

## Improving the regulations on the jurisdiction to resolve land disputes – Implementing the judicial power of the court under the 2013 constitution

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### Abstract

According to the provisions of the 2013 constitution, the court is the body that exercises judicial power through the function of adjudication. To concretize the content of the constitution, the legal documents have regulations on the jurisdiction of the court to resolve disputes. The 2013 Land Law stipulates that for land disputes, in addition to the court, the people's committees at all levels also have the jurisdiction to resolve. The draft Land Law amendment is in the direction of abolishing the jurisdiction of the people's committees to resolve disputes, this agency only has the responsibility to provide relevant documents and materials. Thus, the court is the only body with the jurisdiction to resolve land disputes. This regulation aims to address the difficulties and shortcomings in the land dispute resolution activities in the past. However, the Land Law passed by the national assembly on January 18, 2024 does not have any changes in the jurisdiction of the court and the people's committees to resolve land disputes. Therefore, it is necessary to have objective assessments on the basis of analyzing the legal regulations and the practical application to contribute to improving the regulations on the jurisdiction of land dispute resolution in accordance with the content of the exercise of judicial power of the court in the current stage.

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## 1. Overview of land disputes

In practice, land disputes have always been considered a “hot spot”, with complex developments and a certain impact on socio-economic life. However, before the 2003 Land Law was enacted, the term “land dispute” was not defined in any legal document, but was only implicitly understood through the regulations on land dispute resolution<sup>1</sup>.

The concept of land dispute was first mentioned in the 2003 Land Law, which defines it as *“a dispute over the rights and obligations of land users between two or more parties in a land relationship”*<sup>2</sup>.

According to this concept, the subject of a land dispute is the rights and obligations of a land user. However, it is not clear whether the dispute is about the entire set of rights and obligations, or only individual rights and obligations, or whether it includes disputes about rights and obligations that land users have acquired through participation in other legal relationships. On the other hand, it is also not clear whether the two or more parties referred to are only land users, or whether they include all subjects related to the rights and obligations of land users<sup>3</sup>. The content of the concept also does not refer to disputes between parties involved in land use transactions.

The ambiguity of legal regulations can lead to a broader interpretation of the content of the concept of "Land disputes are disagreements, conflicts, or clashes of interests, rights, and obligations between subjects involved in land relations"<sup>4</sup> or *“it could be a dispute arising between subjects involved in land relations about rights and obligations in the process of managing and using land”*<sup>5</sup>.

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<sup>1</sup> Article 9, Article 21 of the 1987 Land Law; Article 38, Article 40 of the 1993 Land Law.

<sup>2</sup> Article 3, Clause 26 of the 2003 Land Law.

<sup>3</sup> Luu Quoc Thai, Discussion on the concept of “land dispute” in the 2003 Land Law, Journal of Legal Science, No. 2, 2006, pp. 3-6.

<sup>4</sup> Hanoi University of Law, Textbook on Land Law, National Political Publishing House, Hanoi, 2018, p.457.

<sup>5</sup> Hanoi University of Law, Dictionary of Legal Terms, National Political Publishing House, Hanoi, 1999, p.74.

Therefore, land disputes can include all disputes arising from the rights and obligations of land users, disputes related to land-attached property or transactions on land use rights. However, according to the regulations on the jurisdiction to resolve land disputes, there are only two cases, namely the jurisdiction to resolve disputes over land use rights and the jurisdiction to resolve disputes over land-attached property<sup>6</sup>. Therefore, land disputes are not disputes over land use rights, which means that land disputes are a broader concept than disputes over land use rights.

This content continues to be regulated in the Land Law of 2013 and the Land Law of 2024 approved by the National Assembly, according to which, “*Land disputes are disputes about the rights and obligations of land users between two or more parties in land relations*”<sup>7</sup>. The content of the concept can also be understood to include disputes over land use rights, disputes arising from relationships arising from transactions over land use rights, or disputes over inheritance of land use rights, attached property to land, etc. At the same time, this regulation does not clearly define the subjects participating in transactions over land use rights, making it difficult to apply the law to determine the procedures and jurisdiction to resolve disputes. Thus, the remaining shortcomings in the regulations have not yet been adjusted to be consistent with practical application.

The mediation procedure stipulated in Article 202 of the Land Law of 2013 and Article 235 of the Land Law of 2024 is a mandatory condition for the parties to a dispute to choose the competent authority to resolve the dispute, either the people's committee or the court. However, the law does not specify whether this is a mandatory procedure that must be applied to all land disputes as understood in Clause 24 of Article 3 of the Land Law of 2013 and Clause 47 of Article 3 of the Land Law of 2024. However, resolution No. 04/2017/NQ-HĐTP provides guidance that disputes over who has the right to use the land that have not been mediated at the people's committee of the commune where the disputed

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<sup>6</sup> Article 136 of the Land Law of 2003.

<sup>7</sup> Article 3, Clause 24 of the Land Law of 2013; Article 3, Clause 47 of the Land Law of 2024.

land is located in accordance with the provisions of Article 202 of the Land Law of 2013 are considered to be not yet have sufficient conditions to initiate a lawsuit. For disputes related to land use rights, such as disputes over transactions related to land use rights, disputes over inheritance of land use rights, division of joint property of spouses is land use rights, etc., the mediation procedure at the people's committee of the commune where the disputed land is located is not a condition for initiating a lawsuit<sup>8</sup>. Therefore, according to the guidance of resolution No. 04/2017/NQ-HĐTP, land disputes are disputes over who has the right to use the land, while disputes related to other land use rights are not considered land disputes as defined in Clause 24 of Article 3 of the Land Law of 2013.

Therefore, according to the guidance of Resolution No. 04/2017/NQ-HĐTP, land disputes are disputes over who has the right to use the land. However, disputes related to other land use rights are not considered land disputes as defined in Clause 24 of Article 3 of the Land Law of 2013.

The analysis above shows that the content of land disputes in Vietnam today can only be understood as disputes over land use rights. However, the provisions of the Land Law of 2013 and the Land Law of 2024 do not specifically define the object of the dispute and the subjects involved in the dispute. As a result, there are many different interpretations of this content, leading to difficulties in determining the competent authority to resolve the dispute.

## **2. Legal provisions on the jurisdiction to resolve land disputes**

### **2.1. Resolving land disputes under the Land Law of 2013**

One of the important contents of state management of land is the resolution of land disputes<sup>9</sup>. Accordingly, the state encourages the parties to land disputes to self-mediate or

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<sup>8</sup> Article 3, Clause 2 of Resolution No. 04/2017/NQ-HĐTP of the Supreme People's Court Judicial Council dated May 5, 2017, Guiding on some provisions of Clause 1 and Clause 3 of Article 192 of the Civil Procedure Code No. 92/2015/QH13 on Returning the Complaint, the Right to Refile the Case.

<sup>9</sup> Article 22, Clause 1 of the Land Law of 2013.

resolve disputes through mediation at the grassroots level. If the parties to the dispute cannot self-mediate, they can send a petition to the people's committee at the commune level where the disputed land is located to proceed with mediation<sup>10</sup>. This regulation is of practical significance in the activity of resolving land disputes, as the local government administrative agency is the entity that knows the content, relationship, and current status of the disputed land. On the one hand, it helps to reduce the number of land disputes arising at the court, on the other hand, it preserves the relationship and good feelings between the parties in the dispute relationship.

Land disputes that are not resolved through mediation at the commune level can be resolved as follows<sup>11</sup>:

*One*, land disputes in which the parties have a Certificate of Ownership or one of the types of documents listed in Article 100 of the Land Law of 2013 and disputes over attached property are resolved by the Court.

*Two*, land disputes in which the parties do not have a certificate of ownership or one of the types of documents specified in Article 100 of the Land Law of 2013, the parties can only choose one of the two forms of dispute resolution: First, submit a petition for dispute resolution to the competent people's committee; Second, file a lawsuit with the competent court in accordance with the provisions of civil procedural law.

According to the provisions of the Land Law of 2013 and the Law on complaints of 2011, if the parties do not agree with the decision of the chairman of the people's committee at the district or provincial level, they have the right to appeal the decision to the next level or file a lawsuit with the court in accordance with the provisions of administrative procedural law<sup>12</sup>. The analysis above shows that all land disputes are within the jurisdiction

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<sup>10</sup> Article 202, Clauses 1 and 2 of the Land Law of 2013.

<sup>11</sup> Article 203, Clauses 1 and 2 of the Land Law of 2013.

<sup>12</sup> Clause 3 of Article 203 of the Land Law of 2013.

of the court, and depending on the case, the parties may choose the court or the competent people's committee to resolve the dispute. In addition, the mediation procedure is regulated as a mandatory procedure for disputes over who has the right to use the land and does not apply to other disputes related to land.

The regulations on the procedures for resolving land disputes can be implemented as follows:

*First*, the parties to the dispute can file a lawsuit to resolve the dispute through civil procedural procedures. According to the provisions of the 2015 Civil Procedure Code, the Court has jurisdiction to resolve disputes over ownership and other rights to property; disputes related to civil transactions, contracts; land disputes under the provisions of land law<sup>13</sup>. The condition for the Court to accept the case for resolution of land disputes is that the dispute over who has the right to use the land must be reconciled at the grassroots level, while for other disputes such as those related to civil transactions with the subject of the right to use land or the division of common property of spouses when divorcing is the right to use land, etc., this is not a mandatory requirement. In addition, for land disputes in which the parties have a Certificate of Ownership or one of the types of documents specified in Article 100 of the 2013 Land Law, they belong to the jurisdiction of the Court under civil procedural procedures. Thus, if the People's Committee proceeds to resolve disputes that fall within the jurisdiction of the Court, it is against the regulations and may be nullified by the Court. Accordingly, Article 34 of the 2015 Civil Procedure Code stipulates that in the course of resolving civil cases, the Court has the authority to annul unlawful individual decisions of agencies, organizations, or persons with authority that infringe upon the legitimate rights and interests of the parties. An individual decision is a decision that has been issued on a specific issue and is applied once to one or more specific individuals<sup>14</sup>.

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<sup>13</sup> Article 26 of the Civil Procedure Code of 2015.

<sup>14</sup> Article 34, Clause 2 of the Civil Procedure Code of 2015.

*The second*, option is for the parties to the dispute to file a lawsuit to resolve the dispute through administrative procedural procedures. This procedure applies only to objects that are administrative decisions or individual decisions, such as decisions on land disputes issued by the competent People's Committees in accordance with the provisions of the 2015 Administrative Procedure Law. The Court participates in the role of reviewing whether the resolution of land disputes by the competent authority is in accordance with the law. On this basis, the Court accepts or rejects the request of the plaintiff. This is not a lawsuit between the parties to the dispute over land, but a relationship between the parties to the dispute and the entity that resolves the dispute. Thus, for land disputes that fall within the jurisdiction of the Court under civil procedural procedures, such as those in which the parties have a Certificate of Ownership or one of the types of documents specified in Article 100 of the 2013 Land Law, or disputes related to transactions on land use, inheritance, etc., the administrative procedural procedure will not be applied to resolve.

With regard to the right of the parties to the dispute to choose the dispute settlement body for disputes in which the parties do not have a Certificate of Ownership or one of the types of documents specified in Article 100 of the 2013 Land Law, according to the guidance of Resolution No. 04/2017/NQ-HĐTP, it will not fall within the jurisdiction of the Court if the agency, organization, or individual has submitted a request for dispute resolution to the competent People's Committee<sup>15</sup>. Therefore, when receiving a request for filing a lawsuit from the parties, the Court must consider whether the case falls within the jurisdiction of the Court. If the case is already being resolved by the competent People's Committee, the Court must reject the request of the parties.

In conclusion, under the provisions of the 2013 Land Law, the Court and the People's Committee are the subjects with jurisdiction to resolve land disputes. Based on the provisions of the law, the jurisdiction of the People's Committee to resolve land disputes is

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<sup>15</sup> Article 4 of Resolution No. 04/2017/NQ-HĐTP of the Supreme People's Court Judicial Council dated May 5, 2017 Guiding some provisions of Clause 1 and Clause 3 of Article 192 of the Civil Procedure Code No. 92/2015/QH13 On returning the complaint, the right to re-file a lawsuit.

narrower than that of the Court. However, the law does not specify whether the parties have the right to file a lawsuit under administrative procedural procedures against an unlawful decision to resolve the dispute, or whether they are required to file a lawsuit under civil procedural procedures<sup>16</sup>. In this case, the parties still have the right to choose the dispute resolution procedure of their choice. The authors believe that the division of jurisdiction to resolve disputes under the provisions of the 2013 Land Law is not really necessary, while the law has also determined that the Court is the subject with jurisdiction to resolve disputes. Therefore, it is necessary to study, amend, and supplement the provisions on the jurisdiction to resolve land disputes, especially in the current phase of perfecting land law.

## 2.2. Suggestions on the jurisdiction to resolve land disputes under the 2024 Land Law

On the basis of analyzing the current legal provisions on land disputes, land dispute resolution, and the jurisdiction to resolve land disputes, in comparison with the content of the 2024 Land Law, the authors propose the following suggestions:

*First, the regulation on the concept of land disputes.*

The concept of land disputes is defined in Article 24, Clause 3 of the 2013 Land Law and Article 47, Clause 3 of the 2024 Land Law, both of which define “*land disputes as disputes over the rights and obligations of land users between two or more parties in land relations*”. As analyzed, this is a vague and unclear provision, while the relevant laws and guidelines are gradually narrowing this concept to determine the subject of dispute resolution. Therefore, the law needs to be amended and supplemented to clarify that land disputes are disputes over the rights of land users. First, based on the regime of public ownership of all land, land users only have the right to use. Second, disputes related to the

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<sup>16</sup> Le Thi Bich Chi and Nguyen Thi Loan, The Jurisdiction of the Court in Resolving Land Disputes: Some Inconsistencies and Suggestions, Journal of Legislative Studies, No. 23, 2022, p.26.



right to use land, such as disputes over land-related transactions, disputes over attached property, have been mentioned in the guidelines on the jurisdiction to resolve land disputes<sup>17</sup>.

In addition to the term "land disputes," the 2024 Land Law also refers to "disputes related to land"<sup>18</sup>. However, whether disputes arising from commercial activities "related to land" are land disputes or not is unclear. This can lead to confusion or controversy when choosing between the Court and the Commercial Arbitration Tribunal to resolve the dispute<sup>19</sup>. Therefore, the 2024 Land Law should supplement the definition of "disputes related to land" that fall within the jurisdiction of the Commercial Arbitration Tribunal. These disputes could include disputes arising from contracts or rights and obligations arising from contracts that have land use rights as their object.

*Second*, the regulation on mediation in land dispute resolution Compared to the current land law, the mediation procedure in the 2024 Land Law is no longer a mandatory provision but is only intended to encourage. However, some provisions on the mediation procedure are not really appropriate<sup>20</sup> and need to be reviewed and adjusted: One is that Article 235, Clause 1 of the 2024 Land Law stipulates that the State encourages the parties to land disputes to self-mediate, mediate at the grassroots level in accordance with the provisions of the law on mediation at the grassroots level, mediate in accordance with the provisions of the law on commercial mediation, or other mediation mechanisms under the law. Therefore, according to this regulation, before the case is brought to trial by the Court, the parties to the dispute may have to mediate several times, three times, in which the

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<sup>17</sup> Luu Quoc Thai, A Discussion of the Concept of "Land Dispute" in the Land Law of 2003, Journal of Legal Science, No. 2, 2006, p.6.

<sup>18</sup> Article 236, Clause 3 of the Land Law of 2024 provides that disputes between parties arising from commercial activities related to land shall be resolved by the People's Court in accordance with the provisions of civil procedural law or resolved by commercial arbitration in accordance with the provisions of commercial arbitration law.

<sup>19</sup> Article 236, Clause 2 of the Land Law of 2024.

<sup>20</sup> Articles 10, 205, 206, and 207 of the Civil Procedure Code of 2015.

mediation time at the People's Committee of the commune lasts for no more than 45 days. This will affect the process of dispute resolution of the parties, because in practice, the results of mediation depend mainly on the goodwill of the parties. Therefore, this regulation should be adjusted to limit the number of mediations, if mediation is unsuccessful, the parties have the right to request the Court to resolve the dispute.

Second, Article 235, Clause 3 of the 2024 Land Law stipulates that mediation in land disputes at the People's Court is conducted in accordance with the provisions of the law on civil procedure and the law on mediation and dialogue at the Court. However, mediation in accordance with the provisions of the law on civil procedure is a mandatory procedure in the process of resolving civil cases, except for cases that cannot be mediated or that mediation cannot be conducted. Therefore, this is not in line with the provision on encouraging mediation in Clause 1 of Article 235 of the 2024 Land Law. In addition, at point b, Clause 2 of Article 235, the composition of the mediation council at the People's Committee of the *“commune includes the Chairman or Vice Chairman of the People's Committee of the commune as the Chairman of the Council, a representative of the Vietnam Fatherland Front Committee of the commune, a civil official in charge of land administration, and a person who has lived for many years and knows the origin and use of the disputed land plot. Depending on the specific case, representatives of organizations and individuals may be invited to join the land dispute mediation council”*. The provision has not yet determined the scope of the participants, and it does not assign the Government to provide detailed guidance on this content. It is believed that the provision should be changed to encourage the parties to resolve the dispute themselves or through mediation at the grassroots level, except for the mandatory mediation procedure at the Court in order to be consistent with the provisions of the law on civil procedure. At the same time, it is necessary to provide guidance on the entities that are entitled to participate in the mediation procedure at the grassroots level.

*Third, the regulation on the jurisdiction to resolve land disputes*

According to the provisions of Article 236 of the 2024 Land Law, land disputes and land and attached property disputes are within the jurisdiction of the Court and People's Committees at all levels. Therefore, the jurisdiction to resolve disputes has not changed from the provisions of the current land law. The authors believe that the land law needs to be adjusted in the direction of transferring the jurisdiction to resolve land disputes to the Court. People's Committees at all levels only have the responsibility to provide documents and materials related to land management and use as a basis for the Court to resolve in its jurisdiction when requested, based on the following grounds:

*One* is to assign the jurisdiction to resolve land disputes to a specialized court in a unified manner, ensuring that it focuses on a specialized body with the necessary expertise, and reduces the management responsibility of the state land management agency. This is also in line with the provisions of the 2013 Constitution on the functions and tasks of the court. At the same time, separating the judicial function from the executive function meets the requirements of judicial reform in Vietnam in the current period, and helps to prevent the problem of "*playing both sides of the game.*"

*Second*, the division of jurisdiction to resolve land disputes between the courts and the competent People's Committees is not really necessary, it takes a lot of time and cost to resolve disputes but does not achieve results. On the other hand, when the parties continue to file a lawsuit for administrative review because they do not agree with the decision to resolve the dispute, the settlement will start over from the beginning. In addition, Clause 2 Article 236 of the Land Law 2024 also stipulates that if the parties do not have a certificate of ownership or one of the types of documents specified in Article 137 of the Land Law, the Court still has jurisdiction to resolve. This is also in line with the provisions of the current civil procedural law<sup>21</sup>.

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<sup>21</sup> Article 26, Clause 9 of the Civil Procedure Code of 2015 provides that civil disputes falling within the jurisdiction of the People's Court include land disputes under the provisions of the Land Law.

*Third*, in order for the Court to resolve land disputes effectively and quickly, the 2024 Land Law also stipulates that People's Committees at all levels have the responsibility to provide documents and materials related to land management and use<sup>22</sup>. Thus, the competent People's Committees play a very important role in resolving land disputes. However, the Land Law does not have regulations binding the responsibility of the People's Committees. It does not stipulate the maximum period for the agencies managing documents and materials to provide them to the Court, nor does it specify what documents need to be provided. In addition, the 2024 Land Law also does not stipulate penalties for not providing or providing incomplete information. Therefore, the content on jurisdiction needs to add regulations on the penalties applicable to the People's Committees in this case, in order to improve their responsibility in coordinating with the Court to resolve land disputes.

### **3. Conclusion**

The 2024 Land Law, which was passed by the National Assembly on January 18, 2024, has made additional provisions on the determination of jurisdiction to resolve land disputes between the People's Courts and People's Committees at all levels. This has addressed the shortcomings in the regulations of the 2013 Land Law. However, there is a need for guidance documents on the following regulations: the definition of land disputes, the definition of land-related disputes, the regulations on mediation procedures, and the responsibilities of competent state agencies in providing documents and materials related to disputes. The content on jurisdiction to resolve land disputes still needs to be studied to transfer the power to resolve disputes to the People's Courts in order to ensure the exercise of judicial power of the People's Courts as stipulated in the 2013 Constitution.

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<sup>22</sup> Article 236, Clause 6 of the Land Law of 2024.

## **COMPETING INTERESTS**

The authors have no competing interest to declare.

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