



Law Of Vietnam On Compensation For Aquatic Livestock When The State Recovers Land For Project Implementation

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Abstract

To pursue the goal of industrialization and modernization, the State of Vietnam allows the recovery of land for national defense and security, socio-economic development in the national interest, and public interest¹. However, to the people, the land recovery causes not only damage to the recovered land but also land-attached assets such as construction works, plants, crops, and livestock. So far, the Law of Vietnam has stipulated compensation for aquaculture products only, so all other livestock of farmers are not considered for compensation. It causes a lot of difficulties for farmers who have damage to non-aquaculture products. On the other hand, the compensation for aquaculture products also has many shortcomings. For instance, in some cases, there was no correct and sufficient method of determining the damage leading to compensation that is not fair and objective. Based on the analysis of livestock damage when the State recovers land to implement the project, this article codifies Vietnam's legal provisions on compensation for livestock. Since then, solutions and recommendations have been proposed to improve the law of Vietnam.

Keywords: land recovery, compensation, livestock, aquatic animals, etc.

Introduction

According to the statistics of the Ministry of Natural Resources and Environment of Vietnam, from the effective date of the Land Law 2013, dated July 1, 2014, to December 31, 2020, the State of Vietnam recovered more than 1,179,879.78 hectares to implement 25,362 projects, of which: 109,402.8 hectares of land to implement 930 projects for national defense and security purposes and

1,070,476.98 hectares to implement 24,423 projects for socio-economic development purposes². Accordingly, the total compensation for damage to land-attached assets is 183,913.17 billion dong, including main compensation for construction works, architectural objects, crops, and livestock³. As a country with more than 84.45% of the area being agricultural land,⁴ Vietnam has many farmers cultivating crops and raising livestock.

¹Clause 3 Article 54 of the Constitution 2013 and Articles 61 and 62 of the 2013 Land Law.

²Report No. 115/BC-BTNMT dated September 26, 2022 of the Ministry of Natural Resources and Environment on the assessment of the implementation of the Land Law 2013 and the orientation for amending the Land Law.

³Report No. 115/BC-BTNMT dated September 26, 2022 of the Ministry of Natural Resources and Environment on the assessment of the implementation of the Land Law 2013 and the orientation for amending the Land Law.

⁴According to Decision No. 387/QĐ-BTNMT dated March 2, 2022 of the Ministry of Natural Resources and Environment approving and announcing the results of land area statistics of the whole country, as of December 31, 2020, the total agricultural land area is 27,983,482 ha of the total natural land area of Vietnam is 33,134,427 ha.

This shows that a relatively large number of residents are negatively affected by land recovery activities in general and livestock compensation activities in particular, including aquatic livestock.

1. The issue of determining livestock damage when the State recovers land

When the State recovers land, all assets on that land are likely to be negatively affected, including crops and livestock. Article 3 of the Law on Fisheries 2019 identifies aquatic resources *as living resources in natural waters with economic, scientific, tourism, and recreational value*. In addition, according to Clause 4, Article 3 of Decree 39/2017/ND-CP dated April 4, 2017, of the Government on the management of animal *and aquatic feed*: *“Livestock are cattle, poultry, bees, silkworms, aquatic animals raised by humans.”* From this, it can be inferred that livestock is all animals domesticated by humans to create economic value for scientific research, tourism, and entertainment to meet the diverse needs of people. As such, aquatic products are only one part of many breeds, and livestock species will likely suffer when the State recovers land.

In general, the damages when the State recovers land could be direct or indirect and could incur before, during, and after the land recovery process. However, so far, the law of Vietnam has not had a provision on determining damage when the State recovers land, but the principles and cases of compensation for land and land-attached assets when the State recovers land. The current regulations on compensation do not fully reflect the principles of science, fairness, and objectivity. It argues that, ultimately, the compensation for damages should be based on the actual damages incurred.

2. Legal and institutional provisions on livestock compensation when the State recovers land

Clause 3, Article 54 of the 2013 Constitution stipulates: *“The State may recover land currently used by organizations or individuals in case of extreme necessity prescribed by law*

for national defense or security purposes; or socio-economic development in the national or public interest. Land recovery must be public and transparent, and compensation must be paid by the law.” Based on the constitution, Article 26 of the 2013 Land Law recognizes the State's guarantees to land users as follows: *“When the State recovers their land for national defense or security purpose; or for socio-economic development in the national or public interest, land users are entitled to compensation, support, and resettlement in accordance with the law.”* Thus, the phrase “compensation, support, and resettlement following law” under Clause 3, Article 26 of the Land Law 2013 is clear but not comprehensive. In reality, when the government carries out land recovery for public interest purposes, the people suffer many damages related to their land use rights and property ownership rights associated with the land. Among them, some assets are recognized and compensated by the law, but there are damages that the law has not recorded. Some uncompensated damages will arise at that time because the law has not yet provided regulations. For example, the law only compensates aquatic livestock,⁵ so any other animals damaged are not eligible for compensation.

3. Principles of livestock compensation when the State recovers land

According to Article 88 of the Land Law 2013, the principles of compensation for damage to property, including livestock, when the State recovers land are stipulated as follows:

- If land-attached assets are damaged upon land recovery by the State, lawful owners are entitled to compensation.
- Upon the land recovery by the State, if organizations, households, individuals, overseas Vietnamese or foreign-invested enterprises have to stop production and business which causes them damage, they are entitled to compensation for the damage.

When studying the process of developing legal provisions related to property compensation

⁵See Clause 2, Article 90 of the Land Law 2013.

when the State recovers land, Decree 90-CP can be seen as one of the first legal documents detailing compensation for property damage when the government reclaims land for national defense, security, and national and public interests.⁶ This document contains a list of compensations for houses, architectural structures, and constructions attached to land (Article 11), graves (Article 12), and plants and animals (Article 13).⁷

Land Law 2013 has a separate section to regulate compensation for property damage (Section 3 Chapter VI). The laws in the country, which, until now, only address and determine the property damages but do not consider the damages to property rights, emotional and health damages. Moreover, due to the method that relies on listing different types of damage that are legally regulated, when actual damage occurs outside of the written regulations, it will not be compensated. For example, stress and anxiety due to prolonged clearance, water, air pollution, noise, vibration, etc.⁸

On the other hand, this also reveals the limitations of the Land Law 2013 within its scope of internal regulation presented by that law. Logically, the land law should regulate issues such as the regime of land management and use for land owners and land users, including cases where the State recovers land for national defense and security purposes; socio-economic development for national and public interests. However, the issue of compensation when the State recovers land is a separate aspect that, although related to land

recovery, has a relatively independent nature. Therefore, it needs to be regulated by a separate law. For example, land recovery is expressed under an administrative decision of land recovery and compensation from the government for the recovery (including both land and associated property). It emphasizes the civil nature and equality between the party who suffered and the party causing harm.⁹

4. Provisions on the conditions for the property, which is livestock to be compensated

The conditions for compensation for land-attached assets, in general, and livestock, in particular, are not detailed in the Land Law 2013 and guiding documents. However, Article 92 of the Land Law 2013 stipulates that in cases where the State recovers land without compensation for land-attached assets, it is possible from here to deduce the conditions for compensation for specific assets as follows: “Land-attached assets are created in contravention of the provisions of law or created after the land recovery notice of a competent state agency”, based on the “land recovery notice” is the basis clearly defined in the provisions of law: “Before the land recovery decision is issued, at least 90 days for agricultural land and 180 days for non-agricultural land, the competent state agency must notify the land recovery to the person with the recovered land. The content of a land recovery notice includes a plan to recover the

⁶Decree No. 90-CP dated August 17, 1994 of the Government promulgating regulations on compensation for damage caused when the State recovers land for use for defense, security, national interests and public interests.

⁷Phan Trung Hien: *What to know about compensation, support and resettlement when the State recovers land*, National Political Publishing House, Hanoi, 2021, p.233.

⁸ See also: Phan Trung Hien: *Proposal to improve the constitutional basis for land acquisition, compensation, support, resettlement*, Legislative Studies Journal, Iss.06 (238), 2013.

⁹ Hung Long: “There should be a roadmap to promulgate a law on compensation for damage when the State recovers land”, Natural Resources and Environment Newspaper, Ministry of Natural Resources and Environment, There should be a roadmap to promulgate a law on compensation for damage when the State recovers land (baotainguyenmoitruong.vn) [accessed June 5, 2023].

land, conduct investigations, and perform land measurement and assessments “.

Thus, since the announcement of land recovery, people are not allowed to raise new or release more aquatic products. The law should precisely determine when people in the area where the land is recovered receive land recovery notices. It is because there are cases where, for objective and subjective reasons, the land recovery notices do not reach the notice recipients or arrive later than a certain period since the notice was issued. However, the concept of “created against the law” is a concept that causes certain difficulties in understanding and applying. Except for banned aquaculture products, the land specialized in rice cultivation where are not allowed to farm on, etc. aquaculture in some cases is considered illegal, the others are still farmed by the people. Obviously, whether farming is illegal is based on the confirmation of local authorities, the decision to sanction administrative violations (if any), or at least the record of violations. In that condition, our country's law does not restrict aquaculture after the annual land use plan at the district level is announced, although there are perennial plantation restrictions.

5. Specific regulations on compensation for livestock when the State recovers land

According to Clause 2, Article 90 of the 2013 Land Law, when the State recovers land and causes damage to aquatic livestock, the compensation shall comply with the following provisions:

- For aquatic products that, at the time of land recovery, have reached the harvesting period, there is no compensation;
- For aquatic products which, at the time of land recovery, have not reached the harvesting period, they shall be compensated for the actual damage caused by early harvest; in case of being able to

move, they shall be compensated for the moving costs and damage caused by the movement; the provincial People's Committee shall stipulate the specific compensation level.

Firstly, these are the losses of livestock that are aquatic products due to early harvest. However, there is a situation of “anticipating planning” and “dealing with site clearance” that some households release aquaculture in unreasonable quantities. Therefore, the People's Committees of provinces and cities have guidelines on the density of aquatic livestock, even in the case of interbreeding and other types. If the price of crops is relatively stable, the price of aquatic livestock is not stable. Therefore, some localities determine the seafood price according to the land recovery time instead of prescribing the unit price.

When mentioning pet compensation, it is necessary to pay attention to the following issues: (i) It is necessary to determine the time of farming before or after the time of the land recovery notice announcement; (ii) Consider the legality of the land where people are raising livestock.

To provide detailed guidance on the above issues, local agencies have issued documents guiding compensation, support, and resettlement applied locally, including the price list for each type of livestock.¹⁰ On the other hand, to prevent unauthorized livestock raising in anticipation of receiving benefits from planning policies or compensation for land clearance, the local authorities impose regulations on the allowable density of livestock raising to limit the number of animals that can be farmed on a given land area. In particular, the density of livestock raising also considers primary and secondary livestock¹¹. Specifically, for the number of aquatic

¹⁰Example: Decision No. 10/2019/QĐ-UBND dated June 27, 2019 of the People's Committee of Can Tho City regulating the unit price of houses, works, architectural objects, plants and livestock.

¹¹ Example: Decision 18/2020/QĐ-UBND dated September 15, 2020 of the People's

Committee of Ba Ria-Vung Tau Province promulgating the Regulations on compensation for aquatic livestock when the State recovers land in Ba Ria-Vung Tau Province, replacing the regulations on pet compensation in Decision 66/2014/QĐ-UBND dated December 31, 2014 of the People's

livestock within the allowed stocking density, they will be compensated according to the regulations. Compensation will be provided at a lower rate for the number of aquatic livestock exceeding the stocking density (if the excess is small), or no compensation or support will be provided (if the excess is large). However, these regulations did not receive the consent of the document control agencies from the Ministry of Justice. The reason given is as follows: The decision of the provincial people's committee regarding the pricing table for livestock often lasts several years and does not get updated according to the current market prices. This constitutes a violation of the compensation regulations. (ii) Regulating livestock density and not compensating for the livestock outside the allowable density lacks legal basis from central regulation documents, violating the compensation principle for property damage. This principle states, "If land-attached assets are damaged upon land recovery by the State, lawful owners of those assets are entitled to compensation", according to Clause 1, Article 88 of the Land¹² Law. Secondly, although Article 90 of the Land Law provides for livestock compensation, Clause 2 of this Article only specifies "aquatic livestock". This shows that the regulations on livestock compensation have not effectively

covered all the damages related to this activity. In that condition, the Constitution and the Land Law both define the principle of "compensated according to the law"; it can be inferred that what the law has not/does not stipulate will not be compensated. It is a challenge for those who raise animals other than aquatic animals, who experience damage but are not compensated, such as those who raise bees, silkworms, earthworms, etc.

Thirdly, "determine that it has come to the harvest time" is understood as at what point in time? Coming to harvest time can be the period when the aquatic products are of good quality for commercial products, i.e. they may be exchanged to make a profit. Or at the time the aquatic products begin to be used as food? The harvesting period for aquatic products is not necessarily just one but can be three or four periods in the same growth stage. This is determined by the first harvest period when the aquatic product meets the standard age for that breed¹³. Based on the initial goals set, farms producing breeds have the right to harvest, transfer to the nursery pond for the next stage, or sell to other hatcheries or directly to farmers¹⁴. When the fish reaches the standard weight of commercial size, it is also the third harvest in the final harvesting process that takes place when the livestock animals reach a

Committee of Ba Ria-Vung Tau province promulgating regulations on compensation and support prices for crops, livestock and salt when the State recovers land in Ba Ria-Vung Tau province.

¹² Example: Conclusion of inspection No. 130/KL-KTrVB dated December 16, 2019 of the Department of Legal Document Inspection, Ministry of Justice on Decision No. 10/2019/QD-UBND dated June 27, 2019 of the People's Committee of Can Tho City on the regulation of unit prices of houses, works, architectural objects, plants and livestock.

¹³Campet, M.,1997.Qualité des ovules d'un poisson chat élevé en cages flottantes dans le delta du Mekong (*Pangasius hypophthalmus*) Durant le processus de maturation ovocytaire. Mémoire DAA, ENSA-Rennes. France. The

scientific analysis of different stages of fish harvesting. From the moment they hatch, until they are 7 days old, the fish are called 'fry', and then from 20 to 45 days, they are called 'fingerling'. At this stage, farms can either continue to raise them to a larger stage or sell them to other farms or farmers. A period of 2.5 to 3 months following the current time, fish are considered mature and ready for harvesting. This is the main harvesting phase for fish farms, also known as the second harvesting phase. The third harvesting phase is called the commercial fish phase, where the fish can be exported.

¹⁴Decision No. 09/2015/QD-UBND dated March 5, 2015 "regulating the unit price of houses, buildings, structures, plants and livestock issued by Can Tho City

certain stage of growth, also known as the “maturation” process to meet breeding standards. Each growth stage of the fish indicates a different value. Therefore, having a firm grasp of the key issue is a prerequisite for building a legal compensation system.

Thus, the law of Vietnam stipulates the harvest period but has not clearly defined the characteristics of the growth stage, so it has been impossible to determine the nature of the damage to calculate compensation. In practice, there will be certain cases where compensation is disproportional. However, stipulating “at the time of harvest, there is no need to compensate” raises several practical issues. Even at harvest time, there may not be a basis for proving that there are no actual damages, excluding factors related to quality and products. Harvest season timing may depend on various factors, such as market demand, natural conditions, diseases, etc. Thus, it is difficult to determine when aquatic products need to be harvested, excluding external factors that may affect the harvesting process.

6. Compensation for these specialized and high-quality commercial products from these particular regions

Currently, in Vietnam, areas are designated for aquaculture following prescribed plans, carefully implemented according to government-approved regulations and guidelines provided by agricultural promotion agencies. This aims to ensure a large quantity of farmed aquatic products, serving both domestic and export demands. For instance, An Giang province in Vietnam has a high amount of aquaculture production, with a decision made by the provincial People's Committee approving the detailed plan for the development of specialized commodity production areas (rice, vegetables, and aquatic products) in the province until 2020 and with a vision towards 2030. According to this document, the purpose of establishing these zones is to rapidly increase the production of rice and high-quality aquaculture, which contributes to improving the efficiency and

income of producers. Additionally, these zones help create conditions for expanding sustainable production and environmental protection in other areas.

Besides, in Vietnam, there are also high-quality aquaculture zones that meet VietGAP standards. For example, the agricultural sector in Dong Nai province, a province in the Southeast region, has collaborated with the People's Committees of the districts to deploy and construct 8 aquaculture zones meeting VietGAP standards. In particular, aquatic products certified under VietGAP standards are very diverse, including giant river prawns in Tra Co Commune (Tan Phu District), giant tiger prawns in Vinh Thanh Commune (Nhon Trach District); pangasius, snakehead, perch, etc. in communes of Phu Ngoc (Dinh Quan District), Thien Tan (Vinh Cuu District), etc. Currently, the statement mentions the total area of aquaculture meeting VietGAP standards in Dong Nai Province, with 140 hectares and 3.4 thousand cubic meters of cages and floating structures, producing a total of over 9.1 thousand tons per year, accounting for more than 14% of the province's total aquaculture production.¹⁵ High-quality farming regions have a higher level of investment in breeding stock and infrastructure than traditional free-range farming, to provide clean food and ensure export quality for demanding territories and countries worldwide.

So far, the law of Vietnam has not yet established regulations on compensation for damages to specialized and high-quality aquaculture zones, as opposed to regular aquaculture areas. In reality, some specialized and regular aquaculture areas receive the same compensation, even though specialized areas may have more damage, and the investment in agricultural production for both areas significantly differs. Some local agencies have introduced separate regulations to support specialized or high-quality aquaculture areas to address this situation. However, due to the lack of general guidelines from central documents, the methods of determining and applying compensation rates for aquaculture farmers

¹⁵ Minh Sang: *Dong Nai: Establishing 8 aquaculture areas meeting VietGAP standards*, Dong Nai: Establishing 8

aquaculture areas meeting VietGAP standards (nongnghiep.vn), [updated June 5, 2023].

vary, leading to inconsistencies and unfair treatment among different localities.

7. Conclusion

The law of Vietnam should be amended and supplemented in the following direction to ensure the correct and complete determination of damages to compensate for damage:

Firstly, it is necessary to clearly define the calculation method for compensation and apply it uniformly across all localities. The guiding document needs to have conventions and limitations regarding how early the harvest can be compared to the season and how long compensation will be provided. Accordingly, it is necessary to determine the growth period with a fixed damage level for livestock and equivalent value conversion.

Secondly, there is a distinction between specialized farming areas, high-quality farming areas (for example, the VietGAP model), and regular farming areas. In particular, the law should issue uniform regulations defining the standards of specialized, high-quality, and regular farming areas. Henceforth, it is necessary to unify in determining damages and compensations when recovering land between various localities to avoid discrepancies and differences, which could lead to complaints and lawsuits.

Thirdly, “livestock compensation when the State recovers land” should be completed. So far, although the law of Vietnam uses “livestock compensation when the State recovers land”, the current Land Law and its implementation guidelines only specify compensation for aquatic products. Thus, the author suggests that the Land Law and its implementation guidelines should include

compensation for damages to livestock, including cattle, poultry, seafood, and other animals, as well as investment costs in raising and cultivating them when there is evidence proving that land recovery causes damage to the quality and quantity of livestock. The author suggests that land laws should be regulated in a more open direction as follows: People whose land is recovered should be compensated for attached properties when fulfilling these three conditions: there is damage, the damage is a direct result¹⁶ of land recovery activities, and the damage can be materialized.

Moreover, a method of determining damages by listing them one by one is no longer sufficient to protect the rights and interests of those affected by land recovery activities in the country. It further explains that any damages arising from land recovery extend beyond the scope of the Land Law's regulations¹⁷.

In the long run, there should be a roadmap to develop a separate compensation, support, and resettlement law when the State recovers land. It can be said that although “land recovery” and “compensation, support, and resettlement” are closely related, they are two issues of different natures, so they need to be adjusted separately. “Land recovery” is of administrative and imperative nature, while “compensation” is of civil and economic nature, showing fairness and parity according to the law “if the subject causes damage, the subject must compensate”, and “where is the damage, compensation is there.” If the State recovers land by law (Land Law), it should compensate for damage by law (Separate law on compensation for damages when the State recovers land)¹⁸. At that time, damages related

¹⁶ Dr. Phan Trung Hien: *The law of compulsory acquisition of land - Striking a balance Public and Private Interests in the United Kingdom and Vietnam*, VDM, Verlag Dr. Muller, Germany, 2009, pp.131-236.

¹⁷ Assoc. Prof. Dr. Phan Trung Hien: *Problem of determining damage and compensation for damage when the state recovers land*, Law on land management and use in Vietnam (editor), Can Tho University Publishing House, 2016, p.108

¹⁸ Hung Long: “There should be a roadmap to promulgate a law on compensation for damage when the State recovers land”, Natural Resources and Environment Newspaper, Ministry of Natural Resources and Environment, There should be a roadmap to promulgate a law on compensation for damage when the State recovers land (baotainguyenmoitruong.vn) [accessed June 5, 2023].

to land and properties, including losses associated with livestock, will be fairly calculated and compensated proportionately according to the actual losses incurred. On the other hand, applying certain laws should be interconnected with the Civil Code 2015 to ensure that provisions related to fair, equal, and proportionate compensation are effectively implemented.¹⁹

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