

Study on the Innovation of homestead Right System under the Separation of Three Powers —— Analysis sample based on local practice

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Abstract: The "three rights separation" reform of homesteads is one of the significant innovative measures in China's rural land management system. It aims to optimize the allocation and efficient use of rural land resources by reasonably separating ownership, eligibility rights, and usage rights of homesteads. However, this reform faces numerous legal issues and challenges during its implementation, primarily manifested in unclear rights definition, restricted transfer mechanisms, and insufficient protection of rights and interests. These problems not only hinder the progress of market-based transfers of homesteads but also affect the realization of farmers' land property rights. To explore the legal pathways for the "three rights separation" reform of homesteads, this paper uses local practices in Jinzhai County, Anhui; Yujiang County, Jiangxi; and Yicheng City, Hubei as case studies. It systematically analyzes the successful experiences and legal difficulties encountered in these regions. Through an in-depth analysis from a legal perspective, the paper proposes that clarifying the legal boundaries of the "three rights," improving the rules for market-based transfers of homestead usage rights, and establishing judicial remedies for farmers' rights are key paths to innovate the homestead rights system. Additionally, the paper argues that revising relevant laws and regulations, promoting the legalization of policy enforcement, and disseminating successful local reforms can provide institutional guarantees for the "three rights separation" reform of homesteads. Further clarification is needed in future legislation and policy formulation. The rights and obligations of rural economic organizations, the standardization of circulation procedures, and the strengthening of farmers' legal rights to redress are essential for achieving efficient utilization of rural land resources and sustainable development of the rural economy. In summary, this article not only provides theoretical support in law for the reform of the three rights separation of homesteads but also offers specific suggestions and references for future policy and legislative practices.

Key words: separation of three powers; homestead; rights definition; transfer mechanism; judicial remedy

1 Introduction of the problem

The reform of rural land systems in our country has deepened with the development of the economy and society, especially under the

background of the "Rural Revitalization" strategy. The management and use of homesteads have become a focal point for both policy makers and scholars. In this process, the proposal of the "three rights separation" reform

of homesteads holds significant institutional innovation value. "Three rights separation" refers to the division of ownership, eligibility rights, and usage rights of homesteads, aiming to optimize land resource allocation, improve land use efficiency, protect farmers basic housing rights, and promote rural economic development and urban-rural integration. However, this reform has also exposed a series of legal issues in practice, which urgently require in-depth exploration from a legal perspective to improve relevant laws and ensure the smooth implementation of the reform.

First, in terms of rights definition, the current law fails to provide clear and specific regulations on the boundaries and content of the "three rights" of homestead land. Although Articles 362 and 363 of the Civil Code make general provisions regarding the ownership of homestead land and the conditions for transferring usage rights, they do not offer a clear legal interpretation of the new concept of "qualification right." This leads to conflicts between farmers qualification rights over their homestead land and the ownership of collective economic organizations in practice, thereby causing disputes over ownership. Moreover, issues such as the scope of exercise and transfer conditions of homestead land use rights have not been fully clarified within the existing legal framework. For example, some local governments impose restrictive provisions on the scope and targets of usage rights transfers during the process, which are contradictory to legal provisions, affecting the applicability of the "three rights separation" reform of homestead land^[1].

Secondly, in terms of circulation mechanisms, the market-based circulation of homestead use rights is still subject to many restrictions. The Land Management Law stipulates that homestead use rights shall not be transferred to non-members of the collective economic organization. While this regulation protects the nature of collective land ownership to some extent, it also hinders the rational flow and market allocation of land resources, affecting farmers ability to increase their property value through land circulation. In particular, in some rural areas, farmers are unable to transfer idle homestead use rights to external enterprises or individuals, leading to a large amount of idle land resources and low economic efficiency. Furthermore, current laws lack unified regulations on specific procedures for homestead circulation, contract norms, and tax standards, resulting in legal risks in practice. Farmers are prone to suffer losses due to unclear contract terms when signing circulation agreements^[2].

In terms of rights protection, the current legal mechanisms for judicial protection of homestead rights are still imperfect. Farmers face the risk of their rights being infringed upon during the transfer process of homesteads, but they lack effective channels for legal redress. On one hand, the existing judicial relief system lacks specialized mechanisms to handle disputes over homestead ownership, making it difficult for farmers to protect their rights through legal means when they are violated. On the other hand, due to the lack of clear definitions regarding the nature and scope of homestead eligibility and usage rights, courts have inconsistent standards in adjudicating related cases. This not only

affects the protection of farmers legitimate rights and interests but also undermines the authority and credibility of the "three-rights separation" reform to some extent^[3].

Therefore, this article argues that the core legal issues of the "three rights separation" reform of homesteads focus on three aspects: rights definition, circulation mechanisms, and rights protection. To ensure the smooth implementation of the "three rights separation" reform, it is urgently necessary to revise relevant laws and regulations, clarify the legal boundaries of the "three rights" of homesteads, improve market-based circulation rules for homestead use rights, and establish judicial remedies for farmers rights. This not only effectively promotes the efficient utilization of rural land resources and the sustainable development of the rural economy but also provides a solid legal foundation for achieving the strategic goal of "rural revitalization."

2 The local practice of the right system of homestead under the separation of two and three powers

2.1 Case selection

To delve into the innovative pathways of homestead rights systems under the separation of three rights, this study selected Jinzhai County in Anhui Province, Yujiang County in Jiangxi Province, and Yicheng City in Hubei Province as local practice cases. These regions exhibit strong representativeness and diversity in implementing the separation of three rights reform. Jinzhai County, an old revolutionary base area in Anhui, boasts abundant land resources but suffers from low utilization efficiency; traditional land management models urgently need reform to unlock the potential of the land market. The

reason for selecting Jinzhai County lies in its historical context combined with current economic development needs, providing an ideal environment for studying the reform of the separation of three rights. Yujiang County in Jiangxi, as a pioneer in rural reforms nationwide, has long been actively exploring innovations in homestead rights systems. Its reform measures and achievements offer valuable lessons for other regions across the country. The reason for choosing Yujiang County is its pioneering explorations and innovative reform measures in policy implementation, which have significant reference value. Yicheng City in Hubei, located in central China, has a moderate level of economic development, offering both a solid policy foundation and practical needs for reform implementation. The reason for selecting Yicheng City is its typicality in economic development and policy implementation, reflecting common issues and solutions in the reform of the separation of three rights in central China. The specific details of these three regions in the reform of the separation of three rights in homesteads are as follows. The measures and results are distinctive, which provide rich case analysis materials for this study.

2.2 Case description

2.2.1 Reform practice in Jinzhai County, Anhui Province

In Jinzhai County, Anhui Province, the local government has separated the ownership, usage rights, and operating rights of homesteads through certification, granting farmers more land use and transfer rights. Specific measures include establishing a unified homestead management platform to achieve dynamic information management of homesteads via

digital means, ensuring transparency and traceability of information. The local government has improved the registration system for homestead usage rights, formulating detailed operating procedures and standards to ensure clear definition of usage rights for each plot of land. At the same time, Jinzhai County promotes a paid exit and transfer mechanism for homestead usage rights, setting up a dedicated homestead transfer service center to provide professional consultation and services, ensuring the legality and standardization of transactions. The reform has been highly effective, significantly improving land utilization efficiency, allowing farmers to earn additional income through the transfer of homesteads, and promoting substantial development of the rural economy. The reform in Jinzhai County not only enhances the utilization rate of land resources but also promotes the optimization and upgrading of the rural industrial structure through land transfer and development^[4].

2.2.2 Reform practice in Yujiang County, Jiangxi Province

In Yujian County, Jiangxi Province, the local government has launched a pilot program for the "three rights separation" of homesteads, clarifying that ownership of homesteads belongs to the collective, usage rights to households, and operating rights can be market-traded within legal limits. Specific measures include conducting comprehensive land certification work to ensure clear ownership of each homestead. Yujian County has established and improved the legal system for the use and transfer of homesteads, providing necessary legal protection for farmers. At the same time, the local government actively promotes the

market-based trading of operating rights, encouraging farmers to effectively utilize idle homestead resources through leasing, shareholding, and other forms. Through this pilot reform, Yujian County has effectively addressed the issues of idle and inefficient use of homesteads, promoting the optimal allocation and efficient utilization of rural land resources. The reform has also spurred the development of related supporting industries, such as rural tourism and agricultural product processing, further enhancing the vitality of the rural economy and increasing farmers income levels^[5].

2.2.3 Reform practice in Yicheng, Hubei province

In Yicheng City, Hubei Province, the focus of reform is on exploring market-oriented operations for the right to operate homesteads, encouraging farmers to develop and utilize idle homesteads through cooperatives, leasing, and other forms. Specific measures include simplifying the approval procedures for the right to use and operate homesteads, improving approval efficiency, and reducing administrative intervention. The Yicheng municipal government has introduced financial support policies, providing low-interest loans and fiscal subsidies to farmers and enterprises, encouraging multiple parties to participate in the development and utilization of homesteads. Additionally, Yicheng has established a homestead transfer information platform, offering market information and transfer services to promote the legal and orderly transfer of homesteads. The reform has shown significant results, with homestead resources being fully utilized, farmers increasing their income through the transfer and development of

homesteads, and the rural economy seeing notable improvement. The reform in Yicheng also emphasizes ecological protection and sustainable development, ensuring that homestead development does not harm the environment through strict environmental assessments and supervision, achieving a win-win situation for economic and ecological benefits^[6].

2.3 Case analysis

Through the comparative analysis of the three rights separation reform cases of homestead in Jinzhai County, Jiangxi Province, Yujian County and Yicheng City, Hubei Province, some common experiences and differences can be extracted.

First, the common experiences across regions include: First, clarifying property rights through methods such as certification and registration to protect the legitimate rights and interests of all right holders. All three regions have systematically carried out certification and registration work, ensuring clear definitions of homestead ownership, usage rights, and operating rights, thus safeguarding farmers basic rights. Second, establishing market-based circulation mechanisms to promote the paid exit and transfer of homestead usage and operating rights, thereby improving land resource utilization efficiency. All regions have set up circulation service centers or information platforms to support the market-based circulation of homesteads, promoting the optimal allocation of land resources. Third, the government actively promotes reforms by issuing supporting policies and providing necessary policy and financial support. Local governments have played a crucial role in the

reform process, ensuring the smooth implementation and effective advancement of reform measures through policy guidance and financial support^[7].

Secondly, there are also differences in specific measures across regions. Jinzhai County in Anhui Province focuses on platform construction and system improvement, enhancing the efficiency of homestead management through information technology to ensure transparency and traceability. Yujian County in Jiangxi Province emphasizes pilot exploration, accumulating experience and gradually promoting it, providing solid protection for homestead rights through the improvement of legal frameworks. Yicheng City in Hubei Province, on the other hand, focuses on market-oriented operations, actively guiding farmers to participate in land transfer and development, promoting the market-based circulation and efficient use of homesteads by simplifying approval procedures and financial support policies^[8].

Overall, these local practices offer valuable insights for the innovation of homestead rights systems. This means that when promoting the separation of three rights reforms, measures should be tailored to local realities and adapted accordingly. Emphasis should also be placed on property rights protection and the establishment of market mechanisms to achieve efficient land resource utilization and effective safeguarding of farmers rights. By summarizing these experiences and lessons, we can provide references and guidance for the reform of the separation of three rights in other regions, promoting the modernization and sustainable development of rural land management.

3. Legal analysis of the reform of "three rights separation" of homestead

3.1 The application of property rights theory

The core of the "three rights separation" reform for homesteads lies in redefining and redistributing ownership, eligibility rights, and usage rights to better achieve effective land resource utilization and protect farmers rights. From a legal perspective, property rights theory provides theoretical support for the "three rights separation" reform. Property rights theory posits that clear definition of property rights is the foundation for efficient resource allocation. In the "three rights separation" reform, a clear delineation of ownership, eligibility rights, and usage rights helps reduce transaction costs and dispute risks caused by unclear property rights.

According to Article 362 of the Civil Code, the ownership of homesteads belongs to rural collective economic organizations. This provision lays the legal foundation for the separation of homestead ownership. At the same time, the right to eligibility for homesteads is a right obtained by rural collective members based on their identity, and its exercise and transfer are subject to the internal rules of the collective economic organization. Therefore, clarifying the boundaries of the right to eligibility for homesteads is of great significance for protecting farmers basic housing rights. The core of the right to use lies in granting farmers the right to possess, use, and benefit from their homesteads, enabling them to maximize the value of the land through market transactions^[9].

In practice, the core challenge of property rights separation lies in balancing the relationship between collective ownership and individual farmers rights. On one hand, it is

necessary to ensure that the ownership of homesteads by collective economic organizations is not weakened; on the other hand, it is essential to grant farmers greater usage and transfer rights to facilitate the market-oriented utilization of homesteads. Therefore, in the "three-rights separation" reform, it is necessary to revise relevant laws and regulations to further clarify the boundaries and rules for exercising these three rights, thereby achieving clear and market-oriented property rights^[10].

3.2 Application of the principle of freedom of contract

The principle of freedom of contract is one of the fundamental principles in civil law, emphasizing that both parties to a transaction have the right to independently decide on the content and form of a contract, provided they do not violate the law or public order. In the "three rights separation" reform of homestead land, the application of the principle of freedom of contract mainly manifests in the market-based circulation of homestead land use rights and operating rights.

In the process of transferring homestead use rights, farmers and enterprises can achieve market-oriented utilization of homesteads through various forms such as leasing, transferring, and shareholding. In this process, the principle of contractual freedom ensures the legitimate rights and interests of both parties, allowing them to independently choose transaction conditions and contract terms based on their own needs and wishes. At the same time, local governments should standardize transaction behavior and reduce transaction risks by formulating standardized templates for transfer contracts^[11].

However, in practice, the application of the principle of contractual freedom also faces certain challenges. For example, due to the immaturity of the rural land market, some farmers may encounter issues such as information asymmetry and unfair contract terms when signing transfer agreements. Therefore, local governments and relevant departments need to strengthen supervision over the transfer of homesteads to ensure the proper implementation of the principle of contractual freedom. At the same time, legal aid and public education should be provided to enhance farmers' legal awareness and help them better protect their rights during the transfer process^[12].

3.3 Balance between public interest and individual rights

In the "three rights separation" reform of homesteads, how to balance public interest and individual rights is a key issue. The ownership of homesteads belongs to the collective economic organization, reflecting the priority of public interest; while farmers' usage and operating rights over homesteads reflect the realization of individual rights.

The protection of public interests is primarily reflected in the planning and management of land. For example, when local governments implement the "three rights separation" reform for homesteads, they need to ensure that land use complies with regional planning and environmental protection requirements, avoiding non-agricultural use or pollution caused by market-based transactions. At the same time, local governments should promote the rational use and sustainable development of homesteads through policy guidance and financial support^[13].

The protection of individual rights is reflected in farmers' rights to use and transfer their homesteads. Through market-based transactions, farmers can convert idle homestead resources into economic benefits, improving their living standards. However, in practice, the protection of farmers' rights faces numerous challenges. For example, in some areas, there are phenomena such as forced transfers and low-price purchases during the transfer process of homesteads, which infringe upon farmers' legitimate rights and interests^[14].

Therefore, in the "separation of three powers" reform, it is necessary to improve laws and regulations and establish an effective mechanism for rights protection to balance the relationship between public interest and individual rights. On one hand, it must be ensured that the management authority of collective economic organizations over homesteads is not weakened; on the other hand, farmers should be granted more autonomy and market-based transfer rights to achieve a win-win situation for public interest and individual rights^[15].

3.4 Construction of judicial remedy mechanism

In the "three rights separation" reform of homesteads, the establishment of judicial relief mechanisms is crucial for protecting farmers' rights and resolving land disputes. Currently, farmers may encounter issues such as contract disputes and ownership controversies during the transfer of homestead use rights and operating rights. Therefore, it is necessary to improve judicial relief mechanisms to provide effective legal protection for farmers.

First, a specialized land ownership dispute resolution institution should be established within the court system to handle cases involving the "three rights separation" reform of homesteads. This institution should possess professional land law knowledge and be capable of swiftly and efficiently resolving disputes between farmers, collective economic organizations, and enterprises. Second, legal aid and public education should be strengthened to help farmers understand the relevant laws and regulations of the "three rights separation" reform of homesteads and their own rights and obligations. By providing free legal consultation and litigation representation services, the cost of farmers rights protection can be reduced, enhancing their ability to seek legal protection. Finally, a diversified dispute resolution mechanism should be established, including mediation, arbitration, and administrative reconsideration, to offer farmers various avenues for redress. In the process of mediation and arbitration, emphasis should be placed on protecting farmers legitimate rights and interests, ensuring the fairness and impartiality of dispute resolutions^[16].

In summary, the legal foundation of the "three rights separation" reform of homesteads mainly includes property rights theory, the principle of contractual freedom, the balance between public interest and individual rights, and the establishment of judicial relief mechanisms. The application of these theories and mechanisms not only provides legal support for the "three rights separation" reform but also offers important institutional guarantees for the innovative development of the homestead rights system. In future reform practices, it is necessary

to improve laws and regulations and establish relevant supporting systems to ensure the smooth implementation of the "three rights separation" reform, achieving efficient utilization of rural land resources and effective protection of farmers rights.

4. Innovation paths and policy recommendations

4.1 Innovation path

Based on the practical experience of the three rights separation reform of homestead in Jinzhai County, Anhui Province, Yujiang County, Jiangxi Province and Yicheng City, Hubei Province, the following innovative paths can be proposed.

1. Clarify Rights Definition: It is necessary to clearly define the specific content and boundaries of ownership, usage rights, and operating rights of homesteads, ensuring the legitimate rights and interests of all right holders. Specific measures include systematic land certification and registration, establishing a unified homestead management platform, and achieving dynamic management of homestead information through information technology, ensuring clear and transparent rights definition^[17].

2. Strengthening the protection of rights: It is necessary to establish a perfect legal system, formulate and improve relevant laws and regulations, clarify the content and exercise mode of homestead rights, establish the mechanism of rights protection, and ensure that all kinds of rights are effectively protected in practice^[18].

3. Improve the rights transfer mechanism: A market-oriented homestead land transfer mechanism needs to be established, promoting

the paid exit and transfer of homestead land use rights and operating rights, thereby enhancing the efficiency of land resource utilization. Specific measures include setting up a homestead land transfer service center and information platform to provide market information, transfer services, and policy support, ensuring the legality and standardization of homestead land transfers. Through these innovative approaches, the reform of separating the three rights of homestead land can be effectively advanced, achieving modernization and sustainable development of the homestead land rights system.

4. Improve the legal system: Develop and refine relevant laws and regulations to clarify the content and exercise methods of homestead rights, establish mechanisms for protecting these rights, and ensure that all rights are effectively protected in practice. In particular, it is essential to specify the procedures for transferring, leasing, and mortgaging homestead use and operating rights, and to establish robust legal safeguards for the circulation of homesteads, preventing abuse of rights and disputes.

5. Explore financial innovation: Provide financial support for the transfer of homestead rights through mortgage loans and securitization of homestead use rights, broaden financing channels, and promote the market-based transfer and appreciation of homestead resources.

6. Strengthen judicial relief mechanisms: Establish specialized land ownership dispute resolution institutions within the court system to focus on cases involving the "three rights separation" reform of homesteads. Enhance legal aid and public education to help farmers understand relevant laws and their rights and

obligations under the "three rights separation" reform. Develop a diversified dispute resolution mechanism, including mediation, arbitration, and administrative reconsideration, providing farmers with various avenues for relief.

4.2 Policy recommendations

In response to the shortcomings of current policies, the following specific policy recommendations can be proposed to ensure the sustainable development of the homestead rights system. First, improve the legal framework by revising the existing Land Management Law, clarifying the legal status and operational norms of the three rights separation in homesteads, ensuring that all rights are effectively protected and exercised within the legal framework. Specific measures include establishing clear procedures for the transfer, leasing, and mortgage of homestead use rights and operating rights, building a robust legal protection mechanism for homestead circulation to prevent abuse of rights and disputes. Second, strengthen the protection of rights by setting up specialized institutions for homestead rights protection, providing legal consultation and assistance services, and offering convenient avenues for farmers to protect their rights. Additionally, promote the socialization and professionalization of homestead rights protection through collaboration among government agencies, social organizations, and legal institutions, forming a diversified rights protection system to ensure that homestead rights are effectively protected at every stage. To facilitate the circulation of rights, it is necessary to establish a market-based homestead circulation mechanism, promoting the paid exit and circulation of homestead use rights and operating rights,

thereby enhancing the efficiency of land resource utilization. Specific measures include setting up a homestead circulation service center and information platform, providing market information, circulation services, and policy support to ensure the legality of homestead circulation and standardization. Explore financial innovations for homesteads, such as mortgage loans and securitization of homestead use rights, to provide financial support for the transfer of homestead rights, broaden financing channels, and promote the market-based circulation and appreciation of homestead resources. Through these policy recommendations, scientific policy guarantees can be provided for the reform of the three-rights separation of homesteads, ensuring the sustainable development of the homestead rights system and advancing the modernization and sustainability of rural land management.

5. Conclusions

5.1 Summary of research findings

This paper, through an in-depth analysis of the three-rights separation reform practices in Jinzhai County, Anhui; Yujiang County, Jiangxi; and Yicheng City, Hubei, proposes a series of key elements and implementation paths for innovating the homestead rights system. The study finds that clarifying property rights separation, establishing a comprehensive legal framework, promoting market-based circulation mechanisms, and strengthening rights protection are core elements for innovating the homestead rights system. In terms of rights definition, systematic land certification and information management platforms serve as the foundation for clear and transparent rights; regarding rights protection, a complete legal system and

specialized rights protection institutions provide necessary legal safeguards; concerning rights circulation mechanisms, market-oriented circulation service centers and information platforms ensure the legality and standardization of the circulation process. Additionally, exploring financial innovations such as homestead mortgage loans and usage rights securitization can offer broader financial support and market vitality for the circulation of homestead rights. Through these measures, efficient utilization of homestead resources and effective protection of farmers rights can be achieved, driving the modernization and sustainable development of the homestead rights system.

5.2 Research significance and prospect

The research findings of this paper have significant practical implications for policymakers and local practices. By clarifying the key elements and implementation paths of the three-rights separation reform, it provides a scientific basis for policymakers, aiding in the formulation of more effective and actionable policy measures to promote the modernization and sustainable development of rural land management. At the same time, through the analysis and summary of the reform practices in three regions, it offers valuable experience and references for local governments, facilitating the broader promotion and implementation of reform measures. Future research can further explore the application of the three-rights separation in different regions and types of land, analyzing its adaptability and effectiveness in various economic and social environments. For example, studies could examine the differential performance of the three-rights separation

reform in urban fringe areas, impoverished regions, and economically developed areas, as well as its application effects across different land uses (such as agricultural land, forest land, and construction land). Additionally, there can be deeper exploration into the innovative homestead rights system and its synergistic role

with other rural reform measures (such as the rural revitalization strategy and new rural construction), providing more comprehensive and systematic theoretical support and practical guidance for the full-scale advancement of rural reforms.

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Express ones thanks

This project is supported by Anhui University of Finance and Economics College Students Innovation and Entrepreneurship Training Program (202410378XXX)