



Basic Conciliation Models for Land Disputes in Ho Chi Minh City

Pham Thi Ngoc Trang

Graduate Student, National Academy of Public Administration, Vietnam

Published Online: : October 12, 2023

ABSTRACT

One of the main factors causing land disputes in Ho Chi Minh City is urban planning, which is not considered enough and develops too quickly. Population density is increasing in limited urban space, leading to increased demand for land. This creates opportunities for investors, businesses, and individuals to access and purchase valuable land funds. Using the document analysis method, this article studies two basic conciliation models for land disputes: voluntary conciliation and compulsory conciliation. These models look at the mechanisms used to resolve land conflicts and suggest potential solutions to Ho Chi Minh City's ongoing development management challenges—urban and land use. Understanding and implementing an effective conciliation model is an important step to minimize land disputes and promote sustainable urban development in this city.

KEYWORDS:

Land disputes;
Urban planning;
Urban Development;
Dispute conciliation;
Conciliation model;
Ho Chi Minh City

INTRODUCTION

Among civil disputes, land disputes are a common problem. The 2013 Land Law defines land disputes as disputes about the rights and obligations of land users between two or more parties in a land relationship. This regulation shows that land disputes include many aspects, such as disputes over land use rights, rights and obligations during the land use process, and land use purposes. Resolving land disputes is an inevitable requirement when conflicts and contradictions occur between related entities (Ngo Thi An, 2020). The goal of resolving land disputes is to protect the legal rights of the subjects, helping to transform land relations from a state of conflict to a state of consensus or forced consensus.

Currently, methods of resolving land disputes depend on the will and goals of the relevant entities (Chien & Thanh, 2022)). Resolution methods include civil proceedings, administrative proceedings, administrative decisions, and conciliation through a third person acting as an intermediary. And forms of negotiation between disputing subjects. Conciliation and negotiation are peaceful approaches to resolving land disputes without passing mandatory judgments and decisions from agencies exercising state power (Ngo Thi An, 2020).

Corresponding Author: Pham Thi Ngoc Trang

**Cite this Article: Pham Thi Ngoc Trang (2023). Basic Conciliation Models for Land Disputes in Ho Chi Minh City. International Journal of Social Science and Education Research Studies, 3(10), 2032-2036*

Ho Chi Minh City is one of the localities with a developed economy, dense population, and significant economic development potential; therefore, the land use needs of individuals, organizations, and businesses increased significantly. This leads to land disputes becoming more common and more complicated. In addition, enforced land practices and violations of legal regulations in land management and use are also causes leading to land disputes in Ho Chi Minh City (Ngo Thi An, 2020).

Ho Chi Minh City has applied many land dispute conciliation solutions and achieved different results. Specifically, the city has established land dispute conciliation boards in towns and districts to resolve land disputes at the grassroots level (Ngo Thi An, 2020). In addition, the city has also established the Land Dispute Conciliation Center to resolve complex land disputes requiring superiors' intervention. In addition, Ho Chi Minh City has also applied many other solutions, such as strictly registering, managing, and using land, handling violations related to land disputes, and introducing Policies and measures to support parties involved in land disputes to resolve the issue quickly and effectively. However, resolving land disputes is still very complex and requires the government's and people's understanding, flexibility, and discipline to achieve the best results.

Land conciliation is considered an effective solution for resolving disputes, minimizing risks for related parties, and ensuring stability in land management. This demonstrates the importance of researching and applying the land reconciliation model at the grassroots and the commune-level

Pham Thi Ngoc Trang, Basic Conciliation Models for Land Disputes in Ho Chi Minh City

People's Committee in Ho Chi Minh City (Ngo Thi An, 2020). The research results can provide helpful information and solutions for local land dispute management and offer policy recommendations to support relevant parties in resolving disputes. Mortgage land quickly and effectively and ensure fairness.

Studies show that conciliation effectively resolves land disputes, saving costs and time compared to court resolution. In addition, conciliation also helps create satisfaction for the disputing parties, helps them maintain good relationships, and avoids unnecessary tensions and conflicts. The application of the conciliation model in resolving land disputes at the commune level is being introduced and deployed in many localities to effectively resolve minor disputes, strengthen community spirit, and improve social skills (Ngo Thi An, 2020). High efficiency of state management. However, it is necessary to learn and evaluate the current situation and results of applying the conciliation model to develop appropriate solutions, thereby improving and enhancing the effectiveness of land dispute resolution in Vietnam. Therefore, researching and using the conciliation model at the grassroots level and conciliation at the commune-level People's Committee on Land Disputes in Ho Chi Minh City is necessary and has essential implications in making decisions. Practical solutions, improving state management, and creating satisfaction for the people (Luan & Thanh, 2022).

Land dispute situation in Ho Chi Minh City

In recent years, Ho Chi Minh City has witnessed increased land disputes, a prominent and complex issue in development and urbanization. The boom in urban planning and the need to expand urban areas and develop infrastructure have led to conflicts between people and local governments. Land disputes affect personal rights and interests and pose significant challenges to urban management, law, and local work (Nguyen Duc Phi, 2021).

One of the main causes leading to land disputes in Ho Chi Minh City is rapid and unconsidered development in urban planning. Population density is increasing, but urban space is limited, leading to increasing demand for land. This creates many opportunities for investors, businesses, and individuals to access and capture valuable land funds (Nguyen Duy Giap, 2021). However, untimely urban planning, lack of transparency, and failure to consider people's rights have created inadequacies and conflicts in land use and, simultaneously, become the cause of disputes—land mortgage.

Ho Chi Minh City is one of the country's localities with the highest number of land disputes. According to statistics from the City People's Court, in the five years from 2016 to 2020, the Court received 8,000 land dispute cases, accounting for about 40% of the total civil cases (Nguyen Phuong Dung, 2021). The leading cause of land disputes is that the implementation of construction investment projects, resettlement, site clearance, land recovery, and issuance of

land use rights certificates face many difficulties and obstacles (Nguyen Manh Hung, Nguyen Thuy Linh, Bui Thi Dao, Hoang Thi Lan Phuong, & Nguyen Van Quang, 2017).

Several land disputes in Ho Chi Minh City have caused fierce conflicts between people and authorities, even with the intervention of civil society organizations and media agencies. International. For example, the land dispute in Quarter 6, Thanh Loc Ward, District 12, between residents and Thanh Do Housing Development and Investment Company Limited has lasted from 2014 to the present (Nguyen Thi Nhat Linh & Phan Thi My Duyen, 2020).

Ho Chi Minh City is also one of the pioneer localities in applying measures to resolve land disputes through communication, conciliation, and arbitration. According to a report from the city's Department of Justice, in the five years from 2016 to 2020, the city's Land Dispute Conciliation Center received 1,500 cases requesting conciliation, of which 1,200 were successfully conciliated. In addition, the city has also established the Land Arbitration Center to resolve disputes related to land use rights according to arbitration procedures (Nguyen Thi Nhat Linh & Phan Thi My Duyen, 2020; Nguyen Thi Hao, 2014)).

Legal processes and mechanisms related to land management also contribute to the land dispute situation in this city (Ngo Thi An, 2020). Lack of transparency and clarity in determining, managing, and changing land use purposes has increased the risk of disadvantage for people while also creating conditions for illegal acts such as Infringement of land use rights, illicit transfer of land, and improper use of land. Furthermore, handling land disputes before courts and authorities still have many limitations regarding time, cost, and fairness, causing dissatisfaction for relevant parties (Reynolds, 2011).

Some basic concepts

Conciliation: Conciliation is a way to resolve disputes, conflicts, or frictions between two or more parties by negotiating and settling with each other with the participation of an independent, intermediary, and persuasive third party. Reconciliation can be applied in many fields, such as social, political, economic, legal, cultural.... Reconciliation is essential in maintaining stability and peace. And cooperation between parties, protecting the legitimate rights and interests of the parties, saving time and costs for dispute resolution (Ridley-Duff & Bennett, 2011).

In the field of land, conciliation is an encouraged method to resolve disputes related to land use rights, ownership of assets attached to land, or other land-related issues (Roberts, 2001; Thang & Thanh, 2023). Conciliation can be conducted at the commune, ward level, or at the province or centrally run city level according to the provisions of the 2013 Land Law and guiding documents. Conciliation is voluntary and has no effect—law is a decision of a competent state agency (). If the conciliation succeeds, the parties will sign the minutes and commit to comply with the minutes. If conciliation is unsuccessful, the parties can

continue to complain or sue according to the provisions of the Law (Rouhana, 2011).

Grassroots conciliation: According to Clause 1, Article 2 of the Law on Grassroots Conciliation 2013, grassroots conciliation is where the mediator guides and helps the parties reach an agreement and voluntarily resolve conflicts—disputes and violations of the Law according to the Law on Conciliation at Grassroots 2013 provisions. The basic concept in the Law on Conciliation is village, village, hamlet, village, hamlet, phum, soc, residential group, neighborhood, block streets, and other residential communities (Rouhana, 2011). A facility is where a conciliation team is established to conduct conciliation activities according to the Law on Grassroots Conciliation 2013 provisions. A facility is also a place where conflicts, disputes, and violations of Law can be reconciled at a facility. At the grassroots level, except for cases that cannot be conciliated at the grassroots level according to the provisions of this Law. The establishment maintains stability, peace, and cooperation among family members, clans, and communities (Thanh, Thuy, Hoa, & Thien, 2022).

Conciliation at the Ward People's Committee: Conciliation at the Ward People's Committee is a way to resolve land disputes according to the provisions of the 2013 Land Law (Ngo Thi An, 2020). When the disputing parties cannot reconcile themselves, they can apply to the People's Committee-Ward, where the disputed land is located, to request conciliation. The Ward People's Committee is responsible for coordinating with the Vietnam Fatherland Front and its member organizations and other social organizations to conduct conciliation within 45 working days from the date of receipt of the application. The conciliation results must be made into a record signed by the disputing parties and confirmed by the Ward People's Committee. If conciliation is successful, the parties will comply with the minutes. If conciliation is not successful, the parties can complain or sue according to the provisions of the Law (Thanh, Thuy, Hoa, & Thien, 2022).

Basic conciliation models on land disputes

Voluntary conciliation model

The voluntary conciliation model is a method of resolving conflicts, disputes, and violations of law by the conciliator guiding and helping the parties reach an agreement and voluntarily resolve with each other according to the provisions of the Law. Regulation on conciliation at the grassroots level. This model is applied to cases that do not violate the interests of the State or public goods and are not prosecuted for criminal liability or handled for administrative violations. Successful conciliation results are valid as a contract. Contracts can be enforced voluntarily or coercively according to the provisions of the law (Thu, Thi, & Nghi, 2023).

The voluntary conciliation model in land disputes is a method of resolving disputes about the rights and obligations of land users between two or more parties by a

conciliator guiding and helping the parties reach an agreement. Mutually agreed and voluntarily resolved according to the provisions of the Law on Grassroots Conciliation (Tuoi & Thanh, 2023). This model is applied to cases that do not violate the interests of the State or public goods and are not subject to criminal prosecution or administrative violations (Thu, Thi, & Nghi, 2023). The result of successful conciliation is valid as a contract and can be enforced voluntarily or coercively according to the provisions of law (Tuoi & Thanh, 2023). To implement the voluntary conciliation model in land disputes, the parties need to take the following steps: The disputing parties can conciliate themselves or go through a conciliator at the grassroots level to find an agreement. If the parties reach a deal, they prepare a document on the successful conciliation results and sign it for confirmation. This document must clearly state the parties' names, addresses, citizen identification numbers, or identity card numbers; content of dispute; the scope of the agreement; time and place of signing; and names and signatures of parties and witnesses (if any).

The voluntary conciliation model is a valuable tool in resolving land disputes in Vietnam, creating favorable conditions for the parties to reach a fair and harmonious agreement while minimizing land disputes—overcrowding, and delays in the judicial system. However, for this model to work effectively, consensus and respect from all participating parties is necessary (Ngo Thi An, 2020). This model relies on the willingness of stakeholders. Because there is no need to use complicated litigation processes, the voluntary conciliation model often helps resolve land disputes more quickly. The parties may decide for themselves the conciliation process's time, place, and scope. They can also reach flexible agreements without being bound by rigid legal regulations.

Mandatory conciliation model

The voluntary conciliation model in resolving land disputes in Vietnam is a way for parties to resolve disputes related to land use rights and obligations between them through negotiations at the People's Committee at the local level. Commune, where the disputed land is located, according to the provisions of the 2013 Land Law and Resolution 04/2017/NQ-HDTP of the Council of Judges of the Supreme People's Court (Ngo Thi An, 2020). This model is applied to cases of dispute over who has land use rights (the owner of the land plot) where the parties have a Certificate or one of the documents specified in Article 100 of Land Law 2013 (Nguyen Duy Giap, 2021).

The voluntary conciliation model in resolving land disputes in Vietnam is a form of resolving legal conflicts between relevant parties in land management and use. Created to support and encourage participants to participate in the conciliation process voluntarily, this model emphasizes the idea of voluntariness and good faith in the search for amicable and durable solutions (Ngo Thi An, 2020).

Pham Thi Ngoc Trang, Basic Conciliation Models for Land Disputes in Ho Chi Minh City

In the context of land disputes, the voluntary conciliation model is a flexible and beneficial approach, helping to reduce the burden of time and costs compared to traditional litigation methods. Instead of taking the issue to court and relying on the authorities' decision, the parties can proactively resolve the dispute and build a good agreement based on each other's common aspirations and interests. This model often occurs at the commune-level People's Committee, where the disputed land is located, as a support and consultation center for participating parties. Experienced mediators or negotiators often support the center, ensuring the process is professional, fair, and transparent (Nguyen Duy Giap, 2021).

Depending on the nature of the dispute and the wishes of the parties, the voluntary conciliation model may involve the intervention of an unbiased third party, such as a lawyer or an independent expert. The presence of this third party can help create a better environment to promote understanding and resolve complex problems objectively. Dispute over who has the right to use land (owner of the land plot) and the parties have a Certificate or one of the documents specified in Article 100 of the 2013 Land Law (Nguyen Duy Giap, 2021). This is a case where conciliation is required at the commune-level People's Committee where the disputed land is located according to the provisions of Article 202 of the 2013 Land Law and Clause 2, Article 3 of Resolution 04/2017/NQ-HDTP of the Council of Judges of the People's Court. supreme people.

CONCLUSION

Numerous empirical studies have shed light on the multifaceted factors that influence the effectiveness of conciliation in dispute resolution. Central among these factors is the temporal dimension, encompassing the duration from when a mediator receives a case until the conclusion of the conciliation process. Previous investigations into the performance of conciliation have consistently underscored the pivotal role played by the satisfaction levels of the conflicting parties with both the procedural and outcome aspects of conciliation. These dimensions encompass considerations of fairness, transparency, amiability, respect, and professionalism exhibited by mediators. Equally crucial is the feasibility and sustainability of the resulting agreements, as well as the capacity of the parties involved to maintain amicable relationships post-conciliation. Furthermore, the professionalism demonstrated during conciliation is often indicative of the degree of compliance exhibited by the disputing parties regarding the terms stipulated in the conciliation agreement. Enhanced compliance levels, in turn, contribute substantially to the overall effectiveness of conciliation endeavors.

Empirical findings have substantiated recent successes in grassroots conciliation and the conciliation work conducted at the Ward People's Committee concerning land disputes in Ho Chi Minh City. These achievements are

evident in the realms of awareness, policy formulation, organizational structuring, and the positions of individuals. These outcomes corroborate prior research, emphasizing the importance of adherence to legal standards, feasibility, sustainability, and the avoidance of generating new conflicts or infringing upon the rights of others.

Nonetheless, limitations and impediments associated with conciliation activities at the grassroots level and within the Ward People's Committee concerning land disputes in Ho Chi Minh City persist. These challenges encompass prolonged timeframes due to delays, an absence of proactivity, and a deficiency in the responsiveness of the Ward People's Committee in receiving and processing conciliation requests. Additionally, the participation of only partial representation among conflicting parties and pertinent social organizations remains a concern. Some wards within Ho Chi Minh City have not fully prioritized the implementation of comprehensive statistics, inspection, reporting, and evaluation mechanisms for conciliation activities associated with land disputes.

The origins of these limitations in grassroots conciliation efforts and within the Ward People's Committee regarding land conflicts in Ho Chi Minh City can be attributed to a range of factors. These encompass the presence of an inadequate legal foundation, limited awareness among stakeholders, and the intricate realities of the land market.

Addressing these challenges necessitates a comprehensive approach by both the National Assembly and the Government, entailing the refinement and updating of legislation pertaining to land-related matters and land conflict conciliation. Transparency and public disclosure of information pertaining to land management, allocation, recovery, transfer, and utilization must also be prioritized.

For Ho Chi Minh City, a multifaceted strategy is warranted. It should encompass intensified public awareness campaigns and legal education to enhance community understanding of their rights and responsibilities in land asset management. Concurrently, priority should be accorded to the training and skill development of participants in conciliation activities, including their proficiency in legal matters, communication, negotiation, and conflict resolution.

Moreover, Ho Chi Minh City's strategies should encompass the facilitation of on-site conciliation and land dispute resolution efforts. The selection of an appropriate conciliation model that aligns with considerations of time, cost, and legal parameters is imperative. Substantial investments in training and capacity-building for conciliation participants should be made to ensure their competence in resolving conflicts with professionalism and efficacy. Finally, a robust system for monitoring and evaluating the outcomes of conciliation activities is indispensable to ensure the timely and effective implementation of conciliation agreements.

REFERENCES

1. Chien, N. B., & Thanh, N. N. (2022). The impact of good governance on the people's satisfaction with public administrative services in Vietnam. *Administrative Sciences*, 12(1), 35.
2. Luan, N. T., & Thanh, N. N. (2022). The impact of competency factors on job performance: a survey of student affairs staff in Vietnam universities. *PalArch's Journal of Archaeology of Egypt/Egyptology*, 19(1), 991-1012.
3. Ngo Thi An. (2020). *Law on land dispute resolution - practice in Bac Tan Uyen district, Binh Duong province and some recommendations*. Master thesis. City University of Economics. Ho Chi Minh.
4. Nguyen Duc Phi. (2021). *Law on resolving land disputes through state administrative agencies - practical application in Tuy Phong district, Binh Thuan province*. Master thesis. City University of Economics. Ho Chi Minh.
5. Nguyen Duy Giap. (2021). *Skills in collecting and processing information and documents in public reception related to land dispute resolution in Hai Phong City*. Doctoral thesis. Hanoi National University.
6. Nguyen Manh Hung, Nguyen Thuy Linh, Bui Thi Dao, Hoang Thi Lan Phuong, & Nguyen Van Quang. (2017). *Administrative lawsuits and dispute resolution in Vietnam*". Scientific research project, Hanoi Law University.
7. Nguyen Phuong Dung. (2021). The relationship between resolving administrative disputes in the land field according to organizational procedures and administrative proceedings. *Science Journal - Hanoi Open University*. 83, 1-9
8. Nguyen Thi Hao. (2014). *Reconciliation in land disputes*. Master thesis. Hanoi National University.
9. Nguyen Thi Nhat Linh & Phan Thi My Duyen. (2020). Assessing the situation of resolving complaints, denunciations, and land disputes in Cam Lo district, Quang Tri province. *Journal of Agricultural Science and Technology-Hue University of Agriculture and Forestry*, 4(1), 1679-1687.
10. Reynolds, K. (2011). Servant-leadership as gender-integrative leadership: Paving a path for more gender-integrative organizations through leadership education. *Journal of Leadership Education*, 10(2). 32-41.
11. Ridley-Duff, R., & Bennett, A. (2011). Towards conciliation: developing a theoretical framework to understand alternative dispute resolution. *Industrial Relations Journal*, 42(2), 106-123.
12. Roberts, A. E. (2001). Traditional and modern approaches to customary international law: a reconciliation. *American Journal of International Law*, 95(4), 757-791.
13. Rouhana, N. N. (2011). *Critical issues in reconciliation: Challenging traditional assumptions on conflict resolution and power dynamics*. Intergroup conflicts and their solution: A social psychological perspective, 291-314.
14. Thang, N. D., & Thanh, N. N. (2023). The Relationship Between Awareness and Commitment to Participate in the Green Tourism Model of Local Communities: Evidence from the Hmong People Community in Lao Cai Province-Vietnam. *International Journal of Professional Business Review*, 8(6), e02540-e02540.
15. Thanh, N. N., Thuy, H. T. T., Hoa, N. T. T., & Thien, N. D. (2022). The relationship between ethical leadership, job engagement, and job performance: evidence from the public sector in Vietnam. *PalArch's Journal of Archaeology of Egypt/Egyptology*, 19(2), 1161-1176.
16. Thu, H. N. T., Thi, T. N., & Nghi, T. N. (2023). Factors affecting corruption in the public sector: evidence from Vietnam. *Journal of Liberty and International Affairs*, 9(2), 50-73.
17. Tuoi, N. T., & Thanh, N. N. (2023). The Impact of Digital Capabilities on the Work Performance of Provincial Civil Servants in Vietnam. *Journal of Law and Sustainable Development*, 11(4), e560-e560.