leading cause of financial crises, both regional and global.

Second, land prices are formed and influenced by the natural factors of the land plot and surrounding elements. Studies show this on factors creating and affecting land prices such as area, floor-area ratio, the shape of the land plot, contiguous road surface, buyers, land use planning, the decision on construction conditions, and construction permits.<sup>2</sup> The unique characteristics of each land plot make the difference in land prices even though the land plots are in the same area and are affected by the same factors. The natural characteristics of the land plot are difficult to change, so land price fluctuations are

---

<sup>2</sup> Michal Gluszak & Robert Zygmunt, *Development Density, Administrative Decisions, and Land Value: An Empirical Investigation*, 70 LAND USE POL'Y 153 (2017).

often influenced by surrounding elements such as economic management policies, markets, legal factors, social psychology, and environments.

Third, land prices tend to increase, which is a phenomenon that is difficult to reverse. Because the total supply of land is limited, the supply curve is less volatile while the socio-economic development and population growth increase the demand for land. Therefore, land prices always tend to grow, even creating a sudden surge in land prices in a short time. This phenomenon frequently happens in developing countries, where the real estate market is one principal investment channel. For example, in Vietnam in the first quarter of 2021, land prices in many places increased by two to three times over the same period in 2020; the average price in localities increased by about five percent to 10% compared to the fourth quarter of 2020.<sup>3</sup> The State must consider the appreciating characteristics of land prices when

---

<sup>3</sup> Nguyễn Mạnh, *Revealing a Series of Shocking Places Due to Double Increase in Land Price*, Dan Tri (Sep. 5, 2021), <https://dantri.com.vn/bat-dong-san/tiet-lo-loat-noi-gay-choang-vang-vi-gia-dat-tang-gap-doi-20210509091600437.htm>.

determining land prices. They must fully comply with market laws such as the law of supply and demand, value, and competition.

## B. Land Price Determination

The State's role in intervening and regulating land prices and its competence to determine land prices are fundamental. Land price determination is an activity of a State administrative agency tasked with setting a specific land price for each land plot/land area or each location or a particular type of land based on the market forces through a legal process. Meanwhile, the State intervention and regulation of land prices in other countries is mainly indirect through economic measures, state management measures, and the influence of land prices movement on the market. However, studies of State intervention have shown that governmental control of land prices in the market has not been entirely satisfactory. Typically, some research has demonstrated that the State regulates market land prices mainly through supply, demand, and cost.

Land price regulation through land supply decisions are presented in some studies. The outstanding experience of dealing with land price fluctuations in Japan in the 1980s is the subject of some studies.<sup>4</sup> A study in Japan outlined solutions that the Japanese State has deployed to overcome and prevent land price fluctuations. These include tax policy, monitoring, handling real estate freezing, the monetary policy with the Bank, information disclosure, agricultural land conversion, and urban development planning. In addition, there are published studies related to the Government's right to land price determination.<sup>5</sup>

### C. Factors Affecting Land Price Determination

The studies above show that the State is the most appropriate intermediary to execute land price determination to harmonize the relationship between

---

<sup>4</sup> Stephen J. Sussna, *An Analysis of Japanese Land—Use Regulation and Land Price Problems*, 25 THE URBAN L. 309 (1993).

<sup>5</sup> Ling Hin Li & Anthon Walker, *Benchmark Pricing Behavior of Land in China's Reforms*, 13 J. P. RES. 183 (1996).

the State administration in the public interest and the market nature of land prices in the exploitation process of land resources. The following are factors affecting land price.

1. First, Land Ownership Is the Foundation That Governs the State's Land Price Determination Right.

Land cannot be treated as a common commodity. Private land ownership can be a significant impediment to the planning and implementation of development programs. Therefore, State administration in land use is inevitable.<sup>6</sup> The practice of land administration in different countries has proven that despite the differences in socio-political regimes and land ownership, the role of State administration is critical. If the State owns the land, then the State has more say in land management and land price determination. However, in the countries where land is privately owned, the State's role is to

---

<sup>6</sup> Dinh T., *Private Ownership of Land or Land Use Rights: International Experience and Some Connections to Vietnam*, 7 REV. FIN. 49 (2002).

recognize the actual land price as determined by market forces. In contracts, in the countries where land is publicly owned and belongs to the people, the State tends to be a significant power in deciding land prices. For example, Article 53 of the Constitution of Vietnam 2013 stipulates: Land is owned by the people and is administered by the State on behalf of the owner and unified administration. This regulation affirms that the State executes the rights of landowners, basically the right to decide the value of the property owned. That is the right to determine the land price. However, it is difficult to ensure the State's extent of intervention and control in determining land prices based on market forces and property. At some point, the stringent state management could break the nature of the land price market.

2. Second, The Purpose of Exploiting Profits from Land Affects the State's Land Price Determination Right.

The direct profit from land brought to the state budget is tax revenue from the land. Early land tax

theorists developed the concept of land tax. Two essential factors that the State determines in collecting taxes related to land are the tax rate and the taxable land unit price in each type of tax. When tax rates aim to ensure fairness and market stability, the differences in land prices determined by the State will strongly affect tax revenue from land.<sup>7</sup> Profits from public investment in land can be increased by exploiting public land's importance and mobilizing finance from land transactions. The earnings from using public land and the revenues from land transactions depend on the land price determined by the State. Thus, the State's strategies in exploiting land profits will directly affect the State's land price determination right.

### 3. Third, Sustainable Development and Social Justice Goals Govern the State's Land Price Determination Right.

---

<sup>7</sup> George E. Peterson, *Unlocking Land Value to Finance Urban Infrastructure*, The World Bank (2008), <https://openknowledge.worldbank.org/handle/10986/6552>.

Because of the importance of land, land prices directly affect the interests of land users and people who need to access land, including vulnerable groups that need to be protected. If land prices are determined according to the market price of land, the poor will face many difficulties accessing land and fulfilling financial obligations related to land ownership. Therefore, the interests of the disadvantaged group in society and community service goals will directly affect the State's land price determination right. In addition, land price decisions influence the implementation of the purposes of the United Nations Sustainable Development Program,<sup>8</sup> specifically to eliminate poverty, end hunger, achieve food security, improve nutrition, and promote sustainable agriculture. Depending on each case and subject, the State flexibly decides the land price in the hope of creating equity, accommodation conditions, and land accessibility for cultivation and production. Therefore, the State determines the land

---

<sup>8</sup> United Nations, *Envision 2030: 17 Goals to Transform the World for Persons with Disabilities* (2015), <https://www.un.org/development/desa/disabilities/envision2030.html>.

price not merely as an intermediary to reflect the land price in the market. It must be a compromise between related interest groups and the market foundation of land prices to optimize land resources for sustainable development.

## II. THEORIES TO IMPLEMENT IN LAND PRICE DETERMINATION

### A. Balancing Interest in Land Price Determination

Land price is the fundamental factor determining the economic benefits of the land. Therefore, land price determination needs to adequately address the question: who benefits from that land price determination? With the popularity and widespread adoption of land prices in land management and land use, the problem of balancing the benefits of the result of land price determination is the essential requirement to eliminate the conflicts and disagreements when the State determines land prices. The issue of interest in land price determination is approached based on the following ideologies: 1)

private ownership; 2) public (or collective) interests; and 3) keeping the balance between private ownership and public interests.<sup>9</sup> Private ownership recognizes a natural and absolute right as John Locke claimed: “The great and chief end, therefore, of men uniting into Commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature many things are wanting.”<sup>10</sup> In addition, Sir William Blackstone saw the right to property as a natural right: “So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community.”<sup>11</sup> Thus, based on the basic theory of private interests, land prices must prioritize the benefits of landowners (land users), which most obviously is the economic benefits of landowners (land users).

---

<sup>9</sup> Hien Trung Phan, *THE LAW OF COMPULSORY ACQUISITION OF LAND—PUBLIC & PRIVATE INTERESTS* (2009) at 21.

<sup>10</sup> John Locke, *THE SECOND TREATISE ON GOVERNMENT* (1986) at 70.

<sup>11</sup> William Blackstone, “Commentaries on the Laws of England,” *THE RIGHT OF PERSONS* (1765) at 135.

People's sufferings originate from establishing private ownership of land and property. In addition, the community's interest is one of the most general expressions that can occur in the phraseology of morals: no wonder that its meaning is often lost. The community is a representative body composed of the persons considered its members. "Then what is the interest of the community?...The sum of the interests of the several members who compose it."<sup>12</sup> Although Karl Marx and Jeremy Bentham express different perspectives, one could see their view: public interests are indispensable in a communist society. Thus, following the philosophy of shared interests, determining land prices must ensure the benefits of landowners (land users) and the public interest, mainly as the land exists naturally, not created by the people. Hence, it must serve the mutual benefits of all people.

It is meaningless if the personal interests can harm the public interest and vice versa; it is senseless

---

<sup>12</sup> Jeremy Bentham, AN INTRODUCTION TO THE PRINCIPLE OF MORALS AND LEGISLATION (1948) at 3.

if the public good can negatively affect the welfare of landowners (land users) in the determination of land price. Therefore, the decision on land prices must balance private and public interests. This secures democracy, creates consensus in society, and avoids conflict of interest. Specifically, in the context of land price determination, the interest groups need to be balanced according to private and public interest theory.

### 1.Socio-economic Benefits

The State needs to ensure the optimal promotion of the economic value of the land without affecting aspects of social life. Therefore, contained in the land price is not merely the economic value of the land. It should not cause a profound divide between the rich and the poor; affect the right to access land, especially for marginalized groups to prevent environmental degradation.

## 2. Interests between Opposing Groups

The State's rights on land prices determination directly affect the interests of three primary groups of entities: 1) The State—directly affecting state budget revenues; 2) Landowner (land user)—affecting the ability to fulfill financial obligations during land use and affecting the value of the land to be compensated when the State recovers the land; and 3) Investors—involving the land rates that investors have to pay for being allocated the land use rights. When the land price is determined, two opposing groups' interests often arise but will partly affect the third group. For example, if the State decides the land price for compensation calculation when the State recovers the land, the interests of the State and the people whose land is recovered need to be secured. However, that land price will affect the later stage, determined when the State allocates/ leases the land area after land recovery to the new investor. Therefore, in the overall context of determining land price, the State needs to consider

harmonizing the interests of the State-Landowner (land user)-Investor.

### 3. Current Benefits and Future Benefits

During land prices determination, the current financial income gained from the land plot/area and the future strategic goals need to be considered. In addition, because land value tends to appreciate continuously and is hard to depreciate, the land price determination must effectively quantify and modify the added value in the future.

Applying the theory of balancing the interests in determining the land price to guarantee consensus eliminates conflicts and contradictions when the State decides on land price to ensure the optimal promotion of land resources parallel with the sustainable development goals. As the inherent nature of land prices influences the decision on the interest of stakeholders, balancing interest is an indispensable requirement for land price determination.

## B. Good Governance in Land Price Determination

The State is a stakeholder in the issues of benefits of land price. It needs a rigorous and scientific process to help it maintain a fair and independent role in harmonizing interest groups in land price-determination. So, why should good governance theory be applied in land price determination? This can be explained by the role and development trend of good governance in land management innovation. It is necessary to use the “good governance” theory, considered the best method to balance interests in land price decisions.

“Good governance is fundamental to achieving the benefits of protecting property rights and developing efficient and effective land and property markets.”<sup>13</sup> The relationship between good

---

<sup>13</sup> Keith C. Bell, “Good Governance in Land Administration,” Plenary Session III—Responding to the Global Agenda—Policies and Technical Aspects, Hong Kong, China SAR, May 13-17, 2007, [https://www.fig.net/resources/proceedings/fig\\_proceedings/fig2007/papers/ps\\_03/ps03\\_01\\_bell\\_2219.pdf](https://www.fig.net/resources/proceedings/fig_proceedings/fig2007/papers/ps_03/ps03_01_bell_2219.pdf).

governance and land administration to improve the land administration system requires accountability and performance indicators of administration activities.<sup>14</sup> Also, practical studies in some countries showed that: “in many countries, land administration systems have failed due to poor management and lack of good governance.”<sup>15</sup>

Therefore, it is necessary and appropriate to study and apply the “good governance” theory to ensure the balance of interests and effectiveness in determining land prices of the State. There are different opinions on the concept of good governance. According to the Office of the High Commissioner of United Nations Human Rights, the term “good governance” is used to address the following issues such as

---

<sup>14</sup> Ian Williamson & Don Grant, *The Evolving Role of Land Administration in Support of Sustainable Development: A Review of the United Nations–International Federation of Surveyors Bathurst Declaration for Sustainable Development*, 44 AUSTRALIAN SURV., 126 (1999).

<sup>15</sup> Mahashe Chaka, Ntseb Putsoa, and Mankuebe Mohafa, “Good Land Governance Is Essential to Effective Administration of Land,” 2018 World Bank Conference on Land and Poverty (2018) at 6.

full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes, and institutions, efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, attitudes and values that foster responsibility, solidarity, and tolerance.<sup>16</sup>

Meanwhile, The United Nations Development Program states:

Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.<sup>17</sup>

World Bank considered: “Good Governance has eight major characteristics. It is participatory,

---

<sup>16</sup> UN Commission on Human Rights, Resolution 2000/64 (2000).

<sup>17</sup> United Nations Development Program (UNDP) Report Governance for Sustainable Development (1997).

consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable, and inclusive. It follows the rule of law.”<sup>18</sup> Also, a study by Organization for Economic Cooperation and Development shows that the principal elements of good governance refer to accountability, transparency, efficiency, effectiveness, responsiveness and the rule of law. Several studies show the ability of “good governance” theory to revamp the management role of the State in modern society; it can be seen that those studies focus on publicity, transparency, accountability, expanding the participation of non-state subjects, effectiveness, efficiency, and the rule of law in discussing “good governance.” The State must apply the tenets of the “good governance” theory to balance interests in determining land prices.

To meet the requirements for “good governance,” the Authors opine that the law and practice of determining land price must meet the

---

<sup>18</sup> Meetika Srivastava, *Good Governance—Concept, Meaning and Features: A Detailed Study* (2009).

following essential needs: first, the land price determination process is to be public, transparent, and subject to tight supervision by the people—this is the basis for people to participate in and supervise the land price determination process; second, accountability in land price decisions—elimination of conflict of interests and irresponsibility in land price determination; third, expand the participation of independent parties in the land price determination process—assurance of independence, objectivity, and professionalism in land price determination; fourth, ensure the accuracy and completeness of information in land price determination—guarantee efficiency and timeliness in land price determination, comprehensively evaluate data to ensure harmony between groups' benefits; and fifth, accuracy and science of the land price determination method—this is a tool to quantify interest groups in determining land prices. Scientific and modern methods are prerequisites to eliminate conflict of interests and subjectivity in land price determination. Lastly, the dispute settlement

procedures in determining land prices are independent and practical—a process that ensures opposing groups' interests and promotes democracy and the rule of law in land price determination.

Based on the nature of land prices and the management role of the State, the Authors interpret the need for a right to interrogate land prices by the State to ensure that the State's decision on land prices is necessary and consistent with objective requirements in land management and use. At the same time, based on the land price based on the economic value of land, the Authors analyze and apply the theory of balance of benefits as a requirement for the land price determination process; it can be said that balancing interests in land price determination is a prerequisite for eliminating disagreements and conflicts over land prices in land management, ensuring equity and optimization of land resources. The influences and development trend of “good governance” theory show that applying the tenets of good governance theory to complete the land price decision process is an

essential and inevitable basis in securing the requirements of balancing interests when the State determines land prices.

Accordingly, within the scope of this Article, the Authors focus on solving the following principal contents: 1) the theoretical issues of the State's land price determination rights; 2) the application of “good governance” theory to promote specific requirements to ensure the balance of interests in the land price determination process; and 3) conduct an empirical study to establish the requirements for land price determination in Vietnam—a country that has recognized the State's right to determine land prices since the land law began to recognize land prices and the land market.

### III. HOW IS LAND PRICE DETERMINED IN VIETNAM?

Vietnam has established a regime of land ownership by the entire people. The State is the sole representative to exercise the rights of the public

owner,<sup>19</sup> including the right to determine land prices when land changes hands among lawful users of the land. In Vietnam, the State's land price determination right has been controlled since the 1993 Land Law and has developed over three periods of the law revision with many changes in regulations.

According to Vietnamese law, land price is the value of land use rights calculated per unit area of land. The value of land use right is the monetary value of the land use right over a defined land area within a definite land use term. In Vietnam, the State holds the right to determine land prices.<sup>20</sup> According to Article 112 of the 2013 Land Law, the land valuation must ensure the following principles: 1) according to the lawful land use purpose at the time of valuation; 2) according to the land use term; and 3) in line with the standard land price on the market<sup>21</sup>

---

<sup>19</sup> Article 13, Vietnamese Land Law 2013.

<sup>20</sup> Clause 5, Article 13 of Vietnamese Land Law 2013.

<sup>21</sup> According to Clause 3, Article 3 of Decree No. 44/2014/ND-CP dated May 15, 2014 of the Government on amendments and supplements to land prices, the common land price in the market is the price that appears with frequency, the highest rate in the transferred transactions on the market, winning the auction of land use rights, the land price is determined from the cost and income of

of the transferred land with the same use purpose, the winning price at the auction of land use rights for places where there is an auction of land use rights or income from the use of land; simultaneously, adjacent land plots with the same use purpose, profitability, and income from similar land use will have the same price.

Based on these principles, land price determination is carried out through five methods of land price determination.<sup>22</sup> According to the law's provisions, the choice of one or more valuation methods is decided by a person competent to determine the price.<sup>23</sup>

There are three types of land prices in Vietnam. First, the Government's land price bracket every five years is issued based on the advice of the Ministry of

---

the land plots with the same use purpose in an area and within a certain period of time. certain time.

<sup>22</sup> Article 4 of Decree No. 44/2014/ND-CP amending and supplementing stipulates five methods of land valuation such as: direct comparison method, deduction method, income method, surplus method and method of land valuation. land price adjustment coefficient method.

<sup>23</sup> Clause 1, Article 5 of Decree No. 44/2014/ND-CP amending and supplementing land price determination and Article 8 of Circular No. 36/2014/TT-BTNMT amending and supplementing Decree No. 44/2014/ND-CP on land price determination.

Natural Resources and Environment. Second, based on the price bracket, the People's Committees of the provinces and centrally-run cities issue the land price list valid for five years. Third, land price is calculated for statutory deductions when people make transactions related to land. However, when the State recovers land, the land price for compensation calculation is a specific land price. Specific land price is the land price determined upon the land acquisition decision.<sup>24</sup>

According to Clauses Three and Four in Article 114 of the 2013 Land Law, the People's Committees of provinces shall decide on specific land prices. Provincial-level land management agencies are responsible for assisting the provincial-level People's Committees in determining the exact land prices. During the implementation process, the provincial land management agency may hire an organization to consult on land price determination to advise on the choice of specific land prices.

---

<sup>24</sup> Article 74, Vietnamese Land Law 2013.

The determination of the specific land price must be based on the investigation and collection of information on the land parcel, the market land price, information on the land price in the land database, and the application of the appropriate land valuation method. Based on the results of land price determination, the provincial-level land management agency shall submit it to the Land Price Appraisal Council for consideration before submitting it to the People's Committee of the same level for a decision.

According to Clause Three, Article 16 of Decree No. 44/2014/CP-ND amending and supplementing, the appraisal of the land price plan is carried out by the Land Price Appraisal Council, the provincial People's Committee decides to establish the Land Price Appraisal Council. The Land price appraisal council has the following members: 1) Chairman of the Provincial People's Committee as Chairman of the Council; 2) The representative of leaders of the Department of Finance as a permanent member of the Council; 3) leaders of the Department of Natural Resources and Environment and the People's

Committee of the district where the land is located; and 4) organizations with the function of consulting and determining land prices or experts on land prices and other members decided by the People's Committee of the province.

Thus, in Vietnam, the promulgation of the land price bracket and the land price list, and the decision on specific land prices are made by officials in the state administrative agencies. Vietnamese law considers this the independent authority of state administrative agencies and related agencies and organizations. Although the law stipulates that the land price determination organization is involved in the land valuation component, the land valuation certificate from this land valuation organization is not binding. Specifically, according to Clause Four, Article 115 of the 2013 Land Law, the land price determined by the consultant is one of the bases for the competent state agency to stipulate and decide on the land price. It should also be added that, in the regulations on the order of land valuation, there is no regulation on the participation of land users; there is

no regulation that the land price determination must be public and transparent.

#### IV. ACTUAL SITUATION OF LAND PRICE DETERMINATION WITH REQUIREMENTS TO ENSURE THE BALANCE OF INTERESTS IN VIETNAM

In Vietnam, disagreement over land prices is still a source of conflict in land administration; indeed, land prices present one of the most pressing issues in society.<sup>25</sup> Land price calculations for compensating users when the State recovers land account for a high rate of complaints.<sup>26</sup> As mentioned earlier, the Authors raise the question of whether these disagreements could result from ineffective State provision on the balance of interests in determining land prices.<sup>27</sup> Based on good governance theory, the

---

<sup>25</sup> Hà Hồng Hà, Quốc Vinh, & Quang Dũng, *Timely Settlement of People's Grievances*, PEOPLE'S NEWSPAPER (June 14, 2017), <https://nhandan.com.vn/tin-tuc-su-kien/giai-quyet-kip-thoi-nhung-buc-xuc-cua-nhan-dan-tiep-theo-va-het-295422/>.

<sup>26</sup> N. Pham, *Dispute Settlement in Agricultural Land Acquisition*, 14 J. LEGIS. STUD. 270 (2014).

<sup>27</sup> Hương Diệp, *Determining Land Prices in Accordance with Market Principles and Consulting with the People*, Vietnam Fatherland Front (Aug. 10, 2021), <http://mattran.org.vn/hoat-dong/xac-dinh-gia-dat->

Authors will evaluate the current status of the law on land price determination in Vietnam. Each requirement is analyzed to demonstrate the limitations in meeting the needs, which affect the efficiency of the balance of interests when the State determines land prices. This is the leading cause of disagreements and conflicts over land prices.

A. The Land Price Decision Process Lacks Publicity, Transparency, and Tight Supervision of the People.

The 2013 Land Law details the responsibility of information disclosure of management entities. The term “publicity” is used 28 times in that law. In addition, Article 207 of the 2013 Land Law has established a mechanism to ensure information disclosure through regulations that specify penalties for violations of information disclosure. Information on the State's land price determination results is published, publicized, and easily accessible; especially, the local land price list must be

---

[dam-bao-nguyen-tac-thi-truong-va-co-su-tham-van-y-kien-tu-nhan-dan-40514.html](http://dam-bao-nguyen-tac-thi-truong-va-co-su-tham-van-y-kien-tu-nhan-dan-40514.html).

announced on January 1 of the first year of five years. However, at present, the published information contains only a draft of the results of the land price determination. The information on the implementation process and the basis for the land price decision is rarely fully disclosed. This is mainly based on the conclusion of the land price for compensation when the State recovers land. The person whose land is repossessed can only access the approved determination of the land price. Current regulations do not specify what information should be made public during the land price determination and what additional information is disclosed only upon request. Oversight rights of citizens in land administration and use are stipulated in Article 199 of the 2013 Land Law.<sup>28</sup> Citizen oversight rights are in two forms: directly by giving feedback through petitions to competent administrative agencies or persons; or indirectly by sending applications to legally recognized representative organizations charged with agency oversight. However, the

---

<sup>28</sup> Article 199, Vietnamese Land Law 2013.

mechanism to ensure leadership effectiveness has not yet been established by regulation, so there is a legal gap in handling complaints and petitions of citizens and handling violations of accountability of the management subject. One of the barriers to executing the public's right of oversight in land price determination is the limitation on publicity, transparency, and the mechanism of access to information and the basis of land price determination. "People's participation in land management is provided for in legislation but limited in practical implementation, undermining the effective control of corruption."<sup>29</sup> Limitations on publicity and transparency affect the people's right to participate in the land price determination process, lead to a conflict of interests, and negatively affect the land price determination process. Specific regulations on the level of information disclosure in the land price determination and strict sanctions violations of publicity, transparency, and obstructing

---

<sup>29</sup> C. Inthavong, et al., *State of Land in the Mekong Region*, Centre for Development of Environment (CDE) (2018) at 168.

peoples' right to access information are prerequisites for openness in land price determination.

### B. Accountability in Land Price Decisions Has Not Been Fully Promulgated and Implemented.

Accountability is the ability to hold public officials accountable for their actions and make them answer and take responsibility for the consequences.<sup>30</sup> Accountability is a tool to control power and is the constraint and transparency in land price decisions. In Vietnamese law, the responsibility for replying to the land users in the process of land price determination is regulated through the content of the explanatory report for the land price determination.<sup>31</sup> According to the Law, the Government, advised by the Ministry of Natural Resources and Environment, decides the “Framework of Land Price” for 58 provinces and five cities (Hanoi, Ho Chi Minh, Haiphong, Danang, and

---

<sup>30</sup> SALVATORE SCHIAVO-CAMPO & PACHAMPET A. SUNDARAM, TO SERVE AND TO PRESERVE: IMPROVING PUBLIC ADMINISTRATION IN A COMPETITIVE WORLD (2003) at 12-13.

<sup>31</sup> Article 7, Article 12, Article 16 of Decree No. 44/2014/NĐ-CP.

Cantho). Meanwhile, the Provincial Committee, advised by the Department of Natural Resources and Environment, decides the land price table for their provinces or cities after approval from the Provincial Council.<sup>32</sup> There are also specific regulations on accountability in each item of land price determination. The Department of Natural Resources and Environment is responsible for reporting to the Ministry of Natural Resources and Environment the results of formulating the land price list before January 15 of the first year to summarize and report to the Prime Minister.<sup>33</sup>

In case of adjustment of the land price list, the Department of Natural Resources and Environment is responsible for reporting to the Ministry of Natural Resources and Environment on the adjustment results. Suppose the local regulations on the land price list exceed the maximum level of the land price bracket of the same type in Clause Three. As per Article 11 of Decree No. 44/2014/ND-CP, the

---

<sup>32</sup> Article 113 and 114 Vietnamese Land Law 2013.

<sup>33</sup> Article 21 of Circular No. 36/2014/TT-BTNMT.

provincial People's Committee must report to the Ministry of Natural Resources and Environment. There are many limitations to social accountability due to regulations and the practice of publicity and transparency of information on the determination of land prices in Vietnam. Regarding this content, the current rules only generalize the accountability of the management entity when the subjects in the society have made complaints and requests. Specifically, Article 199 of the 2013 Land Law stipulates the responsibility to reply competently using a written statement upon receiving opinions from citizens and representative organizations on land administration, including the content of land price determination. These regulations partly reflect the limitation of social responsibility in the rules and practice of determining land prices in Vietnam. Therefore, the land price determination process needs to specify the content to be explained, obligations, and methods of explanation; even this is considered a condition through which the land price determination is passed. Because the Chairman of the Provincial People's

Committee is still the Chairman of the Valuation Council a conflict of interest situation is created.

Regarding the ability to take responsibility for land price determination, Article 206 of the Land Law 2013 stipulates that the handling of the person committing acts violating the land law, depending on the nature and seriousness of their violations, would be prosecuted for penal liability following the law. People performing official land administration duties can be prosecuted for penal liability depending on the nature and severity of their offenses. The commonly prosecuted violations in land price determination are violations or decisions that cause losses to the State budget. Thus, if a competent authority decides that the land price is too high, it is not a basis for land price determination even though it affects the investor's ability to access land and the land user. How should the mentioned violations be handled? The decision of a high land price when determining the starting price in the auction of public land use rights while distributing land, the decision of a high land price can be said to take advantage of Article

118 of the 2013 Land Law. According to the manager's will, the unsuccessful auction will be transferred to the land distribution as designated to a certain subject when the land price is too high. This issue has not been addressed in handling violations on land price determination. In general, the provisions on handling violations in land price determination in Vietnam's land law mainly only protect the interests of the State but are still not comprehensive.

### C. The Participation of Non-State Parties in the Land Price Determination Process Is Still in Form.

The State's right to decide on land prices in Vietnam's land law is stipulated in Article 18 of the current Land Law, including regulation and land price determination rights.<sup>34</sup> The current Vietnamese land law stipulates the participation of organizations with the function of consulting on land price

---

<sup>34</sup> Land price determinations made by provincial-level People's Committees at a specific time, applied to specific cases, are called specific land prices. The specific land price is regulated and widely applied during the 2013 Land Law.

determination in the land price determination process, specifically in Clause Three, Article 114 of the 2013 Land Law, 11 Circular No. 36/2014/TT-BTNMT stipulating the participation of consultancy organizations on land price determination in the process of developing land price lists. However, according to regulations, the involvement of consulting organizations is not mandatory, and government offices have the right not to hire consulting organizations but instead conduct the land price appraisal process themselves. In addition, selecting a consulting organization to participate in the land price decision process is still unfair. Local authorities seek to appoint contractors without bidding to choose a consulting organization.<sup>35</sup> About the direct participation of the People in the process of land price determination, it is limited to giving opinions on the land price bracket and the land price list through the publicized drafts on the website. The collection of specific comments from land users has

---

<sup>35</sup> TRUNG HIEN PHAN, THINGS TO KNOW ABOUT COMPENSATION, SUPPORT AND RESETTLEMENT WHEN THE STATE RECOVERS LAND (2018) at 129.

not been taking place. The subjects affected by the particular land price are still left to determine one exact land price, and there is no mechanism to monitor the land price decision process.<sup>36</sup> The limitations in expanding and effectively ensuring the participation of non-State parties in the land price determination process have specific effects on the balance of interests of opposing subject groups. The result of the land price determination has not yet reflected the multi-dimensionality but mainly the manager's will. Therefore, the mandatory participation of independent consulting organizations in land valuation and the right to directly participate in the State's land price determination process is critical in determining the balance of interests.

D. The Accuracy and Completeness of the Information Used as a Basis for Land Price Determination Are Not Guaranteed.

---

<sup>36</sup> *Id.* at 122.

The knowledge of market land price is the input data of the land price determination process, so the accuracy and completeness of the information will determine the State's land price effectiveness. To ensure the balance of interests in land price determination, the information about the market land price of the valuation area and the related information affecting the profitability of the land plot/land area must be fully provided. However, the reality of fraud in declaring actual transaction prices in Vietnam<sup>37</sup> has seriously affected market land price information sources as a basis for determining land prices. Transaction prices collected from most publicized contracts are much lower than the actual transaction prices for tax fraud, which seriously affects the accuracy of the valuation results. At the same time, the reality of planning inflation in Vietnam<sup>38</sup> seriously affects the feasibility of

---

<sup>37</sup> Chau Hoang Than, *Jurisdiction of the Court in Settling Disputes over Land Prices*, 10 PEOPLE'S CT. J. 12 (2019).

<sup>38</sup> Đức Duy, *The Whole Country Has About 17,000 Plans That Were Overlapped and Have to Be Abolished*, VIETNAM LAW NEWSPAPER (2019), <https://baophapluat.vn/trong-nuoc/ca-nuoc-co-khoang-17000-quy-hoach-co-su-chong-cheo-va-phai-bai-bo-447616.html>.

planning. The selection of planning information as a basis for determining the land determination process requires State agencies to show their will in land price determination, which is a barrier to the balance of interest groups. Strictly managing the real estate market and applying modern scientific techniques in real estate transactions and management is an effective solution to ensure data sources as a basis for land price decisions.

The land valuation method is a vital component in revamping land price management in Vietnam. However, compared to the 2003 Land Law period, the 2013 Land Law did not have many changes in regulations on land valuation methods. The reality of shortcomings in the application of land valuation methods has been pointed out very specifically: Mr. Ho Duc Phuoc—The State Auditor General, said that the different ways differ by dozens of times in value; the provisions in the land valuation method contain many subjective factors, assumptions, and insufficient background for determining land prices; and the price adjustment coefficient method and the

income method are two methods that are easily exploited, and the results are unreliable.<sup>39</sup> Besides, the lack of consistency in the regulations on land valuation methods in the Vietnam Valuation Standards has led to many difficulties in applying land valuation methods.

E. The Accuracy and Science Are Not Guaranteed in Applying the Land Price Determination Method.

Limitations in land valuation methods directly affect the outcome and fairness of land pricing determination. The land valuation method must be guided by the principles and practices of the International Valuation Standards. The valuation method is not a tool to express personal will in the land price determination process.

---

<sup>39</sup> Vietnamese Land Law 2014.

F. Dispute Settlement Mechanisms in Land Price Determination Lack Independence Effectiveness and Are Difficult to Access.

Land conversion has primarily been based on land prices decided by relevant administrative agencies, leading to social dissatisfaction. Peoples' complaints about land account for 70 to 80% of total complaints throughout the country.<sup>40</sup> According to the current Vietnamese law, land price determination is expressed through administrative decisions, including legal decisions—the decision on land prices in the land price bracket and land price list; individual decision—the decision to approve the specific land price. The current mechanism for settling administrative disputes in State administration in Vietnam is through complaints, settlement of complaints according to managerial procedures, and initiating administrative cases in court. However, based on the scope of complaint settlement and the limitation on the jurisdiction to settle complaints and to adjudicate administrative

---

<sup>40</sup> *State of Land in the Mekong Region*, CDE (2018) at 168.

matters of the court, the current administrative dispute settlement mechanism in our country does not resolve disagreements on the results of the State's land price determination process.<sup>41</sup> Although the regulations on the execution method of the right to complain and initiate administrative lawsuits are elementary and easily accessible to the public, the limitations of the jurisdiction have not been able to completely resolve the disagreement over the agreed prices determined by the competent authority. The analysis above shows that if they disagree with the land price decided by the State, they can only give feedback and propose to the competent authorities to reconsider that price. The limitations in the legal provisions on complaints and the Court's power to settle administrative cases in Vietnam cannot resolve disagreements about the State's land price determination results. Therefore, a specific mechanism is essential for dealing with complaints

---

<sup>41</sup> Chau Hoang Than, *Settlement of Disputes over Land Prices for Calculation of Compensation When the State Recovers Land for the Purposes of National Defense, Security, Socio-Economic Development for National and Public Interests*, 5 J. St. & L. 373 (2019).

about decisions and organizational behavior in the land price determination process. This should be beside the extension of the Court's authority to settle disputes arising in the process of determining land prices by the State, but most importantly, the right to veto the land price results decided by the administrative agency when the court has sufficient information to prove that the land price determination process does not comply with legal regulations, affecting the legitimate.

## V. CONCLUSIONS AND SUGGESTIONS

In the context of Vietnam, to ensure a balance of interests in land price determination, it is necessary to consummate regulations and provide the mechanism to implement the following requirements: 1) the land price decision process must be publicized, transparent, and closely monitored by the people; 2) accountability in land price determination is assured; 3) the principle of independence, honesty, and objectivity of non-State subjects when participating in the process of land

price determination is assured; 4) the accuracy and completeness of information as a basis for deciding land prices is assured; 5) the accuracy and science, limitation of the introduction of personal will in the process of applying the land price determination method need to be reinforced; and 6) the disputes settlement mechanism in independent, effective, and accessible land price determination needs to be consummated.

Within certain limitations, our research suggests that the combination of the theory of balance of interests and the idea of good governance is the foundation for optimally promoting the State's land price determination rights toward sustainable development. The significant findings of this Article include the following.

First, in Vietnam, the State has been determined to be the appropriate entity to execute the land price determinations because of its responsibility for managing the exploitation of the economic resources presented by the land. The State's land price determination right is not an expression of the

subjective will imposing on land prices but must be based on the market forces, respecting the characteristics of land prices and the objective laws governing land prices.

In terms of legislative revisions, priority should be given to reviewing existing good experiences in fair compensation and alternatives to land recovery that can be scaled up and incorporated into State land acquisitions and compensation processes and guidelines.<sup>42</sup>

Second, the balance of interests is critical for effectively ensuring a fair and equitable State land price determination. The claims can only be balanced when the land price determination process fully demonstrates the requirements constructed by applying good governance theory. On the one hand, “the requirement to have an independent valuation agency, different from the one determining the land price, among the members of the Land Valuation Council makes the land valuation process more

---

<sup>42</sup> *State of Land in the Mekong Region*, CDE (2018) at 173.

transparent.”<sup>43</sup> “On the other hand, citizen monitoring will only become a common practice if used effectively by communities and civil society groups.”<sup>44</sup>

Third, the study of the current situation of land price determination in Vietnam helps to show that disagreements and conflicts over land prices are mainly caused by the limitations on the balance of interests in the State's land price determination. “Strengthening the participation of civil society organizations will thus be imperative to enable them to extend continuous support to and improve the vulnerable positions of smallholders in Vietnam.”<sup>45</sup> In all cases, independent valuation units in determining land prices must be required. Their detailed guidelines are needed for the independent land pricing mechanism to operate effectively.

---

<sup>43</sup> *Disclosure of Information on Land Management in Vietnam*, Final Report of the World Bank (2014) at 29.

<sup>44</sup> *State of Land in the Mekong Region*, CDE (2018) at 169.

<sup>45</sup> *State of Land in the Mekong Region*, CDE (2018) at 173.