



Current land policies and Law on Management and Use of Forestry Land: Orientation for modification and supplement

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INTRODUCTION

According to land statistics, as of December 31st, 2021, forestry land has an area of 15,439,656 ha, accounting for 46.6% of the total natural area of the country (33,134,480 ha), accounting for 55.15% of agricultural land. In recent years, with the increasingly comprehensive and complete regulations of the Law on Land, forestry and other related laws, the management and use of forest land has brought higher economic, social and environmental efficiency; forest land areas with forests are protected and developed; the allocation of land and forests as well as the management, use and protection of forest land have been gradually stabilized; along with that, the settlement of disputes related to forestry land by competent state agencies has achieved high efficiency, ensuring the interests of forest land users.

The current law stipulates quite comprehensively and fully the contents related to the management and use of forestry land in general and forestland with forests. Legal regulations have basically ensured strict protection for land with natural forests, especially protection forest land and special-use forest land; at the same time, encouraging the development of forest land with forests, creating favorable conditions for subjects to exploit the potential and advantages of forestry land to increase income, develop the economy and ensure the interests of the State. However, reality shows that there are still shortcomings, limitations and inadequacies in policies and laws on management and use of forest land, so the efficiency of forest land use is still limited and not commensurate with potential.

To overcome these shortcomings and limitations, it is necessary to have comprehensive solutions, in which it is necessary to summarize and evaluate the strengths and weaknesses of current policies and laws on management and use of land; thereby, proposing solutions, reviewing and perfecting land policies and laws on the management and use of forestry land, contributing to the protection and development of forested forest land, and at the same time, exploiting and using effectively sustainable forestry land, ensuring adaptation to climate change which is taking place complex and unpredictable.

I. CURRENT POLICIES AND LAW ON FOREST LAND MANAGEMENT AND USE

1.1. Policies and the Law on Land

1.1.1. Land use regimes

The Law on Land 2013 stipulates the use regime for each type of production forest land, protection forest land, and special-use forest land in Articles 135, 136 and 137. These include policies that ensure both forest protection and development, while ensuring income and economic development of people.

For production forest land: The State allocates natural production forest land to forest management organizations to manage, protect and develop forest; The State allocates planted production forest land to households and individuals directly engaged in agricultural production according to the quota, if the limit is exceeded, they have to rent the land; The State may lease planted production forests land to economic organizations, households, individuals, overseas Vietnamese and foreign-invested enterprises to implement investment projects on afforestation; Economic organizations, households, individuals, overseas Vietnamese, foreign-invested enterprises that are allocated or leased by the State with planted production forest land may use such land areas for afforestation or perennial tree planting.

For protection forest land: The State allocates protection forest land to protection forest management organizations for management, protection, zoning, regeneration and afforestation according to master plans and plans. Organizations, households and individuals that have the need and ability to protect and develop forests that are living in protection forest areas without a management organization and in areas planned for afforestation shall be entitled to be granted permission by the State Government to use protection forest land for forest protection and development and may combine the use of land for other purposes in accordance with the Law on Forest Protection and Development. Population communities are allocated forest land for protection by the State for forest protection and development.

For special-use forest land: The State allocates special-use forest land to special-use forest management organizations for management and protection



according to master plans and plans; Special-use forest management organizations shall assign short-term contracts of special-use forest land in strictly protected sub-zones to households and individuals who have not yet had the conditions to move out of that area to protect forests; Provincial-level People's Committees shall decide to lease special-use forest land to economic organizations in areas associated with landscape business, eco-environmental tourism under the forest canopy.

1.1.2. Authority to change the purpose of land use or forest use to another purpose

To protect forest land, especially special-use forest land and protection forest land, the current Land Law stipulates: In case of changing use purpose of special-use forest land or protection forest land from 20 hectares or more, it shall be under the authority of the Prime Minister and in case less than 20 hectares, it shall be under the jurisdiction of the Provincial People's Council.

1.1.3. Rent forest land

To effectively exploit and use forest land, while ensuring the protection and development of forest land, socio-economic development, income increase, and improvement of life of forest land users and managers, the Land Law stipulates the lease of forest land as followings:

- For special-use forests, the Land Law stipulates: "The People's Committees of provinces decides to lease land with special-use forests to economic organizations in areas associated with landscape business and eco-environmental tourism under the forest's canopy" (Clause 5, Article 137).

- For protection forests, the Land Law stipulates: Provincial-level People's Committees decide to lease protection forest land to economic organizations in areas associated with landscape business, eco-tourism - environment under the forest's canopy (Clause 4, Article 136).

- For production forests, Clause 2, Article 135 of the Land Law stipulates:

- + The State allocates land to households and individuals directly engaged in agricultural production according to the quotas for use for forestry production purposes. For areas of production forest land used by households or individuals in excess of the quota, they must be converted to land lease.

- + The State may lease land to economic organizations, households, individuals, overseas Vietnamese and foreign-invested enterprises to implement investment projects on afforestation.

- + Economic organizations, households, individuals, overseas Vietnamese, foreign-invested enterprises that are allocated or leased land by the State for production forests may use such land area for afforestation or perennial tree planting.

1.1.4. Using land owned by agricultural and forestry companies

In order to improve the efficiency of land management and use by agricultural and forestry companies, Decree No. 43/2014/ND-CP dated May 15th, 2014 of the Gov-

ernment detailing the implementation of a number of articles of the Law on Land is assigned to the Provincial People's Committee to consider and approve the land use plan of the local agriculture and forestry company; decide on land revocation for the area handed over to the locality according to the approved land use plan in order to manage and use the land of the agricultural and forestry companies after these companies has been rearranged, renewed and developed and improved operational efficiency (Article 46 of Decree No. 43/2014/ND-CP).

For the land fund handed over to the locality, the Provincial People's Committee prepares the usage plan. One of the prioritized options to use the area handed over to the locality is to allocate or lease land to households and individuals in the locality who have no land or lack production land to ensure income, stabilize the lives of local people, contribute to socio-economic development.

In order to improve the efficiency on using land of agricultural and forestry companies, the Ministry of Natural Resources and Environment (MONRE) has issued Circular No. 07/2015/TT-BTNMT dated February 26th, 2015 stipulating the contents in the management of land use in general and forestry land in general of agricultural and forestry companies, including: Making land use plans; make records of land use boundaries; cadastral surveying and mapping; determine the land rental price; land allocation, land lease and issuance of certificates of land use rights, ownership of houses and other land-attached assets.

1.2. Other policies and laws related to forest land

1.2.1. Directive No. 13-CT/TW dated January 12th, 2017, of the Secretariat on strengthening the leadership of the Party in forest management, protection and development

To quickly overcome limitations and weaknesses in forest management, protection and development in the period before 2017, on January 12th, 2017, the 12th Party Central Committee Secretariat issued the Directive No. 13-CT/TW aims to strengthen the management, protection and development of forests in the spirit of the Resolution of the 12th Party Congress. In particular, the Secretariat of the Party Central Committee requested all levels of the Party Committees, the Party organizations, authorities, the Fatherland Front, socio-political organizations and people's unions to thoroughly grasp and



effectively implement the tasks and solutions, including the tasks and solutions related to the management and use of forest land as follows:

- Reviewing, supplementing and perfecting the legal system, mechanisms and policies on forest management, protection and development, overcoming overlaps, ensuring uniformity, efficiency and feasibility.

- Review, evaluate and strictly control socio-economic development plannings and projects that have negative impacts on forest area and quality, especially for natural forests and protection forests; have a mechanism for strict management and supervision of projects on conversion of forest use purposes, especially projects on hydropower development, mineral exploitation, construction of industrial parks and tourism services... Review and re-evaluate the implementation results and economic, social and environmental effectiveness of natural forest improvement projects; projects to convert forests to rubber plantations and agricultural production.

- Suspend and recover land for projects on changing forest use purposes that commit violations or are likely to cause great damage to the forest, ecological environment and seriously affect production activities and local people's life in the project area; at the same time, strictly, openly and transparently handle violations and irresponsible organizations and individuals in investment appraisal, approval and licensing.

- Speeding up the progress of survey, measurement, development of management records, delineate and mark the boundaries of forest types on the map and in the field to administrative units of communes, wards and townships, national forest boundaries and boundaries of forest management by forest owners. Overcome and completely settle disputes and illegal encroachment on forest land; complete the allocation of land, forest and grant certificates of forest land use rights to organizations, individuals, households and communities.

- To step up the plantation of mangroves, coastal protection forests, riverside and watershed forests... Strict protection and management, combined with strengthening measures to plant new, restore and regenerate natural forests; develop a mechanism to closely manage and supervise the conversion of protection forests in less critical areas to production forests.

1.2.2. The Law on Forestry

Inheriting the Law on Forest Protection and Development (2004) and at the same time, institutionalizing Directive No. 13-CT/TW of the 12th Party Central Committee Secretariat, the Resolution of the 12th Party Congress on public Forest management, protection and development, the Government submitted to the fourth session of the 14th National Assembly to pass the Law on Forestry on November 15th, 2017. The Law on Forestry (2017) includes 12 chapters with 108 articles that regulate forestry planning; forest management; forest protection; forest use; processing and trading of forest products; rights and obligations of forest owners; forest valuation, investment

and finance in forestry; science and technology, international cooperation in forestry; State management of forestry and rangers.

(1) Regarding forest planning

Clause 1, Article 11 of the Law on Forestry stipulates that the national forestry planning is 10 years with 30 - 50 years vision; including orientations for sustainable development of special-use forests, protection forests and production forests at the national level.

(2) Regarding forest allocation and forest leasing

- Article 16 of the Law on Forestry stipulates:

- + The State allocates natural production forests to households, individuals and communities.

- + The State allocates special-use forests without collection of forest use fees to subjects who are special-use forest management boards; organizing science and technology, training and vocational education in forestry; residential community; economic organizations, armed forces... (Clause 1, Article 16).

- + The State allocates protection forests without collection of forest use fees to protection forest management boards, economic organizations, households, individuals, and resident communities; in which, for economic organizations that are assigned protection forests without fee in case protection forests are interspersed in their production forest land (Clause 2, Article 16).

- + The State allocates production forests without collection of forest use fee to the following entities (as defined in Clause 3, Article 16), including: (a) Households, individuals and communities lawfully residing in the area; commune level where the forest area is located; armed forces; (b) The special-use forest management board, the protection forest management board for the area of production forest interspersed with the area of special-use forest or protection forest shall be assigned to such forest management board.

- Article 17 of the Law on Forestry stipulates that the State allows economic organizations, households and individuals to lease natural production forests and planted production forests (with one-time or annual rental payment) to: Forestry production; Combined forestry, agriculture and fishery production; Business eco-tourism, resort, entertainment.

- Forest owners self-organize, cooperate, associate or lease the forest environment to organizations or individuals for eco-tourism, resort and entertainment business in the for-



est, ensuring that it does not affect the conservation of natural ecosystem, biodiversity, landscape, environment and other functions of the forest (Clause 4, Article 56).

(3) *About change the purpose of forest use*

- Article 20 of the Law on Forestry stipulates the authority to decide on the policy of changing the forest use purpose to another purpose:

1. The National Assembly shall decide on the policy of changing the intended use of special-use forests, watershed protection forests and border protection forests of 50 hectares or more; protection forest against wind, flying sand and protection forest against waves and sea encroachment of 500 ha or more; production forests of 1,000 hectares or more.

2. The Prime Minister shall decide on the policy of changing the intended use of special-use forests of less than 50 hectares; watershed protection forest, border protection forest from 20 ha to less than 50 ha; protection forests against wind, flying sand and protection forests against waves and sea encroachment from 20 ha to less than 500 ha; production forest from 50 ha to less than 1,000 ha.

3. Provincial-level People's Councils shall decide on the policy of changing the intended use of watershed protection forests, border protection forests, windbreak and flying sand protection forests and protection forests for breaking waves and encroaching on the sea of less than 20 hectares; production forest under 50 ha; forests protect the water source of the community.

Article 14 of the Law on Forestry stipulates: "Do not change the purpose of using natural forests to other purposes, except for projects of national importance; projects serving national defense and security; other urgent projects approved by the Government" (Clause 2).

(4) *Regarding forest revocation*

Clause 1, Article 22 of the Law on Forestry stipulates that the State shall revoke forests in the following cases:

- Forest owners use forests for improper purposes, intentionally fail to fulfill their obligations to the State or seriously violate regulations of the Law on Forestry.

- Forest owners fail to conduct forest protection and development activities after 12 consecutive months from the date of being assigned or leased forests..."

II. SHORTCOMINGS IN POLICIES AND LAW ON FOREST AND FOREST LAND USE AND MANAGEMENT

Forest land and forests have a close relationship with each other; forests are resources and assets attached to forest land but are regulated by two different laws (the Land Law and the Law on Forestry). Practice shows that, although the Law on Land and Forestry has made strong changes, it has a positive impact on the management, protection and development of forests; However, there are still some difficulties, obstacles and inadequacies in the mechanisms and policies for the management and use of land and forests in the current law on land and forestry.

2.1. Regarding land and forest allocation

- In Clause 1, Article 135, the Land Law (2013) stipulates: "The State allocates natural production forest land to forest management organizations for forest management, protection and development". Meanwhile, in Article 16 of the Law on Forestry, the State only allocates natural production forests to households, individuals and communities (there is no consensus on the regulations on subjects in the two laws: forest management organizations vs. households, individuals, communities).

- Clause 3, Article 136 of the Land Law (2013) stipulates that the State allocates protection forests to organizations and individuals. According to the provisions of Point b, Clause 2, Article 16 and Clause 4, Article 56 of the Law on Forestry, the State shall only assign protection forests to economic organizations in cases where protection forests are interspersed in their production forest land. Meanwhile, for other cases, only the form of forest environment lease for protection forest shall be applied.

- Clause 1, Article 137 of the Land Law (2013) stipulates: "The State allocates special - use forest land to special-use forest management organizations for management and protection according to land use planning...". However, in Clause 1, Article 16 of the Law on Forestry, special-use forests are allocated without collection of forest use fees to entities such as special-use forest management boards, economic organizations, armed forces...

2.2. About land lease, forest lease

- For special-use forests, Clause 5, Article 137 of the Land Law (2013) stipulates: "5. Provincial-level People's Committees shall decide to lease special-use forest land to economic organizations in areas associated with landscape business, eco-environmental tourism under the forest canopy".

Meanwhile, in Article 17 of the Law on Forestry, there is no provision for economic organizations to lease special-use forests, economic organizations can only sign special-use forest environment lease contracts with the Special-use Forest Management Board for eco-tourism business; resort, entertainment except strictly protected zones (Clause d, Article 75 of the Law on Forestry).

- *For protection forests*, Clause 4, Article 136 of the Land Law stipulates: "4. Provincial-level People's Committees shall decide to lease land for economic organizations to protection forests in areas that are combined with landscape and eco-environmental tourism under the forest canopy".



Meanwhile, in Article 17 of the Law on Forestry, there is no provision for economic organizations to lease protected forests. Economic organizations can only sign a contract to lease a protected forest environment with the Protection Forest Management Board for tourism business, eco-tourism, convalescence and entertainment (Clause b, Article 76 of the Law on Forestry).

- For production forests, in Clause 2, Article 135 of the Land Law stipulates the objects that are allocated or leased land by the State are planted forests, of which the State leases land to economic organizations, households, individuals, overseas Vietnamese, foreign-invested enterprises to implement investment projects on afforestation; and at the same time use unforested land for afforestation or perennial crops.

Meanwhile, Article 17 of the Law on Forestry does not stipulate that production forests are leased by overseas Vietnamese, only foreign-invested enterprises are leased land by the State to implement investment projects on production forests. Overseas Vietnamese who want to conduct investment projects on afforestation in Việt Nam must register to establish an enterprise to be allocated afforestation land by the State.

2.3. Change of land use purpose, change of forest use purpose to other purposes

Article 58, the Land Law 2013 stipulates the case of changing the intended use of special-use forest land or protection forest land from twenty hectares or more, under the Prime Minister's authority; Provincial-level People's Councils permit the change of intend use of less than 20 hectares of protection forest land and special-use forest land. However, in Clause 2, Article 14 of the Law on Forestry (2017), it is stated: "Do not change the purpose of using natural forests to other purposes, except for important national projects; projects serving national defense and security; or other urgent projects approved by the Government". The Land Law only states that the purpose of using special-use forest land or protection forest land is changed, not distinguishing natural forests from planted forests; meanwhile, the Law on Forestry only regulates natural forests; on the other hand, in the guiding documents for the implementation of the Law on Forestry, there are no specific explanations about "other urgent projects", so it is difficult for the forest management agency to determine which criteria are urgent projects to develop dossiers and submit them to competent authorities for approval to allow the conversion of natural forest use purposes to other purposes.

Clause 3, Article 20 of the 2017 Law on Forestry stipulates that the Provincial People's Councils decide on the policy of changing the use purpose of watershed protection forests, border protection forests, wind and sand protection forests and protection forest to break waves and encroach on the sea under 20 ha; production forest under 50 ha; forests to protect water sources of residential communities; Provincial People's Councils do not have the authority to permit the change of special-use forest use

purposes; meanwhile, Clause 3, Article 58 of the 2013 Land Law stipulates that the Provincial People's Councils allow the change of use purpose of less than 20 hectares of protection forest land and special-use forest land.

Thus, with the same content, there is no consensus between the Land Law and the Law on Forestry, making it difficult for relevant agencies to implement.

2.4. About land acquisition, forest revocation

Clause 1, Article 64 of the Land Law prescribes cases of land revocation due to violations of the Land Law, including the following cases: Using land for improper purposes and having been administratively sanctioned and continuing to violate; intentionally destroying land; afforestation land is not used for twenty-four consecutive months...

Clause 1, Article 22 of the Law on Forestry stipulates cases in which the State revokes forests, including: (a) Forest owners use forests for improper purposes, intentionally fail to fulfill obligations to the State or seriously violate regulations provisions of the law on forestry; (b) The forest owner fails to carry out forest protection and development activities after 12 consecutive months from the date of forest allocation or lease..."

However, the Law on Forestry as well as legal documents do not explain the phrase "serious violation of the provisions of the law on forestry"; acts, nature, extent and consequences shall be considered as serious violations to serve as a basis for forest revocation.

Practice shows that, in many localities, there are many cases of violations of the law on forestry, such as encroaching and occupying forests; violating regulations on forest use purpose change; illegal forest exploitation; illegal destruction of forests... The nature, extent and consequences of the violation to the extent that the forest must be revoked, but the forest owner did not violate the law on land, so the land cannot be revoked, therefore, forest revoked is not feasible; This is a problem and inadequacy between the Land Law and the Law on Forestry, making it difficult for the authorities to enforce the Law.

2.5. Procedures for changing land use purpose and forest use purpose

Currently, in order to implement a project with an area of forest land that needs to be repurposed, in the case that it requires permission from a competent state agency, the investor must carry out two independent processes, one is submitting self-procedure for



change of land use purpose (led by the MONRE in accordance with the Land Law) the village in accordance with the provisions of the Law on Forestry. Thus, increasing administrative procedures, increasing costs, prolonging project preparation time, slowing down the project implementation schedule, affecting the investment efficiency of the project.

III. RECOMMENDATIONS TO IMPROVE POLICIES AND LAW ON FOREST LAND USE AND MANAGEMENT

Although the Law on Land and Forestry has made strong changes, it has had a positive impact on forest management, protection and development. However, there are still some difficulties, obstacles and inadequacies in the mechanisms and policies on management and use of land and forests in the current laws. To overcome this situation, it is proposed to review, amend, supplement and complete the Law related to mechanisms and policies on management and use of land and forests in the following directions:

For production forests: It is necessary to clearly define the subjects who are allocated land, leased land, recognized the right to use; allocation of production forest land without land use levy; lease production forest land for forestry production; stipulating the rights of individuals to be allocated land by the State without collection of land use levy or leased land with annual payment for natural production forests; the use in combination with other purposes of economic organizations, households and individuals leased land by the State.

For protection forest land: It is necessary to specify who is allocated protection forest land for forest management in accordance with master plans and plans on land use approved by competent state agencies; prescribe the use in combination with the purpose of growing annual crops, medicinal plants, animal husbandry; eco-tourism, convalescence and entertainment; allowed to build infrastructure works in service of forest protection and development and fulfill financial obligations.

For special-use forest land: It is necessary to specify the objects that are allocated special-use forest land by the State for forest management in accordance with land use master plans and plans; stipulate the formulation of migration and resettlement projects and submit them to competent state agencies for approval to move people out of strictly protected sub-zones of special-use forests; stipulating the use in combination with the purposes of ecotourism, convalescence and entertainment; may build infrastructure works in service of forest protection and development and fulfill financial obligations.

For land originating from agricultural and forestry farms: It is necessary to clearly define the responsibilities of agro-forestry companies that are managing and using land originating from agricultural and forestry farms; responsibility of the People's Committee of the province for the area of land originating from agricultural and forestry farms and handed over to the locality and for the land area belong to that the land-using organization has dissolved.

Supplementing regulations on multi-purpose use of forestry land: In order to improve the efficiency of land use, implement the Party's policy in Resolution No. 18-NQ/TW dated June 16th, 2022 of the Central Executive Committee 13th Party Central Committee (on continuing to renovate, perfecting institutions and policies, improving the effectiveness and efficiency of land management and use, creating motivation to turn our country into a developed and high-income country), it is necessary to study and develop an article on multi-purpose land for land plots that are used in combination with two or more purposes. In which, the main land use purpose is determined according to the decision on land allocation, land lease, permission to change land use purpose, recognition of land use rights, in addition, the land parcel also has one or more secondary purpose. According to this regulation, forestry land will be used in combination with commerce, services, animal husbandry, agricultural and forestry production in combination with growing medicinal plants. This will increase income, improve people's living standards, contribute to economic development, political and social stability in forest management and protection areas, especially in natural forest management and protection.

Combine the procedures for change of land use purpose with the order of procedures for change of forest use purpose: Now, the implementation of the sequence of procedures for changing the forest land use purpose and the sequence of procedures for changing the forest use purpose independently, thus it leads to prolonging the project implementation time. To reduce administrative procedures; creating uniformity and consistency in the management of land use and management of forest use; shortening the time to carry out administrative procedures... Accordingly, after the Prime Minister approves the policy of changing the forest land use purpose for the implementation of constructions and projects, the Ministry of Agriculture and Rural Development shall guide the implementation of administrative procedures for conversion of forest use purposes on that area. This will speed up the implementation of constructions and projects, contributing to promoting socio-economic development ■