AN ANALYSIS OF CORRUPTION RISKS IN ISSUING THE LAND USE CERTIFICATE IN VIETNAM

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ABSTRACT

Purpose: The objective of this article was to analyze what are the corruption risk factors in Vietnam's land use certificate issuing process in Vietnam, identify the manifestations of these factors in land use certificates issuing process.

Theoretical framework: There have been many studies analysing the situation of corruption in Vietnam, including those researches in the field of land in Vietnam. However these studies have yet not answered the following questions about the corruption risk factors in Vietnam's land use certificate issuing process and the manifestations of these factors in land use certificates issuing process.

Design/methodology/approach: The authors use a value chain approach to assess the risk of corruption in the procedure for granting land use certificates. Based on using the theoretical formula ("equation") of corruption "Corruption = Monopoly + Description - Accountability" (Klitgaard, 1988), the authors study each step in the process to analyze corruption risks. At the same time, the desk review method to collect and analyze documents and legal documents was also used. The authors also made use of secondary data from 2017 to present from the annual Provincial Competitiveness Report (PCI) of Vietnam, the Corruption Perception Index (CPI), the Corruption Barometer (VCB), Effective Provincial Governance and Public Administration (PAPI) to clarify the current state of corruption risks in the land use certificates issuing process.

Findings: Corruption risk factors exist in all the flows of issuing land use certificates in Vietnam. The main factor leading to the risk of corruption in the current land use certification process in Vietnam is the policy gap caused by overlapping legal regulations, high monopoly, and discretion of authorities with low accountability. All these factors lead to the risk of corruption in issuing land use certificates in Vietnam.

Research, Practical & Social implications: We suggest future research of in-depth analysis of the causes and effects of corruption risk factors in each steps of the land use certificates issuing process.

Originality/value: The article results indicate that corruption risk factors still exist in the flows of issuing land use certificates in Vietnam, although there is a decrease compared to previous periods.

Keywords: Corruption, Risk, Process, Land Use Certificate, Vietnam.

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RESUMO

Objetivo: O objetivo deste artigo foi analisar quais são os fatores de risco de corrupção no processo de emissão de certificados de uso da terra no Vietnã e identificar as manifestações desses fatores no processo de emissão de certificados de uso da terra.

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Estrutura teórica: Há muitos estudos que analisam a situação da corrupção no Vietnã, incluindo as pesquisas no campo da terra no Vietnã. Entretanto, esses estudos ainda não responderam às seguintes perguntas sobre os fatores de risco de corrupção no processo de emissão de certificados de uso da terra no Vietnã e as manifestações desses fatores no processo de emissão de certificados de uso da terra.

Projeto/metodologia/abordagem: Os autores usam uma abordagem de cadeia de valor para avaliar o risco de corrupção no procedimento de concessão de certificados de uso da terra. Com base no uso da fórmula teórica (“equação”) da corrupção "Corrupção = Monopólio + Descrição - Responsabilidade” (Klitgaard, 1988), os autores estudam cada etapa do processo para analisar os riscos de corrupção. Ao mesmo tempo, também foi usado o método de análise documental para coletar e analisar documentos e documentos legais. Os autores também fizeram uso de dados secundários de 2017 até o presente do Relatório de Competitividade Provincial (PCI) anual do Vietnã, do Índice de Percepção da Corrupção (CPI), do Barômetro da Corrupção (VCB), da Governança Provincial Efetiva e da Administração Pública (PAPI) para esclarecer o estado atual dos riscos de corrupção no processo de emissão de certificados de uso da terra.

Conclusões: Existem fatores de risco de corrupção em todos os fluxos de emissão de certificados de uso da terra no Vietnã. O principal fator que leva ao risco de corrupção no atual processo de certificação de uso da terra no Vietnã é a lacuna de políticas causada pela sobreposição de normas legais, alto monopólio e discrição das autoridades com baixa responsabilidade. Todos esses fatores levam ao risco de corrupção na emissão de certificados de uso da terra no Vietnã.

Implicações sociais, práticas e de pesquisa: Sugerimos uma pesquisa futura de análise aprofundada das causas e dos efeitos dos fatores de risco de corrupção em cada etapa do processo de emissão de certificados de uso da terra.

Originalidade/valor: Os resultados do artigo indicam que ainda existem fatores de risco de corrupção nos fluxos de emissão de certificados de uso da terra no Vietnã, embora haja uma diminuição em comparação com períodos anteriores.

Palavras-chave: Corrupção, Risco, Processo, Certificado de Uso da Terra, Vietnã.

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1 INTRODUCTION

Vietnam is a Southeast Asia country with a GDP per capita of about 3,700 USD in 2020 (World Bank, 2020). Vietnam has changed remarkably since the Communist Party implemented the Doi Moi policy in 1986. With its rapid economic development, Vietnam is considered the next "Asian tiger". People's living standards have improved, and the poverty rate has decreased rapidly (Diem & Hiep, 2023).

However, Vietnam also faces many social problems, including corruption (Boothroyd, P., & Pham, X. N, 2020; ). The post-renovation liberalization period has yet to lead to the state's withdrawal from the economy. In contrast, state officials took advantage of the complexity of administrative procedures to proliferate "petty corruption”. They also used the equitization process of state-owned enterprises to accumulate assets (Tromme, 2016; Phan et al., 2021; Dung & Thanh, 2023).

Facing that situation, Vietnam has taken concrete anti-corruption measures such as promulgating the Anti-corruption Law, establishing a specialized anti-corruption agency, and lauching the Anti-corruption Strategy. The above measures brought remarkable results when Vietnam's Corruption Perceptions Index ranked by Transparency International improved from 31/100 points in 2012 to 39/100 points in 2021 (Transparency International, 2022). Although
Vietnam's anti-corruption efforts have yielded specific results, many areas remain potential for corruption, including the land sector. Several studies have shown the influence of interest groups in the real estate sphere or collusion between officials and private companies in the distribution of society's resources, especially in the land sector.

Thus, there are always potential risks of corruption in the land sector. It occurs at both the level of "petty corruption" and "grand corruption" (Hung & Dung, 2022), which poses a need for analysis. Corruption risks occurring in this area to make reasonable policy recommendations. Within the article's scope, the authors analyze corruption risks in issuing land use certificates. This process is often associated with "petty corruption" and directly affects the people, causing outrage in society. "Corruption risk" in this article is approached by the authors from the perspective of vulnerabilities in the system or process that create opportunities for corruption.

2 LITERATURE REVIEW

There have been many studies analysing the situation of corruption in Vietnam. Dang and other authors, in their article, evaluated the risk of corruption for business households in the business registration procedure (Dang et al., 2016). Tromme, in his study, took an overview of corruption in Vietnam. The authors made key findings on the change of the post-renovation corruption situation in Vietnam, such as the development of interest groups, the flourishing status of "petty corruption", the changing of Vietnam's anti-corruption legal framework… (Tromme, 2016). Research by Vo.T.T.Tien on corruption in Vietnam and Italy provided a series of anti-corruption solutions, the most important of which is raising awareness of corruption in education (Vo. T.T.Tien, 2015).

Regarding the research in the field of land, it is possible to mention the study of the National Economics University and the United Nations Development Program in Vietnam (2017), relating to corruption in land acquisition in Vietnam (NEU & UNDP, 2017). Research by Kaitlin Hansen on policy, law and the process of perfecting the legal regulation of land in Vietnam has shown inadequacies in current legal regulations, creating opportunities for corruption flourishing in the land sector (Kaitlin Hansen, 2013). In addition, the research results of Asadul Islam and Wang-Shang Lee (2016) argued that corruption in the land is severe in post-conflict or transition countries (Vietnam is a country in transition). However, these studies have yet not answered the following two questions: 1) what are the corruption risk factors in Vietnam's land use certificate issuing process? and 2) what are the manifestations of these factors in land use certificates issuing process?

3 METHODOLOGY

To solve the research problem, the authors use a value chain approach to assess the risk of corruption in the procedure for granting land use certificates. Based on using the theoretical formula ("equation") of corruption "Corruption = Monopoly + Description - Accountability" (Klitgaard, 1988), the authors study each step in the process to analyze corruption risks. In addition, the authors use the theoretical basis of the "policy freedom interval" (Khan, 2006; Rose, 1978) that contribute directly to the rise of corruption to assess the causes of corruption risks in the land use certification process. The desk review method to collect and analyze documents and legal documents was also used in this article. The study also utilizes previous research results on corruption in Vietnam and the land sector to answer the research question.

Moreover, the authors made use of secondary data from 2017 to present from the annual Provincial Competitiveness Report (PCI) of Vietnam, the Corruption Perception Index (CPI),
the Corruption Barometer (VCB), Effective Provincial Governance and Public Administration (PAPI) to clarify the current state of corruption risks in the land use certificates issuing process.

4 RESULTS AND DISCUSSION

4.1 The Context of Land Sector and Corruption in the Land Sector in Vietnam

Land is one of the primary means of production in Vietnam. According to data from the Statistical Yearbook 2020, the size of Vietnam's economy in 2020 will reach USD 271.2 billion (General Statistics Office, 2020, p.09). As of December 32, 2018, Vietnam has 33123.6 thousand hectares of land, of which agricultural land is 27289.4 thousand hectares; non-agricultural land (including residential land) is 3773.8 thousand hectares; unused land is 2060.4 thousand hectares (General Statistics Office, 2020, p.45). Agricultural land occupies the largest area in Vietnam, and agriculture is the Vietnamese people's main productive labor field. According to statistics, the number of employees in the agriculture, forestry, and fishery industry accounts for 17724.6 thousand people out of the total number of 53609.6 thousand people in 2020 (General Statistics Office, 2020, p.45). Because of the large agricultural land area and the concentrated labor force, the demand for long-term agricultural land use is high. Consequently, the demand for land use certificates correspondingly develops. In addition, every year, the demand for transferring and renewing land use certificates of people and businesses is great. These factors lead to the land use transfer market's activeness and increasing demand for land use certificates.

However, land management in Vietnam still has many shortcomings: the Land Law and legal documents are still overlapping and not synchronized; administrative reform in land management is quite slow (Communist Party of Vietnam, 2022), creating risks for corruption in the issuance of land use certificates.

Corruption in issuing land use certificates is a phenomenon in Vietnam that has been around for a while. According to the 2019 Toward Transparency study on people's views and experiences on corruption, 66% of respondents have contact with at least one public service sector and one in five bribes - equivalent to 18% (Towards Transparency VietNam, 2020). In the land sector, the authors focus on the experience of corruption for citizens and private enterprises because these are the two main subjects affected by corruption in issuing land use certificates. The PCI and PAPI reports show that these subjects still have to pay bribes to government officials to speed up land procedures, although this rate varies from province to region and year to year. It means that the current regulations and policies still contain certain shortcomings that create opportunities for corruption. The report results are shown in Charts 1 and 2.

Chart 1. Percentage of people who have to spend more money when carrying out procedures for issuing and changing land use certificates
Source: PAPI (2017 – 2021)
An Analysis of Corruption Risks in Issuing the Land Use Certificate in Vietnam

Corruption in land can generally be characterized as pervasive and lacking effective control measures (Transparency International & FAO, 2011). It can be classified into two types: petty corruption and grand corruption. Petty corruption includes corruption in issuing land use certificates related to corruption in the public administration, while grand corruption is understood as political corruption. Research by PAPI and PCI shows that people and enterprises still have to bribe cadastral officers to speed up the performance of the land use certificate issuing process. The extent of bribery fluctuates from year to year and province to province and is related to administrative procedures. Although Vietnam has implemented one-stop administrative procedures, the regulations should be comprehensive enough to prevent conditions for law enforcement officers from taking advantage of their position to receive bribes. Research conducted by the World Bank and the Government Inspectorate in 2013 showed that in the land use certificate issuing activity, officials suggested 65% of cases of giving bribes. In most of these cases, officials tend to cause difficulties and delays in work for people to pay bribes (World Bank & Vietnam Government Inspector, 2013). These facts prove the existence of corruption in the land field, which has led to the need to analyze the land use certificate issuing process to identify corruption risks, thereby seeking a solution to prevent corruption.

4.2 Analysis of the Risk of Corruption in the Land Use Certificate Issuing Process in Vietnam

Currently, the process of issuing land use certificates complies with the provisions of the following law and regulations: Land Law 2013; Decree no. 43/2014/ND-CP dated May 15, 2014, of the government detailing the implementation of several articles of the land law; Circular no. 24/2014/TT-BTNMT dated May 19, 2014, of the Ministry of Natural Resources and Environment defining cadastral dossiers; Circular no. 02/2015/TT-BTNMT dated January 27, 2015, of the Ministry of Natural Resources and Environment, detailing several articles of the government's Decree no. 43/2014/ND-CP and Decree no. 44/2014/ND-CP dated May 15, 2014; Circular 23/2014/TT-BTNMT of the Ministry of Natural Resources and Environment issued on May 19, 2014, providing for certificate of land use right, house ownership, and other properties associated with the land; Circular 02/2014/TT-BTC of Ministry of Finance on January 2, 2014, guiding fees fall under the decision-making authority of the People's Councils of provinces and centrally-run cities. From the content of the above documents, the authors summarize the steps for issuing land use certificates in Figure 1.

Chart 2. Percentage of enterprises paying informal fees in implementing land procedures over the years

Source: PCI (2017-2021)
Figure 1. Process flow for issuing land use certificates in Vietnam

In the steps of the process flow mentioned above, each step carries a risk of corruption. When applying the corruption formula "Corruption = Monopoly + Description - Accountability", corruption will occur when there is a monopoly plus the subject has the right to self-determination. The results are shown in Table 1.

<table>
<thead>
<tr>
<th>PROCESS FLOW</th>
<th>MONOPOLY</th>
<th>DESCRIPTION</th>
<th>SHORTAGE OF ACCOUNTABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissemination of information about the procedure</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Submission of application form and related documents</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Evaluation of dossiers and approval, issuing land use certificates</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Handling complaints and denunciations</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

4.2.1 Risk of corruption in the step of disseminating information on land use certificate issuing procedures

According to the provisions of Article 17 of the Law on Access to Information in 2018, information on land procedures is the type of information that must be publicized. However, joint research by the United Nations Development Program (UNDP) and the Center for the Promotion of Education and Empowerment of Women (CEPEW) from July 2021 to June 2022 shows that providing information related to land procedures was only partially guaranteed. At the same time, the number of state bodies that made public information on land procedures could have been increased. Research results show that only 27/63 (accounting for 42.9%) Provincial People's Committees (People's Committees) provinces published information related to the provincial land price list in the period of 2020 - 2024; 337/704 District People's Committees (accounting for 47.9%) published information related to the land use plan in 2021. Information on feedback and recommendations of individuals regarding right to access information was not adequately provided. Accordingly, requests were sent for information to 561 district People's Committees offices, but 407 (accounting for 71.7%) were not responding (UNDP & CEPEW, 2022). The monopoly and high self-determination in this step reduce the transparency of information. It is difficult for people who applied for land certificate issuing procedure to find guidance information, therefore they will tend to give bribes or rely on "informal intermediary services" to quickly get a land use certificate. The shortage of transparency of information, and the monopoly power of state agency in dissemination of information about land certificate issuing procedures, increase the vulnerability to corruption.
4.2.2 Risk of corruption is the step of submission of application form and related documents

In this step, the risk of corruption also comes from the fact that the activities of competent officials in land use certification activities have high autonomy and lack accountability. Research by PAPI 2021 shows that among public administrative procedures, the procedure of issuing land use certificates is much more complicated and lengthy than others (PAPI, 2021, p. xxi). As for enterprises, a similar situation happened. According to the CPI 2021 survey, 13.1% of enterprises stated that the time to examine land documents is longer than the legal time limit (CPI, 2021, p. 70). Among the indicators of enterprises' time costs, the burden of time costs for land procedures ranks second (CPI, 2021, p. 63). In the second step of the application process for a land use certificate, the lengthy procedure of submitting the application and related documents makes people and enterprises "tired", leading to increased risks of corruption to get the result quickly done.

In addition, competent officials deliberately required extra documents so that people and enterprises must take several times to submit and re-submit applications. The problems mentioned above in the step of submission of application form and related documents, and the shortage of accountability of competent government officials, create a risk of corruption (Hai, 2016).

4.2.3 Risk of corruption in the step of document evaluation, approval, and issuance of land use certificates

In this step, the evaluation of the application, approval and issuance of the land use certificate is lengthy and can involve the intimidation of applicants by the competent official. Although the current legal regulations set a time limit for carrying out the procedures for granting land use certificates (up to 45 days) (Vietnam Government, 2014), in reality, prolonging the time for carrying out the procedures for granting land use certificates is quite common. According to a study by PAPI 2022, the percentage of people who have to pay an "extra fee" during the procedures of issuing land use certificates ranges from 40 to 90% in 40 provinces and cities across the country (PAPI, 2022, p. 61). This percentage tends to increase compared to previous years. Moreover, the delay in returning the results of application processing is also typical in many provinces (PAPI, 2022, p. 62).

On the business side, according to the PCI 2021 survey, the percentage of enterprises that get a land use certificate in due course was only 42.9% (PCI, 2021, p. 68). The rate of enterprises that spend informal charges to speed up land procedures in 2021 has decreased to 29.4% from 32% in 2020 (PCI, 2021, p. 58). According to surveyed enterprises, the land procedure is the most troublesome administrative procedure (PCI, 2021, p. 63). This research result is also consistent with the Ministry of Home Affairs assessment in the Summary Report of the State PAR Master Program for the 2011 - 2020 period and orientation for the 2021 - 2030 period. The report stated that "Reform of administrative procedures was insufficient to improve the business environment. Reducing administrative procedures has been made in those areas where it is unnecessary. The interoperability in administrative procedures reform is low" (Vietnam Ministry of Home Affairs, 2021). The cause of this situation could be explained from two sides: from the officials' side, who carry out the procedure and from the side of individuals and enterprises.

The officials who carry out the procedure consider the delay, causing difficulties for people and businesses, as a condition that forces individuals and enterprises pay the “extra fee” or seek out informal brokerage services. Many officials find this as their source of income when the salaries of public employees are pretty low. Some studies have shown that low wages can promote corruption in the public sector (Toke, 2011). However, it is not a fact that low wages
inevitably lead to corruption in this step of issuing land use certificates. The root cause of corruption in evaluating, approving, and issuing land use certificates is that officials can monopolize their activities (exercising public services) with high autonomy of case handling and low accountability.

Meanwhile, in many cases, the people and enterprises actively gave bribes to get the process of issuing land use certificates done. A study in 2013 found that 45% of the people who gave bribes to officials were voluntary (World Bank & Vietnam Government Inspector, 2013, pp. 53). The reason given to explain why surveyed gave the bribe was "I see other people do the same", "It is a gift to thank the person who helped", or "It is better to give some money than to go through complicated procedures" (World Bank & Vietnam Government Inspector, 2013, pp. 54). Accordingly, it can be concluded that corruption in the third step of issuing land use certificates comes from competent officials and the people/enterprises. The actions of these two subjects mutually contribute to the development of corruption in this step.

4.2.4 Risk of corruption in the step of handling complaints and denunciations

Handling complaints and denunciations about the procedures of issuing land use certificates is slow, untransparent, and inadequate. The number of complaints related to the land sphere (including complaints related to the issuing land use certificates) is always high, accounting for 60% of the total complaints. One of the common violations was a delay in issuing land use certificates, affecting the legitimate rights of people (CPV Central Committee's Internal Political Commission, 2021). As for the risk of corruption at this step, the level of self-determination of subjects competent to handle complaints is high, and their accountability is low. Indeed, the People's Committee is the subject competent to settle complaints and simultaneously is the competent authority to issue land use certificates (Government News, 2021). Accordingly, after unsuccessfully settling complaints and denunciations, people return to bribes to speed up issuing land use certificates, causing corruption to spread. In summary, in the fourth step, the factor leading to corruption risk is the low accountability of the authority while the autonomy is high. They can take advantage of the overlap of legal regulations about policies to commit corrupt acts or conceal corruption.

5 CONCLUSION

Corruption in the land sphere in Vietnam is widespread and difficult to control, causing social frustration. Therefore, it is necessary to analyze and assess the risk of corruption in issuing land use certificates. The authors conducted a study under the current law based on theories related to corruption and secondary data. The article answered the question about risk factors in the process of granting land use right certificates and its manifestations. The authors argue that corruption risk factors exist in all the flows of issuing land use certificates in Vietnam. The conclusion was made that the main factor leading to the risk of corruption in the current land use certification process in Vietnam is the policy gap caused by overlapping legal regulations, high monopoly, and discretion of authorities with low accountability. All these factors lead to the risk of corruption in issuing land use certificates in Vietnam. This study will serve as a scientific basis for policy makers in Vietnam in the fight against corruption, together with providing a basis for researchers to have more in-depth findings on corruption in the land sector. However, the article will simply examine the risk factors for corruption in the issuance of land use right certificates. As a consequence, it may not reflect the entire reality of corruption within this field in Vietnam. Therefore, there might be possibilities for imminent studies to look into factors or make comprehensive assessments of the current state of corruption in the land sector in Vietnam.
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