

# A COMPARATIVE STUDY OF PATRIMONIAL RIGHT AND INCORPOREAL PROPERTY IN CIVIL LAW SYSTEM AND VIETNAMESE LAW SYSTEM

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## ABSTRACT

*Property law plays an important role of civil law in the legal systems of continental European countries. Therefore, the establishment and improvement of the property institution is always focused in these countries. This is also gradually confirmed in the process of completing Vietnamese civil law. The article analyzes the conception of patrimonial right and incorporeal property in civil law system and Vietnamese law system, thence propose the improvement of the conception of patrimonial right and the establishment of the conception of incorporeal property in Vietnamese civil law.*

**Keywords:** Patrimonial Right, Incorporeal Property, Civil Law System, Vietnamese Law System.

## INTRODUCTION

In the legal systems of continental European countries, the property provisions are not only applied to the institution of ownership right and other real rights, but also to the other institutions such as succession, contract, etc. This is also gradually confirmed in the process of completing Vietnamese civil law. Indeed, according to the structure of the 1995 and 2005 Civil Code in Vietnam, the provisions of property fall into the Second Section of Property and Ownership Right (Law and Regulations, 1995). However, the current Civil Code moves the provisions of property to the First Part of General Regulations. This also means that the provisions of the conception, the classification of property..., from the Article 105 to 115 of the First Part of the 2015 Civil Code, will apply to the other Parts of this Code such as obligation and contract, succession, etc. (Law and Regulations, 2015). Therefore, the conception of property and other related conceptions need to be focused and improved gradually. A comparative study of patrimonial right and incorporeal property between civil law system and Vietnamese law system helps to find out the gaps that Vietnam needs to fill into its regulations of property in the 2015 Civil Code and other relevant current legal documents.

## LITERATURE REVIEW

### The Conception of Patrimonial Right and Incorporeal Property in Civil Law System

#### The conception of patrimonial right in civil law system

Firstly, patrimonial right, in contrast to ex-patrimonial right, is considered as a type of legal subject's right in civil law system which has their origin in the Roman legal tradition. France and Germany are two typical examples of countries with a civil law system. In France, patrimonial right is understood as the prerogative of legal subject, according to the provisions of law, used against the others who infringe that right (Aubert & Savaux, 2016; Bamdé & Bourdoiseau, 2016). If based on the value of right, legal subject's right is classified into two types, rights that cannot be valued in money, called ex-patrimonial right, such as right to nationality, right to images..., and rights that can be valued in money, called patrimonial right, such as ownership right (Aubert & Savaux, 2016; Bamdé & Bourdoiseau, 2016).

Secondly, in the law of the continental European countries, patrimonial right is considered as a legal concept of property. Right and thing are opposite each other. This is two different approaches of property. This also means that property is recognized as a thing or a right (Terré & Simler, 2014). Therefore, the classification of property can only be done after choosing an approach of the property from the perspective of a thing or a right.

If approaching property from the perspective of a right, patrimonial right is traditionally divided into two categories, real right and personal right (Điền, 2018). However, modern French legal system divides property right into three categories, real right, personal right and intellectual property right (Terré & Simler, 2014; Aubert & Savaux, 2016). Real right is a right to be exercised directly over a particular thing. Real right, also known as right in rem, are classified into right of ownership (including ownership right and other real rights such as usufruct, habitation...) and subordinate real right, which are formed from the property measures to ensure the precise performance of obligations such as pledge, real mortgage, etc. Personal right is a right corresponding to an obligation that another person has to perform such as right of debt collection (Điền, 2009; Terré & Simler, 2014; Bamdé & Bourdoiseau, 2016; Aubert & Savaux, 2016).

### **The conception of incorporeal property in civil law system**

If approaching property from the perspective of a thing, in order to distinguish the property, the first classification of property in Roman law is basically of two categories, corporeal and incorporeal property. Corporeal property has a tangible existence in the world and is related to material things such as land, house, silver, etc. Incorporeal property is intangible because its existence is neither visible nor tangible (Điền, 2009).

Based on the basic classification of property in Roman law, the Article 899 of the Civil Code in Québec, in Canada, provides that the property, whether corporeal and incorporeal property, should be divided into immovable and movable property. Similarly, the Article 448 of the Civil Code of Louisiana, in the U.S., confirms that things are divided into common, public, and private; corporeals and incorporeals; and movables and immovables. In France, according to the provisions of the Civil Code and the doctrine, property, corporeal and incorporeal property, is classified into immovable and movable property (Courbe & Latina, 2016).

## **The Conception of Patrimonial Right and Incorporeal Property in Vietnamese Law System**

### **The conception of patrimonial right in Vietnamese law system**

Firstly, in Vietnam, according to the Article 1 of the 2015 Civil Code, patrimonial right, in contrast to ex-patrimonial right, is considered as a type of legal subject's right. Based on the Clause 1 of the Article 25 of the 2015 Civil Code, ex-patrimonial right is the civil right inherent to each individual, which cannot be transferred to other persons, unless otherwise prescribed by other laws in Vietnam. But Vietnamese Civil Code doesn't give the definition of patrimonial right under the aspect of legal subject's right.

Secondly, patrimonial right, according to Vietnamese law, is one of the categories of property. In fact, based on the definition of property in the Clause 1 of the Article 105 of the 2015 Civil Code, property consists of objects, money, valuable papers and patrimonial right. Patrimonial right is a right which can be valued in money, including patrimonial rights over subject matters of intellectual property rights, land use rights and other patrimonial rights (Article 115 of the 2015 Civil Code). This means that Vietnamese law does not recognize property from two perspectives, either as a thing or as a right, but a property can only be a thing or a right. If property is a thing, this corporeal property has a tangible existence in the world and is related to material things such as land, house, and silver. In contrast, if property is a right, this right is incorporeal because its existence is neither visible nor tangible.

### **The conception of incorporeal property in Vietnamese law system**

Incorporeal property can't be found in the current Vietnamese Civil Code. However, based on the classification of property in valuation, Vietnam's Valuation Standard No. 07 divides property into corporeal, incorporeal and financial property (the Clause 2 of the Section II of Vietnam's Valuation Standard No. 07, issued together with the Circular 28/2015/TT-BTC). According to Vietnam's Valuation Standards No. 07 and No. 13, incorporeal property has no physical form and is capable of generating economic rights and benefits. List of corporeal property includes intellectual property rights in accordance with the Law on Intellectual Property, for example, copyright, industrial property rights... (The Point b of the Clause 4 of the Section II of Vietnam's Valuation Standard No. 07, issued together with the Circular 28/2015/TT-BTC; the Point 3.1 of the Clause 3 and the Clause 4 of Vietnam's Valuation Standard No. 13, issued together with the Circular 06/2014/TT-BTC). Therefore, if comparing patrimonial right specified in the 2015 Civil Code and incorporeal property defined, classified and listed in Vietnam's Valuation Standards No. 07 and No. 13, incorporeal property in Vietnam's Valuation Standards No. 07 and No. 13 is patrimonial right in the 2015 Civil Code (Law and Regulations, 2014; (Law and Regulations, 2015).

## **FINDINGS AND DISCUSSION**

Firstly, unlike the continental European legal system, the Vietnamese law system only considers patrimonial right as a type of legal subject's right, but patrimonial right is not a legal concept of property. Therefore, the Article 115 of the 2015 Civil Code in Vietnam recognizes

patrimonial right of intellectual property rights, a type of author's right, as a property. Meanwhile, the current Vietnamese Law on Intellectual Property approaches patrimonial right from two angles, a legal subject's right and a legal concept of property the Article 18, 19, 29 and the Clause 2 of the Article 122 of the Vietnamese Law on Intellectual Property (Law and Regulations, 2005), amended and supplemented in 2019 (Law and Regulations, 2019).

Secondly, the Clause 1 of the Article 107 of the 2015 Civil Code lists a list of immovable properties that are corporeal. The Clause 2 of the Article 107 of the 2015 Civil Code 2015 confirms that movables are properties other than immovable. Land use right, one of the patrimonial rights specified in the Article 115 of the 2015 Civil Code, which is incorporeal, can be only a movable property. In fact, there is not an immovable property which is incorporeal in Vietnamese Civil Code. However, according to the Clause 4 of the Article 5 of the 2014 Law on Real Estate Business, land use right, which is one of immovable properties, puts into business. Similarly, based on the Clause 2 of the Article 28, the Clause 2 and 3 of the Article 37 and the Clause 1 of the Article 39 of the Circular 200/2014/TT-BTC, land use right, which have no specific physical form and whose existence is neither visible nor tangible, is incorporeal and immovable (Law and Regulations, 2014).

Thirdly, based on different criteria's of property, the 2015 Civil Code in Vietnam provides different ways of classifying property. Property can be divided into immovable and movable, divisible and indivisible, expendable and non-expendable, etc. Absolutely, the classification of the corporeal and incorporeal property can't be found in the current Vietnamese Civil Code. However, according to the Clause 2 of the Section II of Vietnam's Valuation Standard No. 07 (issued together with Circular No. 28/2015/TT-BTC), the classification of property for the purpose of valuation is based on the provisions of the Civil Code and other relevant current legal documents. Although the classification of property into corporeal and incorporeal does not exist in the 2015 Civil Code, the Circular No. 28/2015/TT-BTC dated March 6, 2015 of the Ministry of Finance promulgating the Vietnam's Valuation Standard No. 07 classifies property into corporeal and incorporeal (the Clause 2 of the Section II of Vietnam's Valuation Standard No. 07) (Law and Regulations, 2015).

## CONCLUSION

In order for the Vietnamese Civil Code to play a leading role in specialized laws, as well as to avoid the above mentioned inconsistency, the concept of patrimonial right in Vietnam have to be perfected as civil law system. Accordingly, patrimonial right, in contrast to ex-patrimonial right, is considered as a type of legal subject's right and a legal concept of property besides approaching property from the perspective of a thing. At the same time, the Vietnamese Civil Code in the future also needs to establish the conception of incorporeal property when classifying property into corporeal and incorporeal. Indeed, the complement of property institution in the Vietnamese Civil Code will lead to the consistency between the supreme legislations and between the supreme legislation and subordinate legislation in Vietnamese law system.

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