

Vietnamese Law in Determining Religious Land Use: Current Situation And Improvement Directions

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Abstract: In Vietnam, the land ownership is collective, belonging to the entire population. Besides, the State plays a role in managing and regulating land use for efficient purposes in alignment with the national economic direction. During this process, Vietnam identifies various land use purposes, allowing the State to reclaim land from individuals to allocate it to another entity for community-oriented purposes, contributing to economic development associated with the nation. Therefore, the challenges in determining land use purposes in Vietnam need to be addressed. This article aims to clarify issues related to the determination of religious land, the purpose of religious land use, and the entities with the right to use religious land as stipulated by the Land Law promulgated in 2013, and the Law on Beliefs and Religions promulgated in 2016 in Vietnam, along with relevant implementing guidelines. This paper also aims to identify shortcomings and obstacles in the process of determining land for religious purposes, while also proposing recommendations to enhance the management and utilization mechanisms of land for religious purposes in Vietnam.

Keywords: Religious land, land use purposes, Land Law of Vietnam.

1. Introduction

After nearly 10 years of implementing Resolution No. 19-NQ/TW of Central Committee of the Communist Party of Vietnam cohort 11th, there have been significant legal policy innovations related to land, increasingly meeting practical requirements and gradually creating a legal framework for more reasonable, economical, and efficient land management and use. However, concerning the management and use of religious land according to Vietnam's Land Law of 2013, there still exist some unresolved issues. For instance, Vietnamese law has not clearly defined the limits of land allocation for religious institutions, nor has it distinctly outlined the purposes of using religious land, as well as the conditions for allocation or lease of different types of land for religious purposes. Moreover, it is observed that the Land Law of 2013 in Vietnam still contains provisions that are not harmonized with the Law on Beliefs and Religions of 2016, such as determining religious institutions, entities with the right to use religious land, and the purposes of using religious land.

According to the Report from the Government Committee on Religious Affairs of Vietnam, as of November 2020, there were approximately 29,801 religious establishments in Vietnam. The number of these religious establishments increased by about 5,801 compared to 2008. In general,

according to Tuan (2022), many religious establishments have not been granted a Certificate of Land Use Rights. The reason is that the enforcement process of regulations related to granting Certificates of Land Use Rights to religious establishments is slow, and there are difficulties in determining the land use origins of these religious establishments. Additionally, Linh (2023) argues that there has not been a specific categorization of cases where land area designated for religious purposes is used for various other purposes. In such cases, will the state charge for land use? This issue has not been clarified to date. For the reasons mentioned, this article will analyze and clearly point out the related shortcomings in determining land use for religious purposes, and propose recommendations to improve the relevant legal mechanisms.

2. The Current Legal Situation in Vietnam Regarding the Determination of Land for Religious Purposes

2.1 Regarding the determination of religious establishments entitled to land use.

Trên cơ sở khoản 4 Điều 5 Luật Đất đai năm 2013 của Việt Nam, ta nhận thấy, theo quy định của pháp luật, cơ sở tôn giáo thuộc đối tượng được Nhà nước giao đất, công nhận quyền sử dụng đất... Tuy nhiên, việc định nghĩa, khoanh định đất thuộc phạm vi các cơ sở tôn giáo vẫn chưa có sự thống nhất. Theo đó:

Based on Article 5, Clause 4 of the Land Law of Vietnam in 2013, it is observed that, according to legal regulations, religious establishments are among the entities to whom the state allocates land and recognizes land use rights. However, the definition and demarcation of land within the scope of religious establishments have not been uniformly agreed upon.

Firstly, in Article 5 of the 2013 Land Law, there are seven groups of entities to whom the state allocates land and recognizes land use rights. Specifically, according to Clause 4, Article 5 of the 2013 Land Law: "Religious establishments include pagodas, churches, prayer houses, temples, sanctuaries, Buddhist worship places, monasteries, religious training institutions, headquarters of religious organizations, and other religious establishments." There are divergent perspectives within this provision. Despite its enumerative nature, the regulation does not comprehensively cover all actual religious establishments. For example, in Buddhism, there are other religious establishments such as meditation centers and hermitages. Similarly, in Protestantism, there are small groups and congregations. These religious establishments are not explicitly listed. On the contrary, if one assumes that the phrase "other religious establishments" encompasses those not explicitly listed, this is conceptually problematic. This is because the nature of these establishments does not align with the concept of a group of other religious establishments.

Secondly, churches are classified within the group of religious establishments.

However, the term "church" in the 2013 Land Law and the 2016 Law on Beliefs and Religions has not been defined. Currently, a church can be understood more diversely. It is a place where believers of Catholicism, Christianity, and Protestantism gather weekly. Additionally, in the northern and central provinces, places of worship for ancestors or family ancestors are also identified as churches. The question arises whether places used for ancestral worship are included in the scope of the term "church" as stated in Clause 4, Article 5 of the 2013 Land Law, and this has not been clarified. Conversely, if places of worship for ancestors are recognized as part of the "church" category, the legislation should distinguish them as "ancestral halls" and supplement Clause 4, Article 5 of the 2013 Land Law with groups of religious establishments that are entities assigned land use rights by the state as ancestral halls or lineage halls. Furthermore, there are numerous other locations that, while not belonging to religious establishments, are collectively formed and constructed based on the beliefs of the people. Examples include communal houses, temples, shrines, and communal houses of worship. However, the Land Law has not clearly defined whether these establishments fall within the group of entities entitled to land use rights according to legal regulations. Therefore, legal clarity is needed through provisions to elucidate the terminology.

From the issues analyzed above, it can be concluded that the 2013 Land Law should provide more specific adjustments regarding the concept of religious establishments and other related religious entities. According to some perspectives, it may be beneficial to align this matter with Article 34 of Decree 92/2012/ND-CP dated November 8, 2012, issued by the Government. This decree has clarified several issues related to religious establishments, such as: "1. Worship structures are structures such as communal houses, temples, shrines, ancestral halls, churches, and similar structures. 2. Religious structures are structures such as the headquarters of religious organizations, pagodas, churches, prayer houses, temples, sanctuaries, Buddhist worship places, religious training institutions, statues, monuments, towers, and similar structures of religious organizations. 3. Ancillary structures are structures not used for the worship of religious establishments or religious organizations, such as residences, guesthouses, dining facilities, kitchens, fences surrounding the premises of religious establishments, and similar structures" (Binh Phuoc Newspaper, 2023).

Thirdly, there is a lack of uniformity in the regulations governing religious establishments entitled to land use. Specifically, Article 159, Clause 1 of the Land Law of 2013 stipulates that land for religious establishments includes land belonging to pagodas, churches, mosques, temples, sanctuaries, religious memorials, monasteries, religious educational institutions, headquarters of religious organizations, and other facilities allowed by the State to operate. However, according to Clause 14, Article 2 of the Law on Beliefs

and Religions of 2016, religious establishments are defined as pagodas, churches, mosques, temples, sanctuaries, religious memorials, monasteries, religious educational institutions, headquarters of religious organizations, and other legal facilities of religious organizations. Consequently, religious establishments do not encompass religious memorials, monasteries, and religious educational institutions as stipulated in the Land Law of 2013. The issue arises as to whether the recognition of land use rights should be based on the Land Law or the Law on Beliefs and Religions of 2016. In essence, this is a determination of an issue related to land, and naturally, it should be based on the Land Law.

However, considering the matter based on Clause 3, Article 156 of the Law on Issuance of Legal Normative Documents in 2015, which states: “In cases where normative legal documents issued by the same issuing authority have different provisions on the same issue, the provisions of the document issued later shall apply”. Therefore, since the Law on Beliefs and Religions was issued later, a careful examination based on this law would be reasonable. Nevertheless, Article 57 of the Law on Beliefs and Religions of 2016 addresses the issue of land for religious and belief establishments, stating that such land shall be managed and used in accordance with land law regulations (Minh & Thảng, 2017). This creates significant challenges in the application of relevant laws concerning the determination of land use rights for religious establishments. Consequently, it is necessary to issue specific guidelines for religious establishments, aiming to resolve discrepancies between the Land Law of 2013 and the Law on Beliefs and Religions of 2016.

2.2 Determining the Purpose of Religious Land Use

Based on Article 54, Clause 5 of the Land Law of 2013, religious establishments using non-agricultural land, as stipulated in Clause 1, Article 159 of the Land Law of 2013, will be allocated land by the State without land use fees. Simultaneously, Article 170 has established mechanisms regulating land users, including religious establishments, ensuring the proper use of the land for its designated purpose. However, issues persist regarding the determination of whether religious establishments have adhered to the proper land use purposes, leading to the following problems.

Firstly, the legal framework still lacks provisions clarifying the purpose of land use for religious and belief services, distinguishing it from land allocated for other purposes closely associated with religion. While land is utilized for constructing facilities such as churches, temples, monasteries, etc., to meet the spiritual needs of the community, there are cases where land is used for other purposes related to religion, such as building educational institutions, vocational training schools, hostels, charitable clinics, etc. As of September 2019, there were 1,548 private educational establishments (preschools, kindergartens,

charity classes) in Vietnam, primarily managed by Catholic religious orders. Currently, the country has 52 vocational training institutions, with 11 out of 12 schools associated with religions, primarily overseen by Catholic organizations (accounting for 91.67%), including one vocational college, two vocational secondary schools, and eight vocational training centers. Additionally, there are 144 hostels and charitable clinics run by priests, religious orders, and nuns; 56 social support facilities have been registered and are operating, accounting for 49.55% of the total 113 establishments affiliated with religious organizations (Ngọc, 2023). Furthermore, there are instances where land designated for religious purposes is utilized for commercial activities, such as constructing accommodation facilities for paying pilgrimage guests or renting out spaces for food stalls and shopping within the premises of religious establishments.

Through the above-mentioned issues, the law stipulates the need for clear distinctions regarding when land is allocated with fees and when there is a requirement to pay rent to the State. In this context, it is crucial to clarify cases where religious establishments use land for various purposes, such as constructing places of worship, combined with establishing private educational institutions, charitable clinics, etc. For such cases, how should the calculation of land rent and taxes be applied? Fundamentally, the State allocates land without fees for land used as places of worship or the headquarters of religious organizations. However, religious organizations using land for other purposes, are required to pay rent to the State as per legal regulations. This aspect can be institutionalized based on the spirit of Section 2.2 of Resolution 18-NQ/TW in 2022 on 'Continuing to innovate, perfect institutions, policies, enhance the effectiveness of land management and utilization, and create motivation to make Vietnam a high-income developed country,' issued by the Central Executive Committee of Vietnam. Therefore, the amendment to the Land Law should also include provisions related to this issue.

Secondly, in Article 159, Section 1 of the Land Law of 2013, it is stipulated that the land for religious establishments includes areas used for worship (temples, churches, etc.), land with religious education institutions, headquarters of religious organizations, and especially all other facilities permitted by the State to operate. While the headquarters and educational institutions for religious training may be considered land for religious purposes, other religious facilities permitted to operate may have land used for educational, healthcare, social welfare, or other lawful activities as regulated by relevant laws. The provision of land for religious establishments in Article 159, Section 1, has led to difficulties in managing and utilizing religious land. For instance, facilities without religious activities may be allocated land without paying land-use fees because they are considered 'other facilities permitted by the State to operate' (such as educational, healthcare, and social welfare facilities). However,

land and related laws provide specific regulations for these activities, including business and charitable activities. Many religious facilities are using part of the land for various activities (preschool education, elementary education, healthcare clinics, elderly care centers, orphanages, etc.), while the entire land area is allocated for religious purposes. Separating these activities from religious establishments is challenging for various reasons, including legal constraints as outlined above.

Thirdly, the law has not clarified the distinction between land used for religious purposes and land designated for worship. The legislation does not specify the purposes for which religious land is utilized, which has led to a lack of specificity in conditions for land allocation, leasing, and usage limits for religious organizations that align with the local land resources. According to Article 160, Section 1, of the Land Law of 2013, worship land includes areas with communal structures like communal houses, temples, shrines, and ancestral worship areas. However, in Section 4, Article 2 of the Law on Beliefs and Religions of 2016, it is stipulated that belief establishments are places where communal religious activities are conducted, such as communal houses, temples, shrines, family churches, and other similar establishments. This provision does not comprehensively cover the actual situation, as there are numerous religious facilities operating in various forms and owned by different entities, such as religious organizations, individual establishments, or community-funded religious structures (community-built temples). Temples funded by individuals or households are not considered part of the land and structures of religious organizations, indicating a historical existence of community-built and individually funded temples.

While the Law on Beliefs and Religions of 2016 provides a more open definition for similar religious establishments mentioned above, the Land Law of 2013 does not specify communal religious structures built by the community, households, or individuals. This leads to complications and inconsistencies in the process of handling documentation for issuing certificates for village temples and individually funded temples. To address this issue, there is a need to supplement regulations regarding religious structures built by the community, households, or individuals to align with practical realities. This will contribute to facilitating the resolution of related issues such as granting certificates for land use rights and ownership of property attached to the land for the entities using the land. Additionally, it ensures consistency between the Land Law of 2013 and the Law on Beliefs and Religions of 2016 (Triều, 2020).

2.3 Determining the Land Users for Religious Purposes and the Entities Receiving Religious Land

Based on Article 5 of the Land Law 2013, there are seven groups of subjects

designated by the State to receive land, lease land, acknowledge land use rights, and transfer land use rights. Among them, the six land users include organizations, enterprises, communities, households, and individuals. Specifically, Article 5, Section 4 of the Land Law 2013 defines the land user as religious establishments, including temples, churches, prayer houses, shrines, pagodas, Buddhist meditation centers, religious training schools, the headquarters of religious organizations, and other religious facilities. However, according to Article 159, Section 2 of the Land Law 2013 regarding land for religious establishments, it states: 'Provincial People's Committees, based on the state's religious policies, land use planning and plans approved by competent state authorities, decide on the land area allocated to religious establishments.' Thus, identifying the entity entitled to receive land for religious purposes is determined to be religious establishments.

This lacks consistency when comparing the issue with Articles 12, 13, and 14 of Article 2 of the Law on Beliefs and Religions in 2016. These provisions state: 'Religious organization is a gathering of believers, clergy, positions, and monastic dwellings of a religion organized according to a recognized structure by the State to carry out religious activities. A subordinate religious organization is an organization under a religious organization, established according to its constitution, regulations, and guidelines. Religious establishments include pagodas, churches, prayer houses, shrines, temples, and the headquarters of religious organizations, as well as other legal facilities of religious organizations.' Additionally, Article 3, Section 2 of Decree 162/2017/ND-CP details certain provisions and measures for the implementation of the Law on Beliefs and Religions, stating: 'Religious construction is a structure built as a religious facility, statue, monument, and religious tower.'

As a result, it is observed that the legislation on beliefs and religions has defined "religious establishments" within the limited scope of constructions deployed for religious activities. However, the Land Law suggests that land users for religious purposes or entities with the right to use religious land are specifically religious establishments. This creates difficulties in the legal application process, leading to confusion between religious establishments as subordinate religious organizations and the actual religious organizations. The latter faces challenges in managing and utilizing properties, particularly the right to use religious land, when legal events occur, such as applying for certificates, adjusting changes in land dynamics, or receiving compensation during the land recovery process.

In such situations, it becomes apparent that the regulatory documents of religious organizations approved by competent state authorities clearly specify the organizational structure, assets, authority, and responsibility for managing assets, including the right to use

religious land. No organization delegates the task of managing and utilizing assets, especially the right to use land, to religious establishments (construction works). Article 12 and 13 of Article 2 of the Law on Beliefs and Religions in 2016 also distinctly define the organizational forms of religious organizations, including religious organizations and subordinate religious organizations (Huy, 2022).

3. Conclusion

From the analyzed issues, it is evident that the state's allocation of land for religious establishments to serve spiritual and religious activities is highly necessary. However, due to the lack of legal consistency, issuing certificates for religious establishments remains challenging. To urgently address the construction of religious facilities, believers have directly donated land for the construction of these facilities. However, this is still entangled in various regulations. Planning and land use plans at the local level often lack specifications for the land area designated for religious purposes, leading to the inability to allocate land for the construction of places of worship.

The legal framework should introduce concepts related to religious establishments, the purpose of using religious land, and specify the land area within religious establishments that may be used for other purposes. Clarifying how land usage fees and taxes are determined for areas within religious establishments used for non-religious purposes is essential. This would expedite the land allocation process, and certificate issuance, and help religious establishments overcome the current challenges they are facing.

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