

# Proposal of the Land Valuation Process in Vietnam According to the Rules of the Market when the State Acquires Land

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## Abstract:

When the State acquires land, the price of land use rights is valued by compensation, which is one of the essential bases for guaranteeing land users. Resolution No. 18/NQ-TW also clearly states that land valuation must have a method valued according to market principles. Regulations on valuing specific land prices in the 2013 Land Law, amended and supplemented in 2018, have also revealed limitations related to failing to ensure specialization, objectivity, fairness, participation in supervision, and access to information of people whose land is acquired. The article proposes to develop a land valuation process in Vietnam according to market principles when the State acquires land to ensure a balance of benefits for those whose land is acquired.

**Keywords:** land price; land valuation; land acquisition.

**Classification of disciplines:** *Jurisprudence*

## 1. Overview of land valuation according to market principles when the State acquires land

### *1.1 The concept of land valuation according to market principles when the State acquires land*

According to clause 5, Article 4 of the 2012 Price Law, “Valuation is the determination of prices for goods, and services by competent state agencies or production, and business organizations, and individuals.” However, land use rights are considered a particular type of goods because owners and users are not identical; exchanging these goods must depend on land use planning and plans. Therefore, land valuation is subject to independent and separate adjustment of the Land Law under relevant regulations on land use management.

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However, the current land law only defines land prices but does not specify “land valuation.” According to the provisions of Clauses 19 and 20, Article 3 of the 2013 Land Law, amended and supplemented in 2018, it is stipulated that land price is the value of land use rights calculated per unit of land area. Land use rights are the monetary value of land use rights for a specified land area within a specified land use term. Besides, the method of valuing according to the market principle in land valuation was first included by our Party as a goal in Resolution No. 18/NQ-TW dated June 16, 2022, on *Continuing to renovate and improve institutions and policies, raising the effectiveness and efficiency of land management and use, creating a driving force for our country to become a high-income developed country*. Therefore, it is necessary to have theoretical grounds to formulate the concept of land valuation according to market principles when the State appropriately acquires land, balancing benefits.

Theories related to market economics indicate that individuals are delighted when exchanging and that exchange activity establishes prices. Typically, the market can be understood as a place where goods or services are exchanged. The market is just “an inevitable consequence of a human nature disposition... that is, a disposition to barter or exchange one thing for another” [1:63] t. According to Malcolm Adiseshiah, markets are formed based on the exchange of goods that they have in surplus in order to receive goods that they do not have or lack. Accordingly, each individual is seen as having some initial asset, and they begin to look around other individuals in similar circumstances. The difference between them is the package of goods that each person currently has, from which comes the desire to get rid of excess goods to receive goods that they do not have enough or do not have. These exchange transactions are the source and the basis that led to the emergence of the market. The market is where many participants, goods, and some good items are expressed [5]. Land valuation is an activity conducted based on market law and considering factors constituting land value, which have been formed based on people’s consent.

In essence, land valuation consists of determining the price and value of land. The fundamental difference between price and value is expressed in the fact that market prices specify how much an asset can be sold for in a specific time; the value specifies the actual value of an asset compared to other assets [10:90] . Thus, the market value of land is the price valued based on the factors constituting the land value such as profitability, location, size, land use purpose, supply-demand relationship of that type of land in the market [14:254] . However, in Vietnam, the land price, i.e., the price of land, is valued based on land use rights and is mainly implemented by state agencies under the concept in clause 19, Article 3 of the 2013 Land Law.

In summary, the valuation of land use rights on the market principle upon land acquisition by the State is *the appraisal of results of land valuation by independent valuation organizations based on market laws and the principle of objectivity and honesty to determine specific prices for each type of acquired land as a basis for calculation of compensation, support, and resettlement*.

## **1.2 Land acquisition in ASEAN**

According to [19], land acquisition is a scenario where a government expropriates land that has been in private use. *"This power is known by a variety of names depending on a country’s legal traditions, including eminent*

*domain, expropriation, takings, and compulsory purchase.* "The key feature of expropriation is that land use rights change from private to public. Expropriation is done for the purpose of projects that would serve the greater good of the public. [19] further argues that in spite of the fact that land acquisition is geared towards the greater public good, there are some controversies that sometimes arise from the exercise. In itself, land expropriation has a positive side in that it ensures that governments do not face land challenges whenever they intend to initiate infrastructure projects.

However, despite the positive aspect of freeing up land for the government to run infrastructure projects the land acquisition process has a downside. First, land acquisition comes with the displacement of people. Displacement of people leads to the disruption of life patterns as well as means of earning a livelihood. Even though displaced persons are given monetary compensation, it is difficult to quantify the monetary value of the disruption. Second, if not conducted properly the land valuation process might be flawed and the occupants might feel short-changed. Third, poorly done land expropriation, poor legislation or poor implementation of laws regarding land acquisition might cause land tenure insecurity. For investors, this is a red flag and it would drive away both existing and potential investors hence affecting the economy negatively [19].

ASEAN countries save for Myanmar and Laos have legislation dealing with land acquisition for public use [22]. In Vietnam and Laos its termed as Land Recovery and Land Requisition respectively. It is further noted that legislation in Vietnam and Malaysia is explicit regarding land expropriation for socio-economic development and public use.

Writing about the Land acquisition process in Malaysia [22,73] in 'The Negative Effect of the Land Acquisition System for Profit-oriented Enterprises in Order to Promote Growth' states that Malaysia's Land Acquisition (Amendment) Act of 1991 *"for Economic Growth has institutionally enabled arbitrary land acquisition."* The Land Acquisition (Amendment) Act of 1991 in Malaysia gives the government power to expropriate land in private use for public utilization and development projects [22]. Unlike Vietnam where land recovery is limited to the establishment of industrial parks among other investments geared towards spurring economic growth, the 1960 Land Acquisition Act in Malaysia does not limit the scope of land acquisition purposes.

Land Acquisition is where the state expropriates land that has been in private use. This mandatory acquisition is non-negotiable and the current users of the land must surrender it to the government [21]. Further, Malaysian Law gives the government the right to expropriate land for economic development. However, the law also obligates the government of the day to compensate the current land owner for the expropriated land. The compensation envisioned in Law should restore the land owner to the financial position they were in before the land acquisition. The extent of restoring the land owner to the status quo is not limited to the value of the expropriated land. It also covers compensation for the loss of business to the landowner[21].

In 2017, according to [15] the Malaysian Federal Court in its ruling in the *Semenyih Jaya Judgement Semenyih (Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & another case)*:

"For the first time ever, the Federal Court expanded the scope of "market value" in land acquisition to include

loss of business. This ruling opens the door to the multifarious scenarios where loss of business can occur in calculating the value of acquired land, which will largely benefit business owners. In so doing, the Federal Court sought to give the full effect to the right to property under Article 13(1) of the Federal Constitution"[15:59]

This ruling goes a long way in cushioning business owners from losses related to land acquisition. If the state were to compensate land users the market value of the land and perhaps the value of the infrastructure in place it would still have undervalued the compensation due. Businesses thrive on day-to-day transactions with their clients and land acquisition means that in many cases business is lost. Therefore, it is only fair practice if the state takes into consideration the loss of business in the compensation process.

In the *Senyih Jaya case* a land owner had initiated development on a piece of land that was expropriated by the government of Malaysia. The land owner was developing factory units and collected 10% deposit from various investors who would take up the units once completed. *Semenyih Jaya Sdn Bhd* had moved to The Apex Court after the lower courts had struck out the case challenging the amount awarded after land acquisition. The land administrator and the Lower courts had declined to compensate the plaintiff for the loss of business (profit) related to the factory units under commercial development. In its ruling, the Federal Court held that the quantum of compensation due to the plaintiff in relation to the market value of the land should include (i) the present state of the land, (ii) The profit expected from the development, and (iii) loss of business. If the compensation awarded by the land administrator did not take into account these requirements it would be in contravention of the principle of adequate compensation as envisioned in Article 13(2) of the Federal Constitution of Malaysia [22,15]. Moreover, in so doing, the Federal court upheld *Article 13 of the Federal Constitution* of Malaysia which deals with the right of property. The article stipulates that persons have a right to property and can only be deprived of that right in accordance with the law. The same article further stipulates that any law that deprives property owners of the right to commensurate compensation for their expropriated property will be deemed unconstitutional [21].

This landmark ruling in Malaysia upheld not only the law of natural justice but also went a long way in bolstering investor confidence. Investors would definitely have qualms in investing in a country where they are not assured of fair compensation in the event of land acquisition.

### ***1.3 Land Valuation and Compensation in Malaysia***

In Malaysia issues relating to land Valuation and Compensation for land expropriation are covered in the First Schedule of the amended Land Acquisition Act 1960. The schedule outlines principles such as (i) Market value of the Land; (ii) Betterment; (iii) Severance; (iv) Injurious Affection; Incidental expenses incurred as a result of Change of residence or place of business; and (v) Accommodation works. The act stipulates that upon land acquisition the owner is entitled to commensurate compensation at the prevailing market value of the land plus other expenses incurred while improving the state of the site. However, the expenses are limited to the only ones incurred prior to the state issuing the land acquisition gazette notice [3].

Article 58 of Act 486 of the Laws of Malaysia: land Acquisition Act 1960 (Amended 2011) delves into the issue of compensation.

58. (1) On receiving any direction under section 57 the Land Administrator shall give notice in writing in Form Q to the persons interested in such land of the purpose for which the land is needed, and shall make such offer of compensation, or shall negotiate the payment of such compensation, as shall be reasonable in all the circumstances of the case.

(2) Compensation under subsection (1) may be in the form of a single sum of money, in the form of periodical payments of money, or in such other form as may be agreed.

(3) In making any assessment of compensation under this section the Land Administrator shall, where the land is required in order to carry out public works, take into account any increase in the value of the land to be occupied or used, or any advantages which will accrue to any person interested therein, by reason of the purpose for which such public works are being carried out.

In the event that the land owner and land administrator cannot agree on the amount to be paid as compensation as stipulated in Articles 58 and 59, the land owner has recourse in a court of law as enshrined in Article 60 of the Land Acquisition Act 1960 (Amended 2011) (Act 486 Laws of Malaysia).

In any instance of land acquisition, the issue of compensation is always a thorny issue. The main problem is determining what is a legitimate compensation and what it is not. Land acquisition in its nature is disruptive both socially and economically. Therefore, there has to be a way of determining what will be compensated and what will not be compensated. On the one hand, from a social perspective, Land owners do not live in a vacuum. Their lands are within communities and therefore they are part of a community. Expropriation of land then means that these communities are broken and the land owners have to start afresh.

On the other hand, the economic effect of land acquisition is even more pronounced and a great challenge to deal with. One way of looking at the economic challenge is the disruption caused to businesses during land acquisition. Business owners invest both financially and man hours to create a clientele for their business. Land acquisition means relocation of their enterprises that could easily affect the success of their businesses by (i) Relocation from a prime business location; (ii) Relocation from the specific clientele for the particular service or goods; (iii) A total collapse of the business due to relocation resulting from land acquisition.

Act 486 of the Laws of Malaysia Article 70, The Land Acquisition Act 1960 (Amended 2011) stipulates the principles Relating to the Determination of Compensation upon land acquisition in Malaysia. Regarding Market value, the first schedule of the Land Acquisition Act of Malaysia states:

1. (1) For the purposes of this Act the term —market value<sup>1</sup> where applied to any scheduled land shall mean the market value of such land—

(a) at the date of publication in the Gazette of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or

(b) in other cases, at the date of the publication in the Gazette of the declaration made under section 8.

It further stipulates that in (1A) the valuer can use any method deemed appropriate to determine the actual value of the land being expropriated. One of the suggested methods is pegging the value of the expropriated land on the value attached to similar pieces of land within the same locality. The basic principle is based on assuming that the value of land will be the same as surrounding pieces of land. However, the principles go ahead and stipulate that when basing this value on the price at which surrounding land has been sold, the sale must have been conducted within the past two years from the day the land in question is to be expropriated.

In addition, (1B) stipulates that in cases where only a part of the entire land is to be placed under acquisition the valuer will: (i) First determine the value of the whole land as captured in its title deed; then (ii) proceed to determine the exact value of the exact piece to be expropriated.

Moreover (1C) evidence of market value based on sale transactions done after valuation of the expropriated land cannot be admitted. This means that, in the event that the land valuer has done his work, the owner cannot appeal for the value to be adjusted based on the prices paid for similar land sold within the vicinity after the valuation has already been done.

Moreover, in the event that the lease of land has years to go before expiry as per the valid title of land ownership held by the owner, (1D) requires the land valuer to estimate the possible value of the land at the expiry of the lease. The value reached through this estimation is the value to be paid for the land being expropriated. The issue of determining market Value is further tackled under (2) and (3) of the first schedule.

(2a) (2A) In assessing the market value of any scheduled land which is Malay reservation land under any written law relating to Malay reservations, or a Malay holding under the Malay Reservations Enactment of Terengganu [Terengganu En. No. 17 of 1360 (A.H)], or customary land in the State of Negeri Sembilan or the State of Malacca, the fact that it is such Malay reservation land, a Malay holding, or customary land shall not be taken into account except where the scheduled land is to be devoted, after the acquisition, solely to a purpose for the benefit of persons who are eligible to hold the land under such written law

(2BA) In assessing the market value of any scheduled land, where the information provided by the State Director of Town and Country Planning or the Commissioner of the City of Kuala Lumpur, as the case may be, under section 9A indicates that the scheduled land is within a local planning authority area, then the land shall be assessed by having regard to the specific land use for that land as indicated in the development plan.

(2C) In assessing the market value of any scheduled land which but for the acquisition would continue to be devoted to a purpose of such nature that there is no general demand or market for that purpose, the assessment shall be made on the basis of the reasonable cost to the proprietor of the scheduled land of using or purchasing other land and devoting it to the same purpose to which the scheduled land is devoted, if the Land Administrator is satisfied that this is bona fide intended by the proprietor of the scheduled land.

(2D) In assessing the market value of any scheduled land which is an estate land, or forms part of an estate land

within the meaning of section 214A of the National Land Code [Act 56 of 1965], the market value shall not in any way be affected by the fact that it can be sold to one person.

Section 3 of the Malaysian Land Acquisition ACT also delimits the scope of compensation and outlines cases where compensation claims may be declined.

3(a) Development projects done on the land within two years of the expropriation. This requirement has been put in place to prevent corrupt practices whereby landowners might learn of the proposed land acquisition and rush into making improvements on the land in order to increase its value. In the event that a landowner has made improvements within two years, they must prove that they did not have prior knowledge of the looming land acquisition. This procedure of rooting out foul play ensures that the government pays only legitimate claims.

3(b) Also, the government of Malaysia does not compensate any development that could be deemed illegal by a court of law or could pose a health hazard to the users of the land. Further, the government is in no way obligated to compensate the land owner for buildings that fall under the categories outlined in part 3 of the first schedule. (3A) If the building erected contravenes the type of structures permitted by the set regulations regarding (a) the structures that can be legally erected on the land; (b) If there is an explicit or implied restriction on such a structure on the land.

The Malaysian Land Acquisition Act 1960 (Amended 2011) in part 2 of the first schedule stipulates the factors to be considered in the determination of the compensation to be paid. No other aspect can be admitted while determining land value.

(a) the market value as determined in accordance with section 1 of this Schedule;

(b) any increase, which shall be deducted from the total compensation, in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land;

(d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner; (e) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(f) where only part of the land is to be acquired, any undertaking by the State Authority, or by the Government, person or corporation on whose behalf the land is to be acquired, for the construction or erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired, provided that the undertaking is clear and enforceable

Moreover part 3 of the first schedule deals with issues that are not considered during valuation for compensation.

(a) The issue of how urgent the land acquisition is does not determine the value of the expropriated land. The fact that a certain piece of land is required urgently cannot be used as grounds to push its value higher than the pieces of land of the same characteristics within the same locality; (b) If the user is opposed to relinquishing the land does not influence the value of the land. The current users desire to continue using the land is not a factor to be used in determining the value of land because land acquisition is mandatory; (c) In the event the interested party suffers any damage by the act of a private person, then the government is not in any way obligated to factor that while valuing the land for compensation; (d) Also, during the valuation process, the land administrator cannot factor in any possible future depreciation of the land that might arise from the activities of the new owner of the land; (e) The same way the land administrator cannot consider depreciation as stipulated in (d) they too under (e) cannot make room for possible future appreciation of the land arising from the activities of the new user. (f) Any costs that are incurred in improving or making additions to the land after a declaration has been published under section 8 are not included while determining the amount of compensation to be paid for the expropriated land. However, there are some special circumstances when this regulation does not apply. (i) In cases where the costs were incurred in ensuring that a building sitting on the land to be acquired does not fall into disrepair; and (ii) In case of agricultural land, the expenses were incurred in maintaining the crops under cultivation.

Finally, part 4 of the first schedule of Malaysia covers the limitations related to the compensation to be paid for land acquisition. Where a land administrator in executing the duties of his office makes an inquiry under section 12 of the act or the land owner has in writing as requested by the Land Administrator under subsection 11(2): 4 (a) stipulates that the Land owner cannot offer a compensation higher than the value claimed by the land owner. This is to say if the land owner has made a valuation for their land and submitted a claim for the same in writing, the Land administrator cannot revise it upwards.

(b) If the land owner without giving valid reasons as determined by a court of law declines to claim compensation for the expropriated land, then they cannot at any point be awarded compensation than what was deemed appropriate by the land administrator.

#### ***1.4 Land acquisition procedure in Malaysia***

In Malaysia, land acquisition falls within the Land Acquisition Act 1960 (Amended 2011). "*Land acquisition is a process whereby a state authority or the government acquires the land of a private owner*" [11].

According to [31], Land acquisition in Malaysia is governed the Land Acquisition Act 1960. The act covers the acquisition of land, assessing the value of the land and compensation. The act has explicitly stated that land owners have a right to be compensated for the losses incurred as a result of the land acquisition. "The act also empowers land administrators to make a summary enquiry and explains the process of taking possession, payment of compensation, extension and withdrawal of acquisition, reference to the high court, service of notice, use of land under certain circumstances and miscellaneous matters" [31].



The government of Malaysia may carry out compulsory land acquisition from private landowners for public use or to put the land into use that will lead to the economic benefit of Malaysia [20]. This expropriation of land leads to loss of property by the landowners. The Land Acquisition Process in Malaysia is split into two levels:

- (i) The administrative stage- This stage ensures that all the stipulations of the Land Acquisition Act are adhered to;
- (ii) Judicial Stage- This stage is a last resort if there are disputes arising from the first level. The disputing parties proceed to court for resolution of the matter [20].

In the Administrative stage also known as the Pre- Acquisition stage [20], posit that the state must initiate the Land Acquisition Process by filling out the requisite Form 1 as stipulated in the First Schedule of the Land Acquisition Rules 1998. Further, the Land Acquisition Act, 1960 (Amended) of Malaysia in Section 3(1) stipulates that the state may acquire land:

- (a) for any public purpose;
- (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
- (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

The next step under the administrative stage is Acquisition. The acquisition stage is governed by the Land Acquisition Act and it involves the filling out and submission of the requisite forms. The Land Acquisition Act has set out the following steps:

1. According to Section 4 of the land Acquisition Act this is the Preliminary notice stage. The land administrator notifies the public by filling out Form A and Gazettes that the state will expropriate land within the affected area in accordance with section 3a of the land acquisition Act.
2. In accordance with Section 5, the State Director fills in Form B giving power of entry and survey. The authorized person has the authority to survey the land but in accordance with Section 5 (2) and (3).
3. In this stage, the Land Administrator fills out and submits to the State Authority Form C according to Section 7 of the act. The required documents as per Section are a plan showing the land(s) under acquisition and the list of the lands: 7 (a) A plan of the entire area showing the specific lands to be expropriated and 7 (b) Duly filled out form C containing the list of lands to be expropriated.
4. Upon the State Authority receiving Form C filled out as prescribed in Section 7 they proceed to publish the decision in a Gazette notice in the form of duly filled out Form D after determining that land acquisition is necessary as per Section 3. This step is done in accordance of the requirements of Section 8 (1)-(5).
5. After fulfilling the requirements of Section 9 (gathering information on the present use of the land for the purpose of compensation) the Land Administrator begins the land Acquisition procedure. The Land

Administrator fills in Form E in accordance with Section 52 issuing a public notice of the date (s) for the hearing of compensation claims and interests in the land - section 10 (1). The hearings can only begin after 21 days from the day the public notice was issued elapse -Section 10 (2). Also, the notice must contain a copy of the Gazetted form D- Section 10(3).

6. Section 11 (1) requires the Land Administrator to serve the current land occupier 11(1)(a) , and the registered owner in case the current occupier is not the registered owner 11(1)(b), any person who has a registered interest in the said land 11(1)(c) and any person he knows or believes might be interested in the land in question with copies of all notices published as per section (10)(1). In this stage, the Land Administrator serves a notice to the registered land owner(s) or any interested parties as per Form E by filling out Form F. The notice served in Form F requires the land owner to submit a written statement giving all the necessary information as required in the form.
7. Section 12 deals with enquiry by the Land Administrator. Section 12(1) the Land Administrator in accordance with the dated for inquiry as stated in subsection 10(1) institutes the inquiry hearings. The Land Administrator seeks to determine the value of the lands scheduled for acquisition and then proceeds within the shortest time possible to assess the commensurate compensation. The First schedule has given the Land Administrator leeway to engage the services of a land valuer and obtain a written assessment of the land's value before awarding compensation as per section 14. Also, Section 12(2) requires the Land Administrator to establish the interests of all persons seeking compensation for the land. Under Section 12(3) may put off or adjourn the enquiry hearings provided there are sufficient reasons. The reason for adjournment of postponed of the hearings must be captured in writing.
8. Section 14 relates to the offer of a written award. The land Administrator upon completion of hearings according to Section 12 proceeds to offer a written award. The award is made in Form G filled out by the Land Administrator 14(1). An award is made for each scheduled and land interested parties separately as determined during the enquiry stage. The land administrator is the custodian of compensation award files -14(2). Also, the amount to be paid to the valuer one was used and any other cost is deducted from the amount awarded as compensation as determined by the Land Administrator-14(5).
9. Section 16 (1) requires the land administrator to serve notice to all the beneficiaries of compensation awards -in respect to subsection 14(1)-via a filled in Form H. 16(2) (2) *“Every notice in Form H shall include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest”*.
10. There are cases where land is required urgently. This case calls for an expediated process and land acquisition is done before compensation is done by issuing a ‘Certificate of Urgency’ through Form I. Section 19 directs that

“Where any land, described in any notice in Form E given under section 10, is in the opinion of the State Authority urgently required for use for a public purpose, or for a public utility in the case of an acquisition under paragraph 3(1)(b), the State Director may, on or after the expiration of fifteen days from the date of the giving of such notice, issue a Certificate of Urgency directing the Land Administrator to take possession of such land, subject to section 20.”

11. Regarding buildings erected on land earmarked for acquisition under certificate of urgency, the Land Administrator will proceed to take possession of the unbuilt area as per section 22. Thereafter, the land administrator will issue a formal notice to the occupier of the building through Form J. The notice issue via Form J requires the occupier of the building to vacate within the given period but it does not exceed 60 calendar days- 20(a). 20(b) (i) The owner is compensated the value of the building as it is if it's a permanent structure. (ii) For temporary structures that can be torn down and re-erected elsewhere, compensation is awarded for the value of the structure or the cost of tearing it down and re-erecting it elsewhere.
12. Through a notice in Form K served to the occupier of the land, the Land administrator takes possession of any scheduled land- 22(1). If the occupier is not available Form K is posted as a notice. 22(2). The notice also contains a list of all the lands gazetted for acquisition.
13. Section 24(1) requires the Land Administrator to fill out form L requesting the proprietor of the expropriated land to surrender the land title and the proprietor is obligated by law to surrender the document upon receipt of the notice.
14. If any of the interested parties dispute the Land administrators award in terms of the land size, amount awarded, recipient of the award, or appointment of the compensation, Section 37(1) provides that the complainant has the right to seek the intervention of a court of law.
15. By way of a duly filled out Form M, the Land Administrator may make an application to the Court for determination of any issues regarding the land's acquisition- Section 36.
16. If there are any objections arising under Section 37, a written complaint in Form N is submitted to the Land Administrator requesting him to refer the matter to court for determination- Section 38(1). The land administrator then forwards the matter to the Court Registrar.
17. When the Land Administrator receives the objection as per 38(1) , he is obligate to refer the matter to court within 6 months by filling in Form O.

## 2. Factors affecting land valuation according to market principles upon land acquisition by the State

*Firstly, the ground rent.* According to Karl Marx's ground rent theory, it exists in three forms: differential ground rent, absolute ground rent, and monopoly ground rent. In particular, differential ground rent includes differential ground rent I and differential ground rent II. *Differential ground rent I* is the profit not made by the land user but by natural advantages. *Differential ground rent II* is the return on land use generated by the chain of land users who know how to invest in proper use since the land was first used. Absolute ground rent, i.e., the value payable for land lease, is formed from differential ground rent I when starting land use. Monopoly ground rent originated *as a super quota profit due to the monopoly price of the product obtained on the land, which the capitalist had to pay to the landlord*" [13,33,34].

However, with the theory of modern ground rent, the difference in ground rent is increasing through industrialization and modernization. According to [12] , harnessing the potential energy of assets requires us to overcome looking at assets as they are to think dynamically about them as they may be. It requires a process to fix the economic potential of an asset into a form that can be used to kick-start further production [12,43] . Bringing it to life requires us to go beyond looking at our assets to think actively about them as they could be. It requires a

process for fixing an asset's economic potential into a form that may be used to initiate additional production. Accordingly, ground rent increases with investment in infrastructure, and this is one of the processes that collect the increased land value not due to the investment of the land user. This theory is the basis for many new industrialized countries to succeed in industrialization because of the use of capital hidden in the soil, South Korea being a good example [7,17,30] .

According to John Maynard Keynes' theory of state intervention in the economy, the State has the right to decide land policies and laws as the representative of the all-people ownership of land. Accordingly, the State regulates land prices based on market economy and state management activities. Combining Hernando de Soto's theory, William Blackstone's balance-of-interest theory, and John Maynard Keynes's theory of state intervention in the economy, it was necessary to define the role of the State, the owner's representative, in valuing the geographical disparity rising as a result of the country's industrialization, and modernization.

*Secondly, interest rates.* [2] argued, "An interest rate is the price paid for the use of capital in any market. Interest rates are generally directed toward an equilibrium such that the total demand for capital in the market is equal to the total amount of capital supplied"[2:220-221]. Meanwhile, [8:198] argued, "An interest rate represents the price a lender requires when temporarily granting the right to use his or her money to another person"). Thus, in a market economy, interest is the price of a loan relationship. Interest is calculated based on the percentage rate between interest and loan capital after a certain period, usually a year. In a market economy, interest is affected by many factors, but fundamentally, interest is formed based on capital supply and demand. Regarding land valuation, bank interest rates are one of the critical factors that can impact and change specific land prices. It is also possible to notice that the psychology of land users and investors is a small part of the indirect impact on land prices in the market.

*Thirdly, the supply-demand relationship.* One of the essential factors in the formation of land use right value is the law of market economy, which is the law of supply and demand. Accordingly, the price matching the quantity of supply and demand is the equilibrium price. The equilibrium price is also known as the settlement price, which is the price that "clears the market" by ensuring that everyone willing to pay that price finds a seller willing to sell at that price and vice versa [23:97]. Based on this theory, when the land price is valued to be the equilibrium price between supply, and demand, the person whose land is acquired is willing to accept the compensation level when the State is also willing to pay compensation at a price valued by itself according to the law of equilibrium between supply, and demand. Then, an absolute agreement is reached between the State and the person whose land is acquired. However, because many factors influence land prices, the use of equilibrium prices between supply and demand also faces limitations. Because the land use right market is the total land supply for all intents, and objectives are fixed, land reclamation may increase the marginal supply in the total supply [14,25,26].

*Fourthly, the gold and the securities markets impact standard land prices.* In the correlation between the real estate market, the securities market, and the gold market, the land prices on the market show signs of increasing or decreasing when there are fluctuations of the gold prices circulated on the gold market and the securities prices on the securities market. For example, the real estate market is in a land craze, attracting investors, but at the same time, the stock market is also attractive; investors will also be interested in both markets [18].The shift of cash

flows between the real estate market and the stock market demonstrates the connection between real estate prices (including the value of land use rights traded on the market) and stock prices. On the other hand, the change in gold prices leads to a change in land prices as the investment cash flows between the real estate market and the gold market. The gold price constantly rises in an unstable economy that attracts the interest of investment cash flows. When the gold market accelerates, investors prioritize financing first to invest in this precious metal and then in real estate.

Thus, the cash flows between 03 stock markets, gold, and real estate affect each other. Much of the impact lies in the psychology and trend of market prediction of investors in these channels. So, land prices change in the market when gold and securities prices change at a specific time.

### ***2.1 Actual status of land valuation procedures when the State acquires land***

The order of valuing specific land prices is based on the provisions of Article 16 of Decree No. 44/2014/ND-CP, specifically as follows: (1) Valuing the purpose of specific land valuation; (2) Investigating, synthesizing, and analyzing information on land parcels, market land prices, applying land valuation methods; (3) Formulating land price plans, and submitting them to provincial-level People's Committees; (4) Valuing land price plans; (5) Finalizing land price plans, and submitting them to provincial-level People's Committees for decision; (6) Provincial-level People's Committees shall decide on land prices. In addition, Circular No. 36/2014/TT-BTNMT, and Joint Circular No. 87/2016/TTLT-BTC-BTNMT guide in detail, specifically the land valuation. Specifically, as follows:

***Step 1: The provincial land authority shall assist the provincial People's Committee in valuing the specific land price (clause 3 Article 114 of the 2013 Land Law, amended and supplemented in 2018).***

*- Prepare dossiers of land parcels and land areas subject to specific land prices:*

The Department of Natural Resources and Environment will carry out the contents such as Valuing the purpose of specific land valuation; investigating and collecting information on land prices in the land database, land prices on the market as well as applying specific land valuation methods; Information on land use planning, detailed construction planning approved by competent state agencies, and other regulations related to the management, and use of the land parcel subject to specific land valuation; Developing a plan on specific land prices to submit to the provincial People's Committee; According to the provisions of point dd, clause 4, Article 114 of the Land Law, the determination of the purpose of specific land valuation according to Decree No. 44/2014/ND-CP is used as a basis for calculating compensation when the State acquires land.

*- Selecting and signing a contract to hire an organization with the function of land valuation consultancy to implement the specific land valuation to ensure the progress according to the approved plan (optional).* In valuing land prices, the provincial land management agency may hire an organization with land price consultancy to provide consultancy on valuing specific land prices under clause 3, Article 114 of the Land Law. The selection of organizations advising on determining specific land prices complies with the law. However, current regulations

on the right to decide to participate in and select land valuation and consultancy organizations of state administrative agencies have affected the independence, objectivity, and honesty of advisory organizations when valuing land prices [24] .

According to point a, clause 1, Article 115 of the 2013 Land Law, land valuation consultancy shall be provided if land prices are adjusted, and competent state agencies request specific land valuation.

The Department of Natural Resources and Environment shall consider selecting a consultancy unit following Article 20 on operation conditions of land valuation consultancy, individuals practicing land valuation consultancy of Decree No. 44/2014/ND-CP; Decree No. 32/2019/ND-CP dated April 10, 2019, stipulating the assignment of tasks, ordering or bidding for the provision of public products, and services funded by the state budget from regular expenditure sources; Based on the decision to issue regulations on funding for compensation, support, resettlement, and coercive land inventory, and acquisition in each locality. Determine the specific land price as prescribed in Decree No. 32/2019/ND-CP. The Department of Natural Resources and Environment will evaluate and select a qualified consultancy unit and the function of advising on specific land valuation as prescribed.

***Step 2: Surveying, investigating, synthesizing, and analyzing information on land parcels and market land prices; applying land valuation methods according to Clauses 1 and 2, Article 30 of Circular No. 36/2014/TT-BTNMT.***

- Field survey means the stage of considering the actual location of land compared to the location on the map and legal descriptions; considering the area of the acquired land parcels;

Collect information related to addresses, land parcels, assets attached to land, costs, selling prices, interest rates, and incomes of comparable land parcels; Collect information about supply and demand, about the moves of people and investors (if the purpose for socio-economic development for the national and public interests); The legal information of the land parcels (Certificates; Some other information such as information and data on the socio-economic and environmental situation affecting the area, to the value of the land parcels; information about natural factors). Each form of collecting land parcel information will have different forms for each type of land according to clause 1, Article 30 of the Government's Circular No. 36/2014/TT-BTNMT of June 30, 2014, providing for land prices.

- Analysis of information about the land parcel: After the investigation, synthesis, and information collection, the analysis must be conducted. It is a critical stage in the land valuation process: Analyzing the field survey information of the land parcel, selecting comparable land parcels for valuation on this basis to apply the valuation method; Analyzing market information: analyzing the behavior of the participants in the relationship when the land is acquired, participating in the market; analyzing the trend of supply, and demand in the market; assessing the impact of the land acquisition on the value of the land to be valued; analyzing the market price; analyzing the demand, and solvency; analyzing the best and most effective use of the acquired land parcel.

The investigation and synthesis of information on land parcels and market land prices are made according to forms

from Form No. 01 to Form No. 05 of Appendix No. 05 issued together with Circular No. 36/2014/TT-BTNMT dated June 30, 2014, of the Minister of Natural Resources and Environment.

***Step 3: Develop and submit a land valuation plan to the provincial People's Committee.***

According to Report No. 45/BC-UBND of the People's Committee of Son Chau Commune, dated October 11, 2021, explains the land valuation plan the land valuation plan shall be formulated together with the description of the land valuation plan according to the following principal contents: Purposes of land valuation and information about the land to be priced; Assessing the situation and results of investigation and consolidation of information about market land prices; Application of land valuation methods; Land valuation results, and proposals for land valuation plans; Assessing socio-economic impacts of land valuation plans.

The Department of Natural Resources and Environment shall examine and evaluate the results of land valuation and options and make reports on land price decisions. For the land valuation for compensation in the state acquisition of land by land owners, in case land prices are valued for compensation, land price adjustment coefficients shall be formulated if land price adjustment coefficients are applied. Accordingly, the Department of Natural Resources and Environment shall assume the prime responsibility for and coordinate with the Department of Finance and relevant departments and sectors to formulate and submit to the provincial People's Committee to decide on land price adjustment coefficients to calculate compensation when the State acquires land under point b, clause 4, Article 18 of Decree No. 44/2014/ND-CP.

***Step 4: Determine the land price plan.*** Based on the land valuation consultation result, the Department of Natural Resources and Environment shall make a dossier and submit it to the land price appraisal council for consideration. The appraisal dossier of land price plan includes A written request for appraisal of the land price plan, A report on the decision on the land price, A draft of the land price plan, and a report on the draft explanation of the land price plan as prescribed in clause 3, Article 30 of Circular No. 36/2014/TT-BTNMT; A document summarizing the opinions of the concerned departments, branches, and agencies (if any); Relevant documents (if any). The contents of appraisal of land price plans by land price appraisal councils comply with the guidance of the Ministry of Finance and the Ministry of Natural Resources and Environment. Specifically, the Department of Finance-the standing body of the provincial land price appraisal council performs the tasks of coordinating and advising the provincial People's Committee following Circular No. 87/2016/TTLT-BTC-BTNMT dated June 22, 2016, of the Minister of Natural Resources and Environment, the Minister of Finance on guiding the appraisal of the draft land price table of the land price table appraisal council, appraisal of the land price plan of the land price appraisal council. Provincial-level Natural Resources and Environment Departments shall archive all specific land valuation results and summarize and report them to provincial-level People's Committees and the Ministry of Natural Resources and Environment.

In case the determination of specific land prices is decentralized to district-level People's Committees by provincial-level People's Committees, ***district-level People's Committees*** shall have the following tasks: Directing, and assigning professional units to organize the implementation of the order, and contents of work related to land valuation in their localities according to the decentralization as prescribed; organizing the valuation,

and approval of land prices according to regulations, entirely storing dossiers, and documents related to the determination of specific land prices, and taking responsibility under the law for the determination of specific land prices; annually allocating funds for the implementation of land valuation in their localities; annually, district-level People's Committees shall report on the results of the determination of specific land prices in their localities to provincial-level Natural Resources and Environment Departments for summarization, and reporting to provincial-level People's Committees, and the Ministry of Natural Resources and Environment; after deciding to approve specific land prices, district-level People's Committees shall send decisions approving specific land prices to provincial-level Finance Departments, and Natural Resources and Environment Departments for monitoring. On May 06, 2023, the Government issued Resolution No. 73/NQ-CP on the authorization to decide on specific land prices. According to the Law on Organization of Local Governments, Conclusion No. 14-KL/TW dated September 22, 2021, of the Politburo, and the actual situation of the province, the People's Committee of the district shall decide the specific land price to calculate compensation when the State expropriates land; collect land levy when allocating resettlement land; and decide to establish a land price appraisal council. ***Commune-level People's Committees*** shall coordinate with one another in collecting information on land parcels, investigating and surveying market land prices according to regulations, and implementing other contents related to the formulation of specific land prices at the request of district-level People's Committees and concerned agencies.

In addition, **relevant departments and units** shall participate in the land price appraisal council under the decision of competent authorities and perform their assigned tasks; cooperate with the Department of Natural Resources and Environment in instructing the People's Committee of the district to determine specific land prices; cooperate in inspecting, and supervising the determination of specific land prices as prescribed by law.

***Step 5: Complete the draft land valuation plan and submit it to the provincial People's Committees for decision.***

Within 05 working days from the date of receipt of the appraisal document of the land price appraisal council, the Department of Natural Resources and Environment shall complete the draft land price plan and submit it to the People's Committee for decision. The dossier submitted to the provincial People's Committee shall comply with clause 2, Article 16 of Decree No. 44/2014/ND-CP. Within five working days after receiving a written proposal from the provincial-level Natural Resources and Environment Department, the provincial-level People's Committee shall decide on land prices. The provincial-level Natural Resources and Environment Department shall archive all results of land valuation in the locality, make statistics, summarize, and report them to the Ministry of Natural Resources and Environment.

Complete the draft land price plan and submit it to the provincial People's Committee for decision. Thus, the land price decided by the provincial People's Committee is one of the essential bases for calculating compensation for land when the State acquires land. In each locality, depending on the time of land valuation, the type of land, and the market price, the provincial People's Committee of that locality will issue different specific land prices.



***Step 6: The provincial People's Committee shall decide the specific land price.***

The provincial People's Committee decides the specific land price with the Chairman of the provincial People's Committee as the Chairman of the Land Price Appraisal Council (clause 3 Article 114 of the 2013 Land Law). Thus, the provincial People's Committee has the authority to allocate land, lease land, and the authority to acquire land, and decide the land price for compensation. Although the law allows land valuation and consultancy organizations to participate, in the situation of "playing soccer while blowing whistles," the role of this organization seems to be blurred [14:108]. According to the author, this is a situation of playing soccer while blowing whistles and leasing yards. Therefore, the provincial People's Committee, a local state management agency, allows land use rights, permits the change of land use purpose, acquires land, and decides on land prices for compensation, support, and resettlement when the State acquires land.

The above provisions show that the current law has not yet ensured independence, objectivity, honesty, multi-component, and specialization when the land valuation, with the nature of professional work, is still prescribed as "private affairs" of the State administrative agencies, namely the provincial People's Committees. Because the final subject has the right to decide the land price for compensation, the land price is valued to be administrative from the viewpoint of the State management but not from the perspective of the person whose land is acquired. Therefore, the consequence is that most people disagree with the price the provincial People's Committee decides and constantly complain and sue. Specifically, some restrictions in the process of land valuation under current regulations may be mentioned as follows:

*Firstly*, the independence and objectivity in the order and procedures for valuing land prices have yet to be ensured. Accordingly, the order and procedures for valuing land prices for calculating compensation when the State acquires land are still heavy for administrative management and subsidies. Because the activities of valuing land prices for compensation are mainly carried out by the majority of subjects being state agencies, the will of the People's Committee, together with the state administrative agencies responsible for advising, is not the will of the market [25,145]. It can be seen that the valuation of land use rights when the State acquires land is also the "own affair" of the majority of state agencies.

*Secondly*, point a, clause 2, Article 69 of the 2013 Land Law, amended and supplemented in 2018, stipulates *that organizations in charge of compensation and ground clearance are responsible for making plans for compensation, support, and resettlement and coordinating with the commune-level People's Committees where the acquired land is located to collect comments on the plan for compensation, support, and resettlement in the form of meeting directly with the people in the area of the acquired land to send written requests for comments, organize seminars, conferences to collect comments with the participation of relevant agencies, and organizations, and experts* [29]. Therefore, it can be seen that people have not really participated in the criticism and almost entirely have no right to decide on the land price to calculate compensation when the State acquires land because people are only consulted on the compensation, support, and resettlement plan without participating in the supervision, and criticism in the council to decide on the land price to calculate compensation when the State acquires land. Thus, the people's opinions may have absolutely no value for the decision on the plan, and the organization of implementation may only be conducted in a form and by the process because there is no

regulation to ensure the right to participate in supervising the decision on land prices when the State acquires land.

*Thirdly*, according to current regulations, organizations with the land valuation and consultancy function are not required to participate in the valuation process; the results of valuation consultancy are optional, so provincial-level People's Committees may easily refuse to accept valuation certificates. Because of this, clause 3 Article 114 of the 2013 Land Law, amended in 2018, stipulates that in *the course of implementation, provincial-level land administration agencies may hire organizations to advise on valuing land prices to determine specific land prices*. On the other hand, clause 3 of Article 160 of the Draft has recorded that the Agency of Natural Resources and Environment hired a consulting organization to determine the specific land price, and clause 2.3 of Article 161 stipulates that the consulting organization to determine the land price is a member of the land price appraisal council.

## ***2.2 Propose the process of land valuation on the principle of market when the State acquires land***

In the 2013 Land Law, there were provisions on the principles of land valuation following the everyday land use right prices on the market. However, in the spirit of the Party's Resolution, it is necessary to continue renewing the valuation methods to suit the socialist-oriented market economy. In order to overcome the limitations of the actual State of regulations, the researcher proposed some solutions as follows:

*First*, it is necessary to build a mechanism to allow subjects whose land is acquired to hire independent valuation organizations to participate in valuing land prices for compensation together with the State's valuation organizations. Following the practical law of Vietnam, valuing land prices for compensation is mainly carried out by the State agency and the State agency that decides the final land price. Besides, in terms of the stability of the land use rights market, our country still needs to ensure this problem; one of the prominent reasons is the impact of the two-price land mechanism. Therefore, it is necessary to consider and formulate a mechanism to allow subjects having land acquired to hire valuation organizations to participate in valuing land prices for compensation calculation together with consultancy organizations hired by provincial-level Natural Resources and Environment Departments.

*Second*, to overcome the limitations in the order and procedures of land valuation for compensation and to ensure the harmony of interests between the parties, especially the person whose land is acquired, it is necessary to renew the land valuation process in Vietnam. Accordingly, *processor*" [4]. Accordingly, the head of the elected agency presides over the professional process, namely the Chairman of the provincial and district People's Council as the Chairman of Council. Then, hire specialized organizations to provide services on land price appraisal and relevant people. However, the professional process (Land Price Appraisal Council) should be assigned to independent consultants and members of the provincial state administrative agencies if any participation must be less than 50% of the composition of the Appraisal Council. It is significant in ensuring democracy, objectivity, and fairness. Subsequently, the administrative process of approving specific land prices may be participated by chairpersons of provincial-level People's Committees, departments, branches, and district-level People's Committees.

*Third*, it is necessary to stipulate that the land valuation and consultancy organization is an independent

organization obliged to participate in the valuation process and the land price appraisal council. This organization operates under the enterprise law and is bound by specific responsibilities and conditions prescribed by the specialized law, the Land Law. It is necessary to supplement regulations allowing people whose land is acquired to hire advisory organizations to determine land prices next to organizations leased by Natural Resources and Environment agencies when disagreeing with specific land prices for compensation, support, and resettlement calculation. Where the organizations hired by the people have differences in the specific land prices set, the State must pay the leasing service charges based on collecting charges from the initial valuation organizations. Where the land prices are equal to or lower than the initial land prices, the people shall have to pay the costs. To supplement such provisions to balance the interests between the State and the people when they have the right to hire independent valuation and consultancy organizations.

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