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Research Article

The legal Nature of Petroleum Contracts from the National Point of View

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Abstract
It has become necessary to determine the legal nature of the petroleum investing contract in order to determine the legal system that is governed by and assigning it to a certain system to settle any risen conflict because it has been considered as a dual system regarding the National and international points of view. This kind of contract is related to many international entities and interests. Whereas the legal nature from the National point of view, we have found that the petroleum investing contract in the light of its creation and determination is submitted to the National law rules to add the legitimate feature of belonging it to rules of this law as a regulatory action to determine the authorized power to sign it, the rights with others, powers, specializations and the required procedures to be followed in case of failure to comply. Regarding the constitution of each state, does the administrative power has the freedom to sign the petroleum investing contract without any restriction, or are there constitutional and legal restrictions? This conflict had risen in Jurisprudence about determining the legal nature of the petroleum investing contract from the National point of view. Some of them see it as a private law contract, and others see it as a private nature contract.

Keywords
Private law, public law, petroleum contracts, legal nature, investment

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The essential thought

The legal nature of petroleum investment was decided later. Previously, it was concerned about the Economic and Financial aspects without considering the legal aspects. The Jurisprudence was contradicted in determining the legal nature of the petroleum investment contract. Some entities considering it as an administrative contract, others considering it as one of the private law contracts, while others considering it as a contract with private nature.
The Jurisprudence contradiction belongs to the legal nature determination of the petroleum investment contract from the state point of view to the variation and incompatibility of benefits and political and economic circumstances, that accompanied the petroleum investing contract inside each state separately. It is obvious, that the Jurisprudence of each state has to stand and support its policy in that field.

The paper's object importance

Oil represents a very important resource of power. It will remain for long centuries as a strategic commodity. The world failed to find an alternative to this commodity and its importance. It is considered as a basic material of the Global economy, with no doubt it is the main concern for the imported and exported states. Regarding the oil industry that needs a developed technical style and modern technology which are unavailable in the produced countries (especially the developing countries) and are available in the exported countries, it is normal that oil will be concerned by the Jurisprudence.

Paper's problem

The petroleum contracts in the produced countries like Iraq need to be settled regarding the Jurisprudence argument about these contracts' legal nature. The Arab Gulf region became the target of all the world, especially after the Arab Gulf's second war. The new Colonialism seeks to reveal the new Global system of direct control on the Arabic oil resources through many ways such as; the Oil agreement with Arabic states and connecting them with the military agreements, and trying to internationalize them out of the National legal systems. This makes the petroleum contracts a very important matter.

Methodology

The petroleum investing contract study and rooting its rules will motivate to follow the descriptive-analytical methodology regarding the legal nature background from the National point of view (regarding the produced states). Also, following the legal and historic development to make a comparison between the petroleum status at the colonialism days, and their status at the current days to find out the progress made to these contracts regarding their legal nature.

The paper's plan

This paper is divided into three sections. The first one is entitled " The petroleum investing contract from the General laws contracts, and this section is divided into two demands; the first one is the opinion that supports the administrative nature of the petroleum investment contracts, and the second demand is the opposite opinion to the administrative nature of petroleum investing contract. The second section has entitled "The petroleum investment contract from the private law contracts, that has divided into two demands; the first one discusses the petroleum contracts relating to the privacy laws, while the second demand includes the author's opinion regarding the contract itself, that has divided into three demands; the first one is entitled " the petroleum investment contracts is a privileged contract", while the second demand studies the petroleum investment contract as a partnership contract, and the third demand entitled "the petroleum investing contract as a contracting contract". This paper has ended with conclusions and recommendations.

The First section

The Petroleum investment contract as the Public law contracts

Jurisprudence sees a petroleum investing contract as an administrative contract signed by the executive Authority as a public power that uses the public law styles. It can amend and terminate the contract. It is also considered one of the compliance contracts, administrative contract and contractual. Regarding the administrative work or the contract is the main factor in the awarded investment, and there is no right unless this contract was found (Al-Bana, 1984; Moshashai, Leber, & Savage, 2020).

The administrative work is only permission, and it is still reversible without compensation. The administration has no right to act with the normal contract principles, but from the point of its sovereignty in practicing the power Acts as a state. This opinion is true, the administrative nature came out to the petroleum investment contract after many principles emergence in the 1950s and 1960s from the last century and confirming the self-determination of the third world countries, and the sovereignty principle of natural resources appeared.The date of commencement was decided by the oil-produced countries for the Natural resources dominance, and many aspects were taken such as the power of monitoring and directing the different activities aspects of the foreign companies that are investing oil and amending the agreements by one side. This power came from that this signed contract is an administrative contract submitted to the public law, and these authorities of the administration are necessary and obligatory enabling the state to monitor each of the oil investors and confirming these entities committed to the contractual missions. Such power is considered one of the features owned by the state on its lands and extends to include all the activity aspects such as the financial, administrative, and technical aspects that touch the relationship between the investor and the state. These powers' justification is regarding the legal adaption of petroleum investment contract due to its administrative nature, and the petroleum investment style is one of the using styles of a public facility through individuals under state supervision, and this contract is considered one of the public laws contracts. Regarding the mentioned above, we have to brief the supports and the opposition for the administrative nature of the petroleum investment contract as hereunder:

The first demand:

The supporting opinion to the administrative nature of the petroleum investment contract.

The second demand:

The opposition opinion to the administrative nature of the petroleum investment contract.

The first demand: The supporting opinion to the administrative nature of the petroleum investment contract

This trend that supports the administrative nature of the petroleum investing contract sees that this contract belongs to the public facilities, and the public feature will be duplicated (Alwan, 1976; Bashynska et al., 2019). The majority of Jurisprudence considered that the agreement with systematic consequences such as the oil privilege are contracts, not an agreement, or they are a combination of the contract and agreement system, but they focus greatly on the contractual element (Ashoosh, 1989; Rabah, 1988; Radhi, 2021a). Does this situation explain how the legal system of these agreements is similar to the legal system of contracts? And regarding some jurisprudence points of view, that agreement with systematic consequences is considered a contract signed willingly (Olawuyi, 2018; Rabah, 1988; Radhi, 2020). The other group of Jurisprudence (Olawuyi, 2018; Rabah, 1988; Radhi, 2020) confirms that an oil contract privilege is an administrative contract submitted to the rules of the National administrative law of the contracted state, which is different than private law. Al-Bana (1984) sees that the petroleum privileges have the administrative contractual trait, and this can be confirmed through the modern trends of these privileges after the second world war to put limitations for the great companies (concessionaire) regarding the public interest variables. The privilege petroleum contracts can be correspondent with the administrative contract elements through the contact in one public facility and using the public law means. Instead, the administration is considered

part of it Al-Bana (1984).

The second demand: The opposition opinion to the administrative nature of the petroleum investment contract

There is a certain trend in Jurisprudence and Adjudication, that the petroleum investment contract does not belong to the public facilities that organized by the administrative law, because the petroleum contract is not including of concessionaire to do any service to the public (paid by the beneficiaries) (Al-Bidery, 2014; Alwan, 1982; Ashoosh, 1975). This trend can support its point of view to banish the National administrative nature of the petroleum investment contracts by saying " The oil contracts that are considered against the origin at the administrative, have some privileges, exceptions and extraordinary powers that can replace the public authorities, and even these agreements have further benefits such as the justification of the contract from one party is forbidden, instead of they have the right of legislation confirmation and Arbitration condition (Al-Muayad, 2003; Alwan, 1982; Radhi, 2021b). On the other side, some jurisprudents see the refusal of some Arab states the idea of codification the thought of the administrative nature of the petroleum contract (Ashoosh, 1975). It is remarkable, that some of the arbitration courts were held to settle some of the petroleum contract conflicts and refused to follow the administrative nature of the petroleum contract. For example, in the Aramco case, the arbitration court decided on the petroleum and mining privileges, with no single text to the beneficiaries (Alwan, 1982; Schwarz, 2008). The court also refused the compliance, that the petroleum contract belongs to the public laborers because it considered the mining deposits became ownership to the concessionaire and he has to return it to the state (Rabah, 1988).

Brief

If there is a contradiction in Jurisprudence, the courthouse, and the international business considering the petroleum investing contract as an administrative contract, we didn't see the application of the administrative contract theory as known to the petroleum contracts, because there is a foreign element at the administrative contract, and this foreign element changes the nature of the traditional administrative contract. The business of administrative contract theory should be stated as a contract signed at the state and not related to other foreign parties. The administrative contact is signed between the public Authority with some of the individuals, whether it is natural or empirical. When the public authority signed contracts it uses the public law styles and targeting the public interest for its connection to the public facility and its main concern to keep that facility working regularly. The public authority desires to supervise it regarding the public interests (Al-Attar, 1963; Bammarny, 2019).
These conditions that control the traditional administrative contract cannot be applied on the petroleum investing contract that signed with a foreign entity, because of foreign party existence and cannot submit to condition and contracts that issued by the public authority. This contract is not for the foreign element benefit only, it is related to international benefits that influence the economy of many states (Al-Juruf, 1973; Rosenbloom, O'leary, & Chanin, 2017). It is obvious, that there is no reason to stop the petroleum investment contract to be submitted to the internal rules and systems at the hostess state unless both parties selected that path. Then, the internal law rules will be applied, and the state authorities are not an obstacle against the foreign companies' activities, but the reason behind that is to achieve the public interest. Most of the petroleum contracts are submitted to the international law rules directly or indirectly (Rabah, 1988).

The second section

The petroleum investment contract is one of the private law contracts. Private law is one of the low branches that organizes the relationship between individuals or between them and the state because it is considered a regular issue. Private law organizes the rules that govern many contracts such as the civil contracts that had been discussed by the civil law, and the commercial contracts that are organized by the commercial law (Lutfi, 1996; Mohammed, Jaff, & Schrock, 2019).
The most important thing to know is how petroleum contracts can match with private law rules. So, this section is divided into two demands:

The first demand: The relationship between petroleum contracts and private law.
The second demand: The researcher's opinion of the private law.

The first demand: The relationship between petroleum contracts and private law.

Jurisprudence sees that the petroleum investment contract belongs to the private law rules that determine validity conditions (Al-Fadhli, 1997). This matter requires the will with no defects. The most important judicial application in this matter, the verdict issued by the International Court of Justice in 1958 regarding the conflict between Saudi Arabia Kingdom and Aramco company. Whereas the court considered the petroleum privilege contract is not submitted to the state sovereignty or the public law, but submitted the private law (Commercial law) because it has the commercial feature, practiced by the state regarding the Islamic legislation (Beck & Levine, 2005; Hadad, 2001).

Confirming the private nature of using oil, the foreign entity is not restricted to any conditions or acts that determine how to invest or use a public facility (Alford, 2013; Nasif, 1999). According to the French Act, the petroleum contract cannot be related to the administrative known categories. It is one side agreement, because the state with sovereignty is the one that granted the privilege from one side, and it considering it as a contract from the other side, and it is required a mutual agreement between the state and the concessionaire. In the United Kingdom, the petroleum privilege contract is considered the one that has a regular contractual feature among the parties, however, the state is a part of this contract. No exceptions can be applied to this contracting, only the one stipulated in the private law. The contracting style for the state can be achieved through the Governmental administration because it represents the Royal Crown, and the rest of the local entities have to make the same way of contracting with individuals. But this is not making these entities far away from the authoritative rules in the administrative law (Sabra, 2002; Stepanova & Kiseleva, 2014).

Considering what we have mentioned above the state's positions and trends to the petroleum contracts, we have found that they are advanced in that matter. The status of the investor is strong and controlled by the private law rules with mutual commitments. If the private law contracts are many, the privilege petroleum contracts are the most important among them, whether it is a normal privilege contract or partnership contract or a contracting contract, and it is the most related to the petroleum investment contract.

However, the difficulty in deciding whether the privileged petroleum contract was a feature to the public law or the private law or determine which law can the petroleum investment contract submitted for concededly is not the private law. Because Jurisprudence's opinion makes all the petroleum investment contracts submitted to the public law rather the private law. During the arbitration process for settlement among the Saudi Arabia Kingdom and Aramco in 1958, the court confirmed " there is no a signed contract without stand on a specific system law, signing a contract doesn't belong to the disentangled contract's parties, but is tied to a situational law with commitment feature. The contract cannot be signed unless there is a governing law". The arbitration court had seen the privilege contract as a real contract, and not as a public service, then the acquired rights were applied, that Saudi Governmental Aramco already had (Nasif, 1999).

The second demand: The researcher's opinion of the private law

Regarding the Jurisprudence's opinion (Ashoosh, 1989; Rabah, 1988), we can see the petroleum investment contract as a development economic contract. The agreement was signed between the state from one side, and a foreign institute from the other side that its existence submitted to the rules of the foreign state. So, this agreement includes a foreign element and a National element. This contract includes constructing fixed facilities or importing machines, and mostly this contract authorizes the foreign company certain rights with abnormal nature, such as free in exporting.

Legally, the petroleum investing contract targets the public interest and derives its validity from the state's law regarding the state's sovereignty rights in its region. This trend sees that the National law of the oil-produced country must be applied at any conflict, but it doesn't give to the other side any acquired rights. This specific nature characterized the petroleum investing contract by saying it is a quasi-International contract because it is signed between a state and private foreign company supervised by the national law for any state rather than the international law (Ashoosh,

1989; Rabah, 1988). So, the petroleum investing contract has a certain feature characterized it from the rest of the contracts that the state has a certain role in them. It is not a commercial contract, but a legal contract related to a public facility, and it is not necessary to be managed by the state itself, maybe can be managed by another party after signing a contract with the state, and the state has the right to monitor and be the guardian (Al-Juruf, 1973). Regarding the mentioned above, a petroleum investing contract is almost a contract of a certain nature, it is not an administrative contract submitted to the public law in all cases. It is also not a certain civil contract submitted to private law. So, the nature of this contract is private and related to the economic development projects, and one of its parties is a foreign individual and its subject is using one of the natural resources at the produced country. The rights of each party are reserved and submitted to public law and private law equally. And also it is kind of achieving the mission to organize the international economic relationships that concern many states. There is a combination between public law and private law equally to determine the National legal nature. This contract has legal nature aims to achieve two targets:

The first target

Strength the oil-produced country regarding its sovereignty on the natural resources and signing a contract with a foreign entity. It has to be correspondent with its constitutional laws considering its dignity and Nationality consideration. From this point, this contract in some issues is submitted to the public law.

The second target

Encouraging the foreign investment, and seducing the foreign entity of petroleum investment operation, and its right and profits are preserved. From other points, this contract is submitted to private law in the light of international private law. The petroleum investing contract is forming a new type of the new contracts internationally, that are characterized with new law-governed through the contract's parties will.

The third section

The petroleum investing contract with objective nature regarding the contract's object itself. The Petroleum contracts are divided regarding their objects and subjectivity to three kinds regarding the hereunder demands:
The first demand: The petroleum investing contract as a privileged contract.
The second demand: The petroleum investing contract as a partnership contract.
The third demand: The petroleum investing contract as a contractual contract.

The first demand: The petroleum investing contract as a privileged contract.

It means, that the oil-produced country has the right to award some companies and individuals the right to use certain areas from its lands to search and oil exploring to a specific period regarding a certain of revenues from the production of the investing company based on the signed contract between them (Al-Bana, 1984).
The petroleum investing contract is a traditional agreement made before the second world war, that gives all the companies absolute rights in search and production. Most of these agreements never obliged the concessionaire to utilize neither train the locals, and even following certain procedures to reserve the petroleum wealth. Also, the state never obliged the concessionaire to make any refinery processes to the crude oil inside the state territory for exporting (Al-Muayad, 2003). The western Jurisprudence Ashoosh (1989) sees that some agreements especially the petroleum privileges are not contracts governed by the national law for any of the states, because all parties never submitted to one National law.
These agreements are not governed by the international public law, because they are not signed between its entities, and these agreements derive their strength directly from the principle of the contract and are submitted basically to the legal system that formed by the contract itself, and the rules determined by the arbitration commissions during the conflict process that is derived from the general principles of the law. The western Jurisprudence is characterized by the administrative

contracts signed by an administrative entity inside the state with foreign individuals and the other party governed by the state's law and the quasi-international agreements that are approved or signed by the government regarding its sovereignty, and also specified in signing the international treats (Ashoosh, 1989).
We stand with Al-Bana (1984) opinion about no contract can be signed by establishing a legal system that carries this feature, and when one of the signed parties is the state itself with sovereignty, it is unacceptable that such state with its contractual commitments submitted to others law without its approval.Also, the distinction between the above-mentioned contracts is not acceptable, because the contract's adaption is based on the contract's nature, objectivity and characteristics, and the entity that represents the state has no right to sign the contract alone (Al-Bana, 1984).

The second demand: A petroleum investing contract as a partnership contract

It is worth noting, that the main reason for participating in the new agreements is that the oil-producing countries established public oil institutes which lead to establishing a new legal relationship between the two parties. The use of the word participation in the past is a kind of indication of the old known rule which means dividing the profits fifty-fifty under the old privilege agreements (Ashoosh, 1989) .
Some Jurisprudents (Al-Bana, 1984) see that participation agreements in oil contracts achieved to the producing countries many advantages such as; increase in the financial revenues. The tax deductions can be obtained from the project, different types of duties, and fees, in addition to the state's rights as a participant in the project. Also, the state's right in planning, managing operations, execution, approval of the required expenses, and other rights because it is the landowner and the privilege awarder. Then, we can remark how the oil-producing countries concern to manage these agreements and managing the company's administration. These agreements stipulate that the decisions must be issued by the board of directors that represent the produced country and the foreign entity, and the responsible positions must be distributed equally. There are three forms to use the oil through the partnership contract:

The first form

This form can be done by awarding the oil privilege in a certain area with known conditions. Each of the National institutes which controls the oil sector and the foreign company (concessionaire) has the right to fifty-fifty of the investment. For example; the contracts that were signed with the Egyptian institute for petroleum (Hadad, 1966; Salacuse, 2013).

The second form

This form can be done by awarding the privilege to the Nation-state of oil with the contribution with the foreign company (fifty-fifty). For example, the two signed agreements between the Saudi Arabia Kingdom and with both of Sinclair and Eta companies (Rabah, 1988).

The third form

This can be done through awarding privilege to the foreign company, and it has to pledge after exploring the commercial quantities to establish a company half of its shares or less or more belong the Governmental Institute in the light of the agreement (Sabra, 2002) It is important say that the contribution system as mentioned above will achieve a kind of tranquility to the oil-producing countries opposite to the traditional privileges that followed by the colonial and occupation. The contribution system was applied after long and hard negotiations because each party was defending his point of view. The oil companies claimed that the contract was signed with oil-producing countries, and this contract determined rights and responsibilities must be respected literary and applying them accurately along with the determined period by the agreed parties. Also, these companies see that this contract was made to be continuous but not to be amended or changed. This contract has specific legislation, and cannot use these conditions as excuses recently or previously. These companies are holding the legislation in adherence to the contract (Hadad, 2001).
While the oil-producing countries see the historic conditions after the occupation influenced on

signing these contracts, and these conditions were changer after getting the independence. Before, these countries have no right to negotiate with the colonial authorities, and these contracts must be signed regarding satisfaction and agreement. These countries are supporting their point of view, that the international exercises applied changing conditions theory, and the oil companies mad the tacit consent at the beginning and surrendered to the theory of the changing conditions (Rabah, 1988). The oil-producing companies were stuck to having a National petroleum company, and these companies were formed as public institutes with industrial and commercial nature to be far from the administrative feature and enable them to be independent in their administration (Al-Anbari, 1976; Shwadran, 2019).

The third demand: A petroleum investing contract as a contractual contract

The contractual contract at the petroleum investment is considered one of the legal forms to use oil from the side of the oil produced country (Rabah, 1988) and some define it as an agreement between the oil produced country or National petroleum company with a foreign company, and regarding this agreement, the state will assign the petroleum operations mission to that company to its account in a certain area for a certain recompense.

Some of the jurisprudents Al-Anbari (1976) see that mostly, the contractor pledges to fund and execute the development and production operations after exploring the oil in commercial quantities regarding the stipulated definition at the contract. In the 1940s, the contractual contract appeared in the petroleum agreements. The oil-producing country relied on a foreign contractor to be responsible for the oil exploring and preparing it for production, then really producing it. And the contractor will be responsible for expenses, responsibilities, and risks for the whole project. The contractor was never taken a fee, but recovering what he paid for the project, and receives a certain share of the production of profits.

The agreement in the contract. The shares will be between 20 % t0 30 % based on the contractual contract (Rabah, 1988). The main practical application of the contractual contract in petroleum investment, the contract dated 03-02-1968 between the French company EYDAP and the Iraqi Government. The period of agreement as determined was six years as maximum for searching oil, that the company should abandon %50 of the privileged lands after three years and %25 at the end of the fifth year, and abandon all the invested lands at the end of the sixth year (Al-Anbari, 1976).

The contract agreement in its new concept gives the oil-producing countries new advantages and goals tried to achieve them before. It enables the oil-producing country to use the oil directly not like before especially what is related to the marketing issues. The contract is better than a partnership contract, because the agreement minimized the foreign companies' rule as a contract only, and the owner became in the state's hands (Rabah, 1988). This model was accepted by the investing foreign companies and seeks one fixed resource and cheap fuel (Al-Anbari, 1976).

Brief

We can summarize all the mentioned above by saying, that the state reaches to the direct use of oil especially in the marketing issue. The marketing issues are managed by the state's name and for its advantage. The contract agreement is better than the partnership contract, and the foreign company's task is to execute a certain order under the supervision of the oil-producing country, because the contract agreement refers to the oil ownership of the oil-producing countries, especially that the state and its authorities are a strong party in this contract, and the administrative nature is dominant.

Conclusion

1. Inability to apply the administrative contract theory in the public law on petroleum contracts due to foreign element existence at the administrative petroleum contract. And this foreign element restricts the rational administrative contract that is signed within the state and National parties. The conditions that governed the traditional administrative contract cannot be applied to the petroleum investing contract that is signed with a foreign entity, and cannot be submitted to the public power restriction.

2. The petroleum investing contracts are private law contracts with accepted strong supports. This can be summarized, that the investor situation has the economic powers and technology to a large extent. The contract also includes commitments governed by private law rules, and the host country compromises on its exceptional rights.
3. The partnership contract is an advanced step to achieve the host country's interest, but the agreement contract had overtaken some obstacles that prevented the state to use the oil directly especially in marketing matters because the marketing process is taking place in the state's name and for its advantage.
4. This study also confirmed that the petroleum investing contract has a legal nature regarding the exchanged rights between the host country and the foreign investing company. Then, these contracts are considered private nature contracts that cannot be assigned to a certain branch of public law or private law.
5. The petroleum investing contract is predominantly the nature of private law, it is not an administrative contract or a pure civil law contract to the private law. So, this contract is related to economic development projects and one of its parties is a foreign element, and its main subject is to use one of the natural resources at the producing countries. This contract is submitted to private law and public law equally, and we can see that obviously through the goals of this contract. The first goal is to reinforce the oil-producing countries' position in keeping with their dominance and the natural resources.

Recommendations

1. We recommend, that all the oil-producing countries especially the Arab Gulf countries to achieve the contract agreement to liberate their oil fortune from the foreign companies' dominance, and the interference of these states in the National sovereignty through these companies.
2. We recommend, that the host countries must concern about making the Arbitration courts a secondary means and considering the courthouse at the host county is the original even its law. The host country's law must be considered the origin of petroleum conflict settlement. Also to be supported by treaties and international principles and decisions such as the international court of justice, United Nations, the rules of private law and public law.
3. We recommend, that the petroleum facility must be assigned to loyal individuals, integrated and honest with sufficient experience in international law and international treaties to deal correctly with foreign parties. All that will achieve the common interests and making the fair balance of the National interests and the foreign investor's rights.
4. We recommend establishing a specialized court in conflicts that may risen between the countries and the foreign individuals from other countries, and should be held at one of the Arabic Gulf states. If these contracts were signed, there is no legal reason for the two parties to write a complete attachment to the main contract.

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