



# Regular pattern of judicial decision on land acquisition and resettlement: An investigation on Zhejiang's 901 administrative litigation cases



Wenzhang Zhou<sup>a</sup>, Yi Peng<sup>b</sup>, Haijun Bao<sup>b,\*</sup>

<sup>a</sup> School of Law, Zhejiang University of Finance & Economics, Hangzhou, PR China

<sup>b</sup> School of Public Administration, Zhejiang University of Finance & Economics, Hangzhou, PR China

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## ABSTRACT

Conflicts in land acquisition and resettlement (LAR) in China frequently occur because of rapid urbanization and economic development. These conflicts require judicial decisions by law courts at various hierarchical levels. However, few studies examine the regular pattern of relevant judicial decisions to improve the resolution of conflicts related to LAR in China. The current study aims to identify the regular pattern of jurisdiction in the field of LAR in Zhejiang Province by examining 901 administrative litigation cases. Docking and blocking net, through which determines whether a judge supports plaintiffs in a nomological basis, is used to investigate these cases. Statistical analysis of jurisdictions, defendants, and causes of action was conducted in the study. Results indicate that jurisdictions, executive positioning of respondents, and causes of lawsuits are key issues that affect the judgment of the docking–blocking net. Results reveal that the temporal-hierarchical level of jurisdiction is negatively correlated with the plaintiffs' winning rate. The docking and blocking mechanism system of high-level courts within a jurisdiction likely provides adverse referees to plaintiffs. The executive positioning of respondents also affects judicial results. The plaintiffs' winning rate deviates depending on the causes of lawsuits. Plaintiffs and defendants use the three factors to further their own interests as much as possible through affecting the final judicial decisions of the docking–blocking net. This study seeks to improve the legitimacy of executive action, thereby reducing the judicial costs of executive acts. The study contributes to the prevention of existing administrative and judicial conflicts of LAR by clarifying the weak points of administrative departments.

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## 1. Introduction

Various forms of land requisition have emerged with the rapid urbanization and industrialization in China (Shen, Peng, Zhang, & Wu, 2012; Chen, Wang, & Huang, 2015; Peng, Lai, Li, & Zhang, 2015; Bao, Zhu, Cen, Peng, & Xue, 2017). Existing research demonstrated that land acquisition in the suburban of Beijing is usually for developing service and innovation industries, while that for Yangtze River Delta and Pearl River Delta is the second industry (Gong, Chen, Liu, & Wang, 2014; Tian, Ge, & Li, 2017; Webster & Muller, 2002, pp. 6–19). In addition, official statistical records indicate that areas of illegally used land increased from

28,674.82 ha in 1999 to 32,026.18 ha in 2012, indicating a growth of approximately 12% (MLR, 2013). A survey shows that the rapid growth of illegal land acquisition of local governments in several cities is more than 90% (Hui & Bao, 2013). Most scholars determine that illegal land use also causes related legal and social conflicts (Bao & Peng, 2016; Liang, 2009; Hui, Bao, & Zhang, 2013). Farmers may experience unfair treatment in illegal land use (Peng, Shen, Zhang, & Ochoa, 2014; Peng, Shen, Shen, Lu, & Yuan, 2014; Tang & Chun, 2002). Illegal land transactions cause various social and environmental problems and further threaten resources and environment protection (Chen, Wang, Chen, & Huang, 2015; Peng, 2015; Peng, Shen, Tan, Tan, & Wang, 2013; Tian, 2008). The misuse of “public interest” by land acquisition departments threatens the principles of Chinese law (e.g. Xu, 2007).

Judicial decisions are required to solve conflicts related to LAR; thus, law research is crucial. Existing law research focuses on the

\* Corresponding author.

E-mail addresses: [zwz15869132800@yeah.net](mailto:zwz15869132800@yeah.net) (W. Zhou), [pengyihz@gmail.com](mailto:pengyihz@gmail.com) (Y. Peng), [baohaijun77@163.com](mailto:baohaijun77@163.com) (H. Bao).

relationship between illegal land use and China's land legislative recommendations. Tian and Ma (2009) asserted that some public authorities work with the private sector to illegally transfer lands in their control. Liang (2009) investigated the effects of promotion incentives and concluded that illegal behavior under departmental interests in the fiscal decentralization mode is strengthened because of the lack of good governance. Koroso, Molen, Tuladhar, and Zevenbergen (2013) found that significant problems in the land market are related to inequity, which is caused by corruption in dealing with land acquisitions. Thus, the central government implemented a series of reforms to prevent corruption in urban land sales. Xu, Yeh, & Wu (2009) proposed that amending the law is only part of the ongoing efforts to develop a "law order" following the aim of the central government. Researchers also suggested legislative actions on land use in China. Ding (2007) argued that the local government should consciously regulate the conflicts of LAR in accordance with the law. Jin, Shi, and Yu (2010) noted that rules must be enacted to obtain a fair bargain on land acquisition, which will help resolve conflicts. Rao, Tan, and Luo (2014) emphasized the monitoring and control of the behavior of local governments to solve land problems effectively. Research on the problems of illegal land use must be improved with solid evidence (Zhou, Xu, & Wang, 2015).

However, existing research has certain limitations. Studies on laws usually focus on whether the results of charges are legal. Other studies are administrative result-oriented and explain the behavioral effect of land acquisition and the corresponding management strategies of local governments. However, the logical basis of administrative result-oriented research is the behavior of administrative departments rather than judicial departments. In the Chinese legal system, the judicial branch, instead of the executive branch, makes the final verdicts on administrative actions. When a bill that involves LAR becomes a law, a judicial decision from the judicial department connects the administrative action and the bill. However, few studies have examined the regular pattern of relevant judicial decisions to improve conflict resolution of LAR in China.

This study aims to identify the regular patterns of jurisdiction in the field of LAR in Zhejiang Province by examining 901 administrative litigation cases. Docketing and blocking net, which determines whether a judge supports plaintiffs in a nomological basis, is used to investigate these cases. This paper is organized as follows: Section 2 presents the context of LAR, and relevant operation of judicial decision on the resulted conflicts through an in-depth review. Section 3 briefly introduces the research methods and data sources. In Section 4, a statistical analysis of the written judgment documents of 901 administrative litigation cases related to LAR in Zhejiang Province is conducted. Section 5 presents an in-depth discussion on the findings. The final section summarizes the research with specifying the future research directions.

## 2. Literature review

### 2.1. Conflicts resulting from LAR

Land conflict related to LAR is a global problem. Developing countries in Europe, Asia, and Africa are facing various forms of land conflicts (Jokhadze, 2006; Müller, 2008; Yucer, Kan, Demirtas, & Kalanlar, 2016). Land conflicts pertain to the personal loss and property loss in land disputes, acquisition, and resettlement (Alston, Libecap, & Mueller, 2000). Various forms of land conflicts exist in different countries. Land conflicts in Kenya are mostly on water use (Campbell, Helen, Mwangi, & Chege, 2000). Simmons (2004) pointed out that land conflicts in Brazil are related to valuable timber and farmland. In a large number of developing

countries, such as China, the number of conflicts resulting from LAR is substantial and accompanied by disputes on land ownership and the right of use (Bao, Ye, & Xu, 2014; Muzondo, Barry, Dwar, & Whitetal, 2007; Tan, 2008).

In Asia, the main reason for these conflicts is two-fold. The first has to do with the question of what is "public purpose", which is usually required by the land management law in some countries. In India, constitutional debates on "public purpose" in land acquisition continue because land acquisition stands at the political fault line of a changing India, which is undergoing significant political, economic, social, environmental, and spatial transitions. Since 1824, India's legislation has not established a good definition of public interest to prevent the abuse of land expropriation rights. Under the administrative system of the Chinese government, LAR is determined by "public purposes" (Clarke, 2014). However, China has its own specific national condition. Lieberthal and Lampton (1992) studied Chinese politics in the post-Mao era and concluded that at the middle reaches of the rural hierarchy, the relationship between the basic government and expanding rural settlements demonstrates the continuing role of bureaucratic authority as a determinant of resource allocation. Thus, China's bureaucracy controls the definition and implementation of "public purpose" (Zhang, 2009). As a result, China's executive authorities will most likely control the arbitrary power of citizenship through their power of interpreting the term "public purpose" (Li, 2008). By establishing the definition of public interest, China's local governments abuse the right of land expropriation to threaten the rights of local people; collective land owners, as well as the holders. The land owners cannot easily safeguard their legitimate rights and interests through legal collective land expropriation procedures. In the end, abuse of administrative actions on land expropriation caused a large number of conflicts resulting from LAR (Li, 2008; Zhang, 2009).

Second, who are the beneficiaries? The Indian state arrogated to itself substantial legal powers to exercise the right of eminent domain. Yet the efforts to establish a legal regime that guarantees the right to resettlement and rehabilitation for displaced groups are unsuccessful (Levien, 2011). Zhang (2005) believes that local governments in China abuse their power on expropriation compensation; compensation standards in the process of collection are excessively low, which has a serious effect on the constitutional rights on expropriation and has sparked intense social conflicts. Mo (2008) conducted a practical study and posited that the behaviors of local governments, such as the simplification of allocation approaches and inadequate social security, violate the basic principles and legislative intention of land expropriation and seriously threaten farmers' property rights. Zhu and Prosterman (2007) analyzed land rights in China and determined that various land conflicts occur because farmers who lose their land typically receive minimal or even no compensation. Unjust expropriation compensation legislation will intensify the dissatisfaction of the people who were expropriated and cause conflicts related to LAR (Shan, Yu, & Wu, 2017), which in turn will affect social stability and economic development. Thus judicial decision is usually unavoidable to solve such generated conflicts.

### 2.2. Judicial decision on LAR

Two factors that result in frequent conflicts of LAR can be attributed to the defects of China's legal system. Studying and improving the legislative and judicial system of land expropriation and demolition are crucial to resolving relevant conflicts. In the ASEAN (Association of Southeast Asian Nations) region, a series of complex issues, including political, economic, and social problems, which lead to judicial or non-judicial redress. Thus, it is difficult to

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