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Vessel Insurance; Commercial Needs and Contractual Choices or Legal Obligations; Domestic and International Regulations

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Abstract

Extensive risks and dangers at sea lead to great losses to many maritime activists, including merchants, vessel owners and governments. The financial ability of any of the activists in this field to compensate the damages is very limited or may even lead to irreparable damages such as environmental pollution that cannot be compensated by money alone and has negative side effects. Therefore, nowadays, the issue of obtaining marine insurance is very important and has legal and international requirements, regardless of the rational benefit and commercial needs. by investigation international conventions, it was determined that due to the importance of the issue and in order to reduce the risk marine activists, various types of marine vessels insurance, including protection and compensation insurance, hull and machinery, cargo, etc. were predicted and the principle of compulsory insurance at sea is mainly designed to ensure the payment of debts and compensation by vessel owners. Therefore, obtaining marine insurance coverage is not only a commercial need for maritime activists, but this issue has become a legally binding rule in the international relation. However, obtaining vessel insurance is not included in domestic law and the basis for action is only some of the multilateral international treaties to which the Iranian government has acceded.

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Legislation of Financial Markets and Instruments in Iran Emphasizing Energy and Oil Derivatives Transactions

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Derivatives, Energy, Laws, Legislation, Petroleum, Regulation

Abstract

Financial markets and one of its most important sub-sectors - energy and oil derivative transactions - have been the subject of legislation in the Iranian legislature for various reasons, to different degrees and in different ways. Given the potential importance of derivatives in the nation's energy economy, having an understanding of related laws is important. The purpose of this article is to understand the developments and challenges of the laws governing these markets and tools in Iran and to suggest measures to improve them. To this end, the relevant laws passed in the legislature from the beginning to the present have been examined in terms of reasons, provisions and approach to energy and oil derivatives transactions. In this study, the dominance of state-owned enterprises, confrontation with the dominant countries in the global financial system, conflict of interest and regulatory capture, and conflicting legislative functions have been identified as important challenges of energy and oil derivatives legislation and to overcome these challenges and achieve optimal legislation, the propositions are: precedence of privatization over promotion of derivatives, joint efforts for international and regional regulation, management of conflict of interest, and balancing the conflicting functions of laws.

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Energy Conservation in the Light of Sustainable Development Goals from the Perspective of National and International Legal and Criminal Laws

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Abstract

The role of laws in extracting and consuming all kinds of energy resources in all fields is undeniable. Undoubtedly, the development and the economic, political, social, environmental and technical future of any country and the world, in general, are completely dependent on the presence or absence of energy. The unplanned and maximum consumption of non-renewable resources, in order to extract energy, has made the security of mankind face new crises, which is referred to as "the common concern of humanity", and some people even consider the perpetrators of these behaviors as "enemies of mankind". Therefore, legislators and executive bodies should take advantage of all available potentials, both legal and criminal, to protect energy resources in line with international policies, so that according to the ideals of sustainable development as a common global goal, the current and future generations can have access to sustainable energy sources in a fair manner. Currently, the lack of technical and executive infrastructures and effective and efficient executive guarantees, and the non-commitment of the enforcers and trustees to the established laws, as well as the lack of executive guidelines and the weakness of regulatory bodies, have caused the laws enacted in the field of energy to be ineffective. It goes without saying that the multiplicity of laws does not necessarily guarantee the operationalization of energy programs and the achievement of sustainable development goals, and the legislator must consider the ability to implement the laws before enacting the laws.

This article has studied the domestic and international legal literature by using the descriptive-analytical research method and based on the hypothesis that the domestic laws are not compatible with the needs of the country and the modern world views in issues related to energy and the ideals of sustainable development. Due to these weaknesses, energy conservation is faced with many shortcomings in domestic laws and executive policies. To answer this question, what actions should be taken to protect energy and the rights of future generations? Some international documents and conventions in the field of energy, some of which are joined by Iran, have been briefly discussed. The implementation of these commitments and goals at the domestic level, especially in the construction industry, depends on correcting the old and wrong traditional policies, revising the current laws or establishing new laws that are appropriate to the existing conditions. Using lessons learned from other developed countries will definitely be useful and efficient.

Iran's general policies related to energy are divided into two main groups: oil and gas general policies and general policies of other energy sources. However, the current domestic policy is mainly focused on the use of fossil resources, and there is little executive support for the use of renewable resources or clean energy. Currently, in the field of domestic energy law, responsibilities are generally defined in the realm of legal and civil responsibilities, and there is no specific criminalization for energy protection at the national level. The few currently defined crimes in the field of energy are also related to issues related to vandalism or creating restrictions on access to energy and destroying the environment and important issues such as unprincipled exploitation, waste of energy and protection of energy resources do not have a place in criminal policies. However, the international community is trying to introduce behaviors that are based on excessive consumption of fossil resources, assaulting the environment and the rights of future generations as the fifth crime of transnational crimes, as an example of the crime of "ecocide". Also, by examining the efforts of the world community to achieve the goals of sustainable development, it is concluded that the world community is moving in the direction that we will probably see the recognition of the crime of ecocide in the near future to protect the environment and future generations at the international level. Therefore, it is necessary to foresee reasonable and implementable measures in accordance with the existing capacities by the domestic legislator to reduce the use of fossil resources that are harmful to the environment and human health. In this regard, the use of nuclear energy is an outdated global policy, and one should think about using solar, wind, sea and geothermal energy and other potentials in the country.

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International Obligations of the Government in the Protection of Cross-Border Waters

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Abstract

The Government of the Islamic Republic of Iran has responsibilities in order to protect groundwater and prevent its pollution. These duties are explained by domestic and international laws and regulations. In the domestic sphere, relevant laws, including the law on equitable distribution of water, define the duties and powers of the government. However, due to the dispersion of international regulations, the government's overseas duties are not well explained. International treaties and rules in the field of groundwater and the environment set out principles for governments that must be complied with, and what is at stake is: what is the international obligations of the government in the protection of groundwater? This article examines the binding principles contained in international laws and regulations, examines the duties and obligations of governments, including the Government of the Islamic Republic of Iran in the protection of groundwater.

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Lex Petrolia; An independent and Transnational legal System or a Secondary and Complementary Source in the Oil and Gas Industry

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Abstract

The term transnational law was first introduced by Philip. C. Jessup became famous in his book published in 1956 under the title "Transnational Law". In the explanation of this term, it can be said that when actions or events go beyond the national society, they create transnational phenomena and relationships that give the identity of the society and the transnational society. Therefore, transnational phenomena and relations are entities, events or situations that include more than one legal-political system (nation-country). In fact, it is accepted that the emergence of transnational rights is influenced by political, economic, cultural and social forces in one word (sociology of law). Many new subjects fall under the category of one of the recognized national or international legal systems, but according to the basic view in this article, "transnational law" is the subject of a distinct legal system that does not belong to any legal system (national or international) and is outside of The territory of state law (nation-state) is located. In this regard, lex petrolea, as a set of conventional rules of the oil industry, can be one of these subjects, but it is not defined precisely and is used in a contradictory manner and has an unclear scope. This term was officially introduced in international law through the famous dispute of AMIN Oil and Kuwait oil exploration. A review of the existing literature about the theory of lex petrolia shows that there is no theoretical consensus regarding the concepts and foundations of this theory. Regarding the nature and scope of the expansion of the legal principles claimed by the aforementioned theory, there are different views, from a limited set in the field of oil arbitrations to a comprehensive world order.

Purpose - The purpose of the discussions raised in this article is whether transnational law can be evaluated as an independent system in the context of the emergence of lex petrolia. Is such a set of propositions and procedures and legal principles, assuming proof, located along the main sources of law in the national and international legal systems or across them; if it is raised along them, it means that it does not have an independent existence by itself and its validity It is subject to approval in domestic and international legal systems. But if it is claimed to be within the main sources of law, the implication is that it can be considered as an independent source of law.

Research method- The method of this research is descriptive-analytical and with a new approach with a view to the Sociology of law and library sources and published scientific articles have been used.

Conclusion- The review of the existing literature about the lex petrolia theory shows that there is no theoretical consensus regarding the concepts and foundations of this theory. However, contrary to what some jurists claim, the theory of Lex Petrolia as a legal system independent and self-sufficient from domestic and international legal systems and with binding properties has not been realized and recognized so far. The arguments of the aforementioned jurists in this regard do not prove the elements and characteristics necessary for the realization of an independent legal system. Therefore, it is not possible to reach a conclusion in this regard with a purely legal-logical point of view, but if legal independence is to be given to Lex Petrolia as an independent and transnational resource, we must adopt a new approach based on the legal sociology method and social expectation. These legal social expectations can be justified by resorting to the independent credit basis of transnational commercial law instead of resorting to the rule of conflict resolution, that is when Lex Petrolia is understood and accepted as a type of transnational social law because this legal rule relies on It is the need of the society, not the legal system of the "nation-country". The meaning is that in order to understand the concept and basis of lex petrolia, we must search for legal rules by the method of legal sociology.

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Transnational *Rules* Governing Drilling Contracts and Its Resources

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Abstract

Oil exploration and development operations, and especially the exploitation of drilled wells, are managed by a complex and multi-layered chain of stages and types of technical services. One of the most important operations is oil and gas well Drilling Services. More than twenty different services are required to manage, repair, maintain, redrill and control oil and gas wells during their operation. From the point of view of advancement and delay, technology has always been ahead of the regulations and laws governing it. In order to organize the specific regulations of each sector, the lawyer should pay attention to this advance and not to legislate, compose and interpret regardless of the requirements of technology and target groups and its functions. Drilling services and related contracts can be considered among the most widely used types of services and contracts in the upstream sector of the oil and gas industry, from the exploration stage to the end of production and exploitation.

By studying the contracts concluded between Companies (employers) and Contractors that come from different legal systems, as well as contract samples that are proposed by related professional and trade organizations, questions arise that such as below: What is the origin of maximum similarity and common language in this section? Can this closeness and sometimes sameness of drilling contracts be simply interpreted as "Boilerplates" in the contracts, or is the issue more fundamental than that, and in the stages of interpretation, implementation and dispute resolution, it is also the basis of important decisions? The method of ascertaining the rules can be based on induction (moving from the part and reaching the general rules). The sources of this inference are also 1- Repetition of contractual conditions based on the standards and examples compiled of drilling contracts by specialized institutions and major multinational companies in the oil industry; 2- Arbitral awards, including classical awards in the field of oil and general awards in the field of international trade and domestic arbitration awards, which explicitly refer to concepts such as "Principles governing the Norms of trade and industry", "Recognized Practices and Known Procedures" and the like are cited and the last is 3- domestic laws.

Confidentiality/ "Contractor's responsibility in equipping and preparation"/ "Commitment to cooperate with other contractors"/ " "Presumption of damage due to the delay of the contractor in fulfilling his obligations."/ "Indemnification of the parties to the contract from consequential (indirect) damages"/ "Compliance with accepted requirements" Regarding safety" HSE /"Distribution and risk allocation between the Company(employer) and the contractor" and "Permissibility of the contract towards the employer in daily and in-depth contracts" are among these rules. Of course, this list can be completed or changed in different circumstances. Today, in cross-border and international commercial and industrial activities, more than local and domestic factors, the nature and specific requirements of these activities, as well as the major players in these fields (multinational companies and specialized institutions) play a role.

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The International Community's Failed Efforts to Establish a Global Organization for Fossil Fuels

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Abstract

To date, two different approaches have been developed in the fossil fuel trade. An approach based on economic considerations that has led to the mutual alignment of fossil energy producers and consumers that seeks to control energy markets and energy trade by establishing international organizations such as OPEC and the International Energy Organization. And the second approach, based on environmental considerations, according to which all governments have stated their goal of reducing the environmental impact of fossil fuel use. Although numerous attempts have been made by both approaches to the normative development of fossil fuels, they have not led to a favorable organizational development to establish a global mechanism with general thematic and geographical competence in this field. The main question is what are the main reasons and obstacles to organizational development and the creation of a global organization in the field of fossil fuels? Also, which approach, economic or environmental, is smoother than the establishment of the WTO? Based on a descriptive-analytical study, in some cases there were formal barriers such as the monopoly structure of existing organizations and resistance to the entry of new members, and in other cases, substantial barriers related to lack of community to cover all issues related to fossil fuels. While paying attention to the fact that in order to overcome the problem of climate change, the principle of common but different responsibility of countries should be taken into consideration.

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Critical Review of IPC's Fiscal Regime

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Abstract

Over the last decades, the buy-back contract model in Iran's petroleum industry was a valuable tool that kept evolving over the last 3 generations. Despite its significance, it was always faced with heavy criticism. After the sanctions against Iran and the occurrence of Joint Comprehensive Plan of Action, there was a crucial need of international investment by joining foreign investors and contractors on behalf of the host government. Thus, there was a vital need for an enhanced model contract, after changes in laws, allowing this agreement. Because most of Iran's current reservoirs have been depleted, it is essential to do sustainable exploit with a maximum efficient rate of recovery including prioritizing use of shared reservoirs. This has led to the enactment of a new model of oil and gas contracts called IPC. This new model has its own flaws especially in fiscal regimes and is faced with criticism. This paper attempts to analyze and respond to these critical reviews. Although there are some gaps in the model, it can pave the way for advancement of economic and fiscal regimes leading to further foreign investments, in hopes of strengthening Iran's position in OPEC and world trade of oil and gas for long-term.

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Legal Analysis of Force Majeure Clauses in Oil and Gas Law and Upstream Contracts of Iran's Oil and Gas Industry

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Abstract

The upstream contracts of the oil and gas industry, due to the nature and specific characteristics of this industry, have unique characteristics that distinguish this type of contract from other types of international commercial contracts. Complexity, uncertainties, and instabilities have always existed in the oil and gas industry in the upstream sector, *i.e.*, exploration, development, and production stages. Due to the long term of these contracts, it is always possible for events beyond the will and power and prediction of the parties to occur, which may temporarily or permanently create obstacles or delays during the implementation of these contracts. In this case, the continued existence of the contract requires the parties to determine their rights and obligations in the event of *force majeure* events. Accordingly, the *force majeure* condition is one of the most important conditions in oil contracts. Iran, as one of the countries with huge oil and gas resources, needs contracts in which the *force majeure* condition is considered to manage this industry in the upstream and downstream sectors.

In this research, with an analytical view, we have given a description of the developments in the inclusion of the *force majeure* condition in the legal system governing the upstream industry of Iran's oil and gas industry. In this context, the laws and regulations governing this industry and the concluded upstream contracts from the point of view of the *force majeure* condition, we have investigated to answer this main question:

Therefore, if we want to divide the history of the *force majeure* condition in the upstream contracts of the oil and gas industry, we must consider the existence of three different periods. The first period was the period of neglect and failure to include the *force majeure* condition in the contracts, which starts from the beginning of the formation of the oil contractual system in Iran, especially in the concession contracts such as Darcy's and Reuter's concessions, until before the nationalization of Iran's oil and gas industry. The second period is when the *force majeure* condition appeared in the oil Act of 1957 and as a result, this condition was included in most of the upstream contracts concluded between 1950 and 1978. The third period is of great importance to the condition of *force majeure* and is the time period after the Islamic revolution. It is well-considered and the condition related to *force majeure* becomes one of the most extensive conditions of oil contracts in this period. In this course, regarding the formal and substantive conditions of *force majeure*, the conditions of realization and the requirements for citing it, the examples of *force majeure* and its constituent elements, the effect of *force majeure* on the life of the contract, the costs incurred, the rights and obligations of the parties and how suspension or termination of the contract and exemption from contractual liability due to the occurrence of *force majeure* are precisely and explicitly included in oil contracts.

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A Reflection on International Law and Regulations Governing Disputes arising from International Waterways

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Abstract

Common international waterways have special importance and status in terms of international law and relations. Undoubtedly, one of the most important challenges of the last century of international institutions is to try for creational more coordination between states with common water resources and fair allocation of these resources among them. Familiarity the states with international customs and laws on how to exploit shared water resources will lead to optimal management and reduce tensions in this area. In this regard, several international treaties and agreements have been prepared with the efforts of international organizations and institutions. In addition, many customary laws have been appeared in this regard at the international level.

Despite the great importance of the issue, the challenge of using international waterways has not yet been managed and planned by an international binding agreement or law, although with the passage of time, public understanding for international participation to solve resource problems Common blue has increased; But the world community has not yet reached a suitable conclusion on an international document that can be agreed upon and efficient, for the management and protection of common water resources.

Until now, various laws, treaties and resolutions have been approved regarding the joint exploitation of common water resources, but due to the existence of problems and ambiguities in some of the articles of these laws, none of these laws are still used as a reference law . and one of the important reasons for that is the existence of different doctrines and attitudes towards environmental law and philosophy.

According to the Helsinki Laws of 1996, all countries located along the river have equal rights to use water resources, and no country has the right to use river water if it causes damage to other countries along the river. In the 1997 Convention on the Rights of Non-Navigational Uses of International Waterways, many legal principles raised in international environmental law, such as "the principle of rational and fair exploitation and use of water and the principle of prohibiting damage to the territory of the state Other" and the principle of "international cooperation" have been formulated and presented.

In terms of research, the articles written in this field are mostly in English. **One of the most important works done in Persian language in this field** is an article written by Mr. Shuli, Watan Feda and Mrs. Sarkar Khanum Arideh entitled "Examination of the theories and legal provisions of water sharing in the laws of international treaties on border waters" The article examines international treaties on border waters, which is very valuable

Considering the important differences and problems of the Islamic Republic of Iran with its neighbors regarding common waterways and considering the severe water shortage, **the most important achievement** of this article is the pathology and finding ways to optimally use international regulations, laws and obligations to prevent It is a violation of the right of our country and also to refrain from any tension with the neighbors in this regard.

Themost important hypothesis of the article is about this axis: "customary obligations of countries and approved international conventions on the issue of international waterways are the only way to resolve the disputes of neighboring countries in this area.

The purpose of this article is to analyze the existing international laws, customs and treaties on how countries use common water resources. Based on the findings of this study, compliance with regulations and treaties by countries will lead to optimal management and reduce tensions in this area

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The Role of the International Energy Charter: Coordinating Quality Development or Growth in Implementation?

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Abstract

Some researchers in the 80s lamented lack of international laws in the field of energy. It was after this period that the 1991 European Energy Charter and the 1994 Energy Charter Treaty (hereafter the Treaty) were drafted with the support of many countries (not most countries). Such a strategy was needed to make the world community around energy more united. Therefore, the needs and dealing with the existing disturbances led to the preparation of new documents and new negotiations in the field of energy. For example, in the decades leading to the 80s and 90s, as a result of organizational decisions such as OPEC oil, it played an influential role in determining the amount of oil supplied to the market and consequently controlling the price of oil, which benefited the few countries that produce it, leading to it become a concern for the countries, especially the large and industrialized countries of the world. Also, the emergence of tensions regarding the contracts concluded with the world's oil companies in this particular field and perhaps the most important part of energy, were all triggers for the dogmatic determination of the consuming countries to act in order to guarantee the speculative flow of energy in the world. In this regard, the 1994 World Energy Charter was concluded and signed. But the big countries that produce fossil energies and others, due to the estimation of the big risks that existed against them, were not very lucky. As it happened in the case of Yukas against Russia. In order to encourage such countries to join the treaty, the 2015 Energy Charter was presented.

This research article has used the library method in its analysis and arguments.

It seems that sustainable development based on three fundamental principles, i.e., 1. easy and 2. permanent access to energy and 3. sustainable security in line with uninterrupted production to achieve large incomes, has been the ultimate goal of this policy. Establishing security from fossil fuel interests to transmission lines is one of the most important issues in the field of sustainable development of the energy society. This point was so important that even the countries that dominate the seas have opposed the expansion of the size of the countries' territorial sea to more than 3 nautical miles in the conferences related to the 1958 and 1982 Conventions on the Law of the Sea. From this point of view, it seems that the concept of sustainable development in the field of energy is a concept that forms the intellectual framework around it.

The most important question that is raised is how to bring cohesion to the producing and consuming countries through this charter. How is this trend around an axis in the direction of profit regulation and balance between energy producers and consumers possible?

Finally, it can be concluded that the energy producing countries that did not want to be a member of the 1994 treaty can get the opportunity under the cooperation framework based on the 2015 Energy Charter to do so in a balanced environment without having any obligations to the Energy Charter Treaty and be able to seek to create or find common areas for beneficial cooperation with the treaty members.

The International Energy Charter is just a statement that can facilitate the dialogue between energy-consuming and energy-first countries, which are often not part of the world powers, and increase the bargaining power in determining global regulations for the management of energy flows.

In fact, the International Energy Charter, in the form of a non-binding but very important statement, has successfully played its role as a stimulus or a new and comprehensive idea towards changing the positions of the target countries, i.e., energy producers, regarding the creation of favorable conditions. To bring together the countries that are members of the treaty and other countries that are not members and cautious to gather around the 1994 treaty, play energy.

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Legal Analysis of the Validity of Block Chain-based Bills of Lading in Oil Trade

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Abstract

Nowadays, block chain technology can be used in all stages of international trade, from contracts to shipping and ownership documents. Considering the crucial role of bills of lading in transportation, the use of technology-based documents will create advantages, opportunities and even a new perspective for facilitating oil trade. However, it seems that oil trade on a global scale has not yet fully accepted the block chain technology, and so far, specific legal frameworks for issuing bills of lading based on technology have not been formed. In addition, technology use in the oil trade will be accompanied by problems and challenges. This issue will become more complicated due to Iran embargos in recent years, especially in the field of oil industry and trade. Therefore, in this research, while trying to identify the legality of block chain bills of lading based on existing domestic and international regulations, we will deal with the effects and challenges of its application in oil trade, including Iran's oil trade.

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