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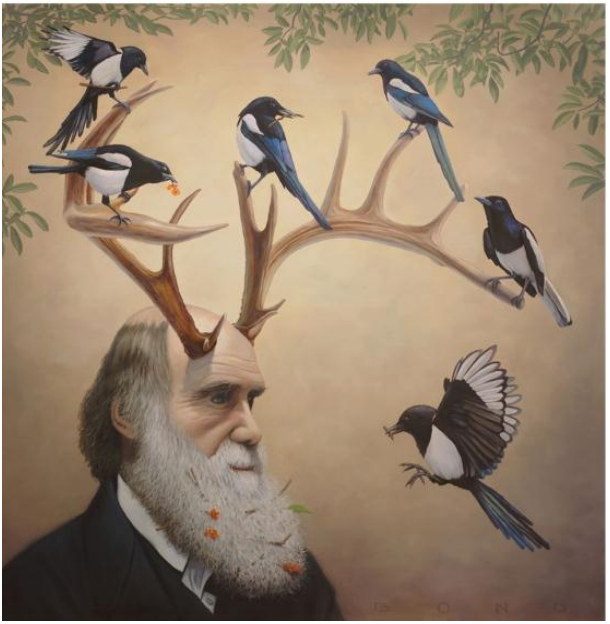
Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía, Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 35, 2019, Especial N° 22

Revista de Ciencias Humanas y Sociales
ISSN 1012-1587/ ISSNe: 2477-9385
Depósito Legal pp 198402ZU45



Universidad del Zulia
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Departamento de Ciencias Humanas
Maracaibo - Venezuela

Opcion, Año 35, Especial Nº 22 (2019):*2899-2921*
ISSN 1012-1587/ISSNe: 2477-9385

# Contractual Liability In Natural Resource Contracts

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**Abstract**
**The purpose of this paper is to clarify the legal basis for the contractual liability in accordance with the general principles via qualitative comparative research method. As a result, through the research we will have three opinions in jurisprudence, the first opinion is more acceptable and balanced that preserves the sovereignty of the state over its natural resources and at the same time respect the conventions and contractual conditions. In conclusion, one of the most important effects of the breach of contracts is the responsibility of the nodal direction of the party.**

**Keywords: Liability, Natural Resources, Contract Law.**

# Responsabilidad contractual en los contratos de recursos naturales.

Resumen
El propósito de este documento es aclarar la base legal de la responsabilidad contractual de acuerdo con los principios generales a través del método de investigación comparativa cualitativa. Como resultado, a través de la investigación tendremos tres opiniones en jurisprudencia, la primera opinión es más aceptable y equilibrada que preserva la soberanía del estado sobre sus recursos naturales y al mismo tiempo respeta las convenciones y las condiciones contractuales. En conclusión, uno de los efectos más importantes del incumplimiento de los contratos es la responsabilidad de la dirección nodal de la parte.

Palabras clave: responsabilidad, recursos naturales, derecho contractual.

## 1. Introduction

Natural resources contracts are important contracts on the legal, economic, and even political aspects. This importance comes from its relation to the sovereignty of the state, represented by the people, and supervising the management of the natural resources of the country, as well as its importance in achieving the best revenues and the highest benefit through these investments, the nature of waste or bad investment. The contracts of natural resources, like the rest of the legal contracts in terms of subject to the general elements (or elements) of the contracts, which are the basis for the convening, as each contract (elements) are available to convene the contract and the implications and obligations to the parties. In light of this idea, the right of the parties to the contracts of natural resources to amend the terms of the contract in accordance with the contract theory of the law of the contracting parties or in case of violation of the obligations and rights by the parties to the contract will be highlighted and the consequences of such breach or modification which may lead to contractual liability And then break the contract sometimes and ask for compensation when the conditions are met. Especially with the special nature of contracts of natural resources in which the party of the foreign company is mostly the national company as another party. As an introduction, the elements of contractual responsibility will be set out in accordance with the general

principles of the law, and then the principle of the right of the national party to amend the terms of the contract or to request the termination of the contract, in accordance with the principle of contract law and the sovereignty of the State over its natural resources.

## 2. Pillars of Nodal Responsibility

If the contract is valid, it is binding on its parties to implement its terms. The contractual relationship then ends and dissolves as a natural effect resulting from the implementation of the parties' undertakings. In other words, the contract is fulfilled and its conditions are fulfilled. If the debtor breaches its obligations by its liability or delay in implementation, the creditor may demand that the execution be in kind. If this is impossible, and if it is not fulfilled, the debtor may force him to move the contractual liability and seek compensation for the damage caused by the mistake. Debtor and failure to fulfill its obligations. Nodal responsibility is based on three pillars: breach, damage and causal relationship, which will be clarified in the following points:

### 2.1 Violation of the contractual obligation

The breach of a contractual obligation is the first pillar of the contractual responsibility. It has been defined as: failure by the debtor to perform its obligation arising out of the contract, the contractual breach is the non-performance of the obligation arising out of the contract, including the failure to fully implement either the whole or part of the obligation or its faulty implementation or late execution. The nature of the obligation may be due to the will of the parties. If it is not possible to determine their will, then the nature of the outcome that the two contractors are seeking to achieve must be reviewed. According to this division, if the obligation of the debtor is a commitment to an end, it is wrong if the objective is not met and it is not acceptable for him to prove the lack of error on his part because that error actually occurred because of his failure to fulfill his obligation. The obligation to build a house or the transfer of an in-kind right; in case of obligation to pay attention, the error is achieved if the debtor does not take due care, for example, the obligation to pay attention, the obligation of the depositor to keep the deposit, And the doctor's obligation to treat the patient (Bashar, 2010).

The responsibility of the debtor may also arise under the liability of the debtor, which is the responsibility of the person who uses them in the ex-

ecution of the obligation. The liability of the debtor may be realized if the user's liability is met by the same conditions. If the debtor is responsible for the care, the liability of the lessor for the exposure of another tenant or any person who has received the right from the lessor shall be borne by the lessor, who shall be responsible for their faults towards the lessee and shall be responsible for the actions of the lessor. His subordinates. The debtor is also asked to do the things, and the intentional error is the failure of the debtor to perform its contractual obligation. The non-performance here is not due to the debtor's personal act, but to the act of doing so, Sold to the buyer, the machine explodes in the hands of the buyer, causing damage to himself or his money, here the seller becomes liable under his contractual obligation to ensure hidden defects. In another case, the debtor executes the contract by using something that hurts this thing such as a car, train or aircraft, the train collides or the plane falls, and the passenger is injured, and the debtor is liable for contract (Ahmed, 2012).

2.2 Damage occurs

That the second pillar of liability is the occurrence of damage, as it is required to do the liability of the debtor is the actual damage to the creditor to prove damage as a result of that breach, and the damage is divided into material, moral and physical, material, is the damage to the creditor in the financial. The moral is what affects the creditor in his honor or reputation and dignity, such as the reputation of the author if the publisher changes the author, and physical damage, is the harm that affects the human body, as in the cosmetic operations that may lead to distortions in the face of the person or in one Members (Khalid, 2013).

2.2.1 Conditions of Damage

The damage shall be required until it has been compensated; it shall be real or realized, foreseen, direct and as follows:

First: The damage is achieved:

The actual or actual damage is intended to cause damage, whether actual or actual, or to be realized in the future, and is intended to achieve damage to the future, namely that its realization is imperative, not merely a possibility of its occurrence, The opinion of the judge of the case is the same.

Second: The damage is expected:

It is assumed that the injury is expected at the time of conclusion of the contract, and the criterion here is an objective criterion, that is, the con-

tractor's expectation is not taken personally, but rather the expectation of the average person if it is found in the circumstances of the debtor at the time of the
contract and also takes into consideration the will of the parties at the time of conclusion of the contract Which determine the nature and quality of the obligations arising from the contract (Baker, 2007).
Thirdly, the damage should be direct
Any damage arising as a result of nature and direct failure to meet or comply with the terms of the contract in return, the debtor is not liable for any consequential indirect damage.

2.3 Provide a causal relationship between breach of contract and damage
Nodal liability does not arise in the direction of the party in breach of the contract unless there is a causal relationship between the actual defect and the resulting damage, ie, the damage is due to the breach of the contract. If the causal relationship between the breach and the damage is lost, The debtor can refer the foreign cause to three factors: the force majeure, the act of others, the act of the victim himself, and the causality is a corner independent of the wrong corner, there may be a corner of causality if the error remains, if the damage is not due to the error, For example, that the person agrees with the owner of the car to be delivered to the auction hall at a certain time, delay the driver on the date, and arrive late, and it is likely to find the person that the auction had expired before the time it should have arrived because of a quarrel happened in the auction hall, correct That the driver made the mistake of bringing him late, but that even if he arrived on time he found that the auction had The damage caused to the person by not participating in the auction was inevitable, not the result of the delay, but the result of the quarrel (Jawhari, 2013).

2.4 Effects of breach of contractual obligations
2.4.1 Application for compulsory in-kind implementation
That if the debtor fails to perform its contractual obligation, it shall require the in-kind implementation of the obligation if the execution is better for it. Therefore, it is not necessary for the creditor to dispose of the nodal bond simply because it is not executed by the other party, but has the option to request forced execution. On the other hand, the creditor has the obligation to terminate the contract if this is in his interest. The civil law provides for

this right in Article 246. In order to achieve the forced implementation of the obligation, a number of conditions are required:

A) The implementation in kind is possible

This requirement means that the performance of the obligation is not impossible or not feasible, where in-kind execution is feasible and useful; the creditor has the right to exercise it in this case.

(B) The creditor shall make the debtor aware of the performance of its obligation

The creditor must notify the debtor that its obligation is to be discharged, when the fulfillment or execution date has been fulfilled so that the debtor does not understand that the claim has not been received after the end of the term that the creditor is tolerant of the late implementation of the obligation.

(C) The creditor requests the in-kind execution or the debtor submits its own execution

If the creditor requests the in-kind implementation and if possible, the debtor is forced to do so without having to pay compensation. On the other hand, if the debtor performs in-kind execution, the creditor
cannot refuse it. However, it is right to explicitly or implicitly agree between the creditor and the debtor on compensation Rather than in-kind implementation (Adlimohammed, 2011).

(D) The in-kind implementation shall be non-cumbersome to the debtor

In this case, the debtor may be limited to the payment of monetary compensation instead of the termination of the contract. The fact that the execution is cumbersome would cause the debtor a heavy loss, as if its expenses were too high to match the creditor is injured by in-kind execution.

(E) Not to arbitrarily request implementation in kind

The judge may modify the judgment by in-kind execution to the award if the in-kind execution is an exhaustion of the debtor, and the creditor does not cause serious harm as a result of the adoption of the compensation instead of the in-kind execution, in which case the creditor should not arbitrate the application for in-kind implementation of the obligation. Because the abuse of the right makes the use of this right illegal whenever it is intended as an investigation An unlawful interest, harm to third parties or interest not commensurate with the harm caused to others by such use (Ahmed, 2006).

2.4.2 Implementation through compensation

One of the consequences of the breach of contractual liability is the appli-

cation for compensation by way of compensation. In the event that a contractor breaches its obligation towards the other contractor, the latter will force the debtor to comply in accordance with the general rules governing the forced execution as described in the preceding paragraph. Which cannot be envisaged unless it is possible, and the impossibility of implementation may be due to a foreign cause that the debtor has no hand in and may be subject to the debtor's conduct. In the first case, the debtor cannot be held accountable for non-execution; And the consequent liability of the creditor, and therefore the contractual liability of the latter is considered as the penalties prescribed for non-implementation of the obligations arising from the contract and the breach of its binding force as a result of non-implementation of these obligations in kind, and the creditor shall only resort to the so-called implementation by compensation, As an injured party and reparation for damages in kind or in cash, that is to say, in the sense of the offense that when it can be executed in kind, there is no place to compensate for the non-implementation (Alnasrah, 2002).

2.4.3 Termination

The dissolution of the contract is considered to be one of the major consequences of the breach of contract. The request for annulment is a right that is proved to one of the contracting parties in the binding contract, as a penalty for non-performance of one of its obligations. The Iraqi Civil Code provided for an abrogation in Article 177, which stated that: In contracts binding on both sides, if a contractor fails to comply with the contract, the other contractor may, after an excuse, request annulment with compensation if necessary, provided that the court may The debtor shall consider the order and may dismiss the request for annulment if it is not fulfilled by the debtor in relation to the obligation in its entirety. It follows from this that the annulment is only in the binding contracts of the two sides, that one of the contractors has already breached its obligations and that the other contractor has fulfilled its obligations and the annulment takes one of the following pictures.

1. Judicial annulment

The judge has a broad discretionary power to adjudicate in an annulment case aimed at dissolving the stricter binding force. The law authorizes him to either accept the annulment or grant compensation to the creditor with the debtor being exempt from execution or to terminate the contract with the creditor being compensated for the damage suffered or And if the judge finds that what is left of the debtor's obligations is small for what has been

done and that the interest of the creditor is not affected (Alikadhim, 2017).

2. The contractual termination

The contractors may agree that the contract shall be deemed to be void if one of the contracting parties fails to perform its obligation pursuant to the general rule of termination for non-implementation after the debtor has been excused and the contractors may agree under a clause in the contract to automatically disassociate the contract because one of them has not fulfilled its obligations, this is called the breach of agreement or explicit, where the annulment occurs once the condition that is the breach of the contractual obligation is fulfilled and the judge's power is in contrast to the case of judicial annulment in which the judge has a broad discretionary power, the judgment is not a source but a disclosure and a decision only for the dissolution of the agreement. Both of the contracting parties shall be bound by the power of this condition by agreeing that the contract shall be severed on its own without the need for a judgment. The two contractors may agree to a stricter degree when the annulment is without the need for a judge's judgment and without the need to excuse the debtor if the latter does not fulfill his obligation. Under the Iraqi Civil Code Article 178 (Muhammad, 2012).

3. The right of the National Party to amend or terminate contracts of natural resources and the rule of contract

Of the effects of the conclusion of contracts in general is the result of the obligations and rights of each of the parties to the contract, and therefore any breach of these obligations or rights arises and arranges the contractual liability if the conditions of the breach, damage and causal relationship between them and as detailed in the conditions of responsibility Streptococcus. There is no problem in assuming the contractual responsibility towards the foreign oil companies if they fail to fulfill their obligations and the consequent effects of either the dissolution of the contract or the compensation of the damage, but what we want to put here is to demonstrate the effectiveness of the principles of sovereignty enjoyed by the state as a party in contracts if it breaks. The terms of the contract and the obligations arising there from, amended the terms of the contract or terminated the contract. As sovereignty plays a major role in the contracts to which the state is a party, with the powers and objectives it seeks to achieve in the public interest and the consequent right in its favor (i.e. in favor of the state) to amend or terminate the contract concluded, especially in state

contracts or administrative contracts. While it may be different in contracts of private law as the parties to the contract within these contracts are within the same strength and level of powers where there is no exceptional authority of one party at the expense of the other. As for natural resource contracts, they are of a special legal nature that differ from those of administrative or international law or private law. The jurisprudence discussed the legal nature of
contracts of natural resources and to which class they belong. As natural resources contracts are of a special legal nature, Contracts of administrative law, international and private, because each of the parties belong to a different legal nature, the state oil and its institutions belong to the public law and foreign companies belong to international commercial law or private law according to the company's activity, as well as the terms of these contracts differ from the terms of contracts The administrative law in which the exceptional powers of the state are not present in the oil contract, where the state complies with the terms and conditions of the oil contract concluded with the companies, and the oil contract operations need prior procedures to conclude the contract as well as subsequent procedures different from the rest of the contracts in other legal systems, The oil contract requires the existence of special legislation specifying the powers of the state or ministry or institution in signing the oil contract as well as determining the nature of the contractual association with the foreign company without being left subject to the administrative law or the civil law, The oil contract and the different purpose of the signing of this contract is the goal of the oil countries to achieve the highest benefit with bringing the expertise and technology in return to stimulate and encourage foreign oil companies to come and make these contracts without hesitation or fear of the powers of the exceptional state under administrative law or subject to law or national jurisdiction Under the Civil Code (Eilaq, 2008).
Therefore, the special legal nature of these contracts can deprive the state of some exceptional power enjoyed under administrative laws and may restrict the sovereign principles of the state that it will abide by the conditions contained in these contracts of natural resources and in some cases may include these contracts cannot be modified Contract or add another condition or terminate the contract only after negotiations and settlement between the two parties. The basis of the idea of the commitment of the State and the other party to the terms and conditions of these contracts is the idea of the contract with the law of contracting and the consequent binding force towards the parties to the contracts to implement the terms

of the contract and without prejudice to them (Hamou, 2011).

3.1 The rule of the contract of the law of the contract

According to the contract rule, the law of contracting parties is that the parties to the contract have agreed to their obligations. Consequently, neither party to the contract has the right to rescind, amend, cancel or terminate the contract, except by agreement of the parties or the law. The law cannot be binding on the parties to the contract alone, but it is binding on the judge. The judge cannot amend the contract and terminate it for reasons of justice, unless a provision of the law permits him to do so. 2013 In the text. The contract, as required by the parties and the judge, is binding on the legislator himself. The legislator cannot annul conditions from any contract or add terms that have not been agreed upon by the parties to the contract and have not included them in the contract. The legislator also undertakes in his legislation not to prejudice contracts concluded under previous legislation, Contracts that may extend to the time of the entry into force of the legislation following the conclusion of the contract. The parties to the contract are the legislators of their law, provided that they do not infringe upon the rights of others, whether they are bound by them or to establish a right. The parties to the contract are free to choose the subject of the contract and conclude whatever they wish Contracts and lay down what Of the conditions are not bound by the terms and conditions established by the law for a contract provided

that the contract is legitimate and not contrary to public order and literature, as a general principle of the rule of contract law.

This rule has an important principle that good faith must be observed in the implementation and interpretation of the contract. The judge must follow in the interpretation of the contract the same methods of interpretation provided for in the law as the contract law and therefore the search for the real will of the parties to the contract is express or implicit the parties to the contract must implement the contract honestly, honestly and honor fully and adhere to the desired purpose of the subject of the contract so as not to cause harm to others without a legitimate reason and take all the right to his right with honesty, sincerity and sincerity.

3.2 The balance between the contract rule and the right of the national party to contracts of natural resources

The basis of restricting the validity of the sovereign state under the contracts of natural resources and trying to apply the rule of the contract and the law of the contract and obligate the state of the terms of the contract without the right to modify or terminate the contract only in agreement with the other party is due to the contracts of natural resources long-term contracts may change the attitudes and circumstances of countries. During this period, it is possible to initiate or issue decisions that amend or violate the terms of the contract in accordance with the new circumstances. In some cases, the state may terminate these contracts as in the cases of nationalization. For these reasons, foreign oil companies impose conditions and clauses to preserve their rights from any future legislation. The contract shall affect or amend the terms or terminate the contract. The companies have based their work on the principles of the contract of the law of contract and binding force However, there is a difference between the jurists on the consideration of these conditions as a denial of the right and the authority of the state to amend its laws for the public interest or to restrict the state in its right to modify or change the terms of the contract in accordance with the interest of the state.
The jurisprudence differed as to the effects of those conditions which are established in the contracts to which the State is a party, including the contracts of natural resources. These effects are reflected in the principle of the sovereignty of the state and its right to amend its laws or contracts concluded in the public interest. The conditions stipulated in the contract are based on the principle of state sovereignty:

First direction:
The owners of this trend agree that the conditions agreed upon by the parties to the contract are effective and productive of all their effects, even if they include deprivation or restriction of the authority of the state to legislate the laws or amend the contract for the public interest because the state has accepted these conditions and approved them when signing the contract. The terms and conditions of these contracts are considered to be autonomous and independent of any national legislation. This opinion has been criticized as being based mainly on the work of the terms of the contract and excluding the application of the laws of the contract. Ululation completely, but deprives the State of its right to sovereignty over its natural resources and the resulting rights amendment and termination of contracts in accordance with the general interests.
The second trend:

The owners of this trend are of the opinion that the conditions or exceptions contained in the contracts concluded do not have any legal effect limiting the future powers of the legislative state or violating the principle of sovereignty, as these conditions are considered as any other contractual condition that falls within the terms of the agreement and therefore has no more binding power Of the power of the contract that included it. The owners of this trend base their views on the considerations of the permanent sovereignty of the state, including the issuance of laws, which apply to the contracts to which the State is a party and to the other foreign party regardless of the nature and type of these conditions contained in the contracts concluded. This view was also criticized by the fact that the parties to the contract, especially the state, are allowed to disengage from the contractual obligations and then to amend or terminate the contracts, which is reflected in the rights of the other party as well as the turnout of companies to invest in the state.

Third direction:
The owners of this trend try to find a balance and agree between the views of the first and second directions, recognizing the right of the state to amend and issue laws that apply to the contracts concluded and the right of the state to amend and terminate the contracts concluded in accordance with the public interest of the state and based on the principles of state sovereignty over natural resources, but at the same time does not neglect the conditions contained in the contract, but arranges legal effects on them as the terms of the contract are factors to be taken upon the dissolution or amendment of the contract and the appropriate compensation for the benefit of foreign companies.
In view of the foregoing, we support the third opinion, since the existence of conditions in contracts for the benefit of companies does not deprive the state of the right to amend or terminate contracts, but considers the amendments, decisions or legislation issued by them valid and binding on the other party based on the principles of state sovereignty, and the type of conditions stipulated in the estimate of compensation in case of amendment or termination of signed contracts.
This opinion creates the balance between the first two views, since the terms of the contract cannot be absolute at the expense of the sovereignty and the rights of the state. At the same time, it is not permissible not to activate and respect the contracts concluded and the conditions contained therein absolutely for the benefit of the sovereignty of the state because

this may have a negative impact on convincing foreign companies to invest in the country, especially in areas where the state is in dire need of the expertise of the competent companies. Thus, the first opinion is more acceptable and balanced that it preserves the sovereignty of the state over its natural resources and at the same time respect the conventions and contractual conditions.

## 4. Conclusion

It has been stated that one of the most important effects of the breach of contracts is the responsibility of the nodal direction of the party, whether the breach of the breach of non-implementation of the obligations or delay implementation or implementation of defective or contrary to the terms of the contract as all these cases breach of contracts concluded. However, for the purpose of this
responsibility, the law stipulates that there are conditions to be achieved, namely, the act of breach by one of the parties to the contract. Benefit to the creditor or compensation shall be awarded upon termination of the contract if the in-kind implementation of the obligation is impossible.
In addition, an important aspect related to contracts of natural resources and the sovereignty of the state and the status of the amendment or termination of contracts or violation of the contractual clauses by the state, on the other hand, it was indicated that there are several trends in this regard I go to the work and the activation of contractual conditions at the expense of principles. The first is that the rule of the state is based on the rule of the contract of the law of the contracting parties. The second is that the state does not take into consideration these conditions. As the state exercises its rights and sovereignty over its natural resources to amend or terminate contracts or issue legislation related to the subject, but at the same time respect the conditions stipulated in the contractual agreements by taking into consideration the judgment of compensation rather than negligence and non-respect. And in order not to consider the principles of sovereignty to expel or alienate companies from entering into contractual obligations in the State, especially in facilities where the State needs foreign expertise for the development of these sectors.

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**UNIVERSIDAD DEL ZULIA**

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Revista de Ciencias Humanas y Sociales

Año 35, Especial No. 22 (2019)

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.
Maracaibo - Venezuela

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