The law applicable to international renewable energy contracts

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Introduction

Praise be to God alone, and peace and blessings be upon the one after whom there is no prophet.

The contracts concluded by individuals and entities are not always simple contracts that involve only one legal operation; rather, they can sometimes be complex, involving multiple legal operations. The renewable energy contract is considered a complex contract that includes various implementation and execution contracts. It encompasses a range of agreements, including the energy production contract, the equipment import contract, the contract with workers, as well as transportation and insurance contracts. It also includes the fundamental rules that must be adhered to in the subsequent implementation and execution contracts. Our research will focus on this contract and the applicable law governing it.

Reasons for Choosing the Topic:

١. The renewable energy contract is unusual both in its name and substance within Iraqi jurisprudence, and little has been written about it.

٢. The Iraqi legislator has not organized this contract with specific provisions despite its unique

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countries, or should another law be applied?

Scope of Research: This research aims to study the renewable energy contract and all subsequent implementation and execution contracts related to it, as well as the applicable law governing them. We will highlight the unique characteristics of this contract at every opportunity.

Research Plan: We will divide this research into two sections:

١. The first section: The nature of the renewable energy contract and its legal characteristics.

٢. The second section: The applicable law for the renewable energy contract.

Chapter One

The Nature of Renewable Energy Contracts and Their Legal Character

This chapter will be divided into two sections. The first will define renewable energy contracts, while the second will determine the legal nature of renewable energy contracts, as follows:

characteristics compared to other contracts.

٣. The connecting factor related to the contract faces significant challenges in application concerning the renewable energy contract, especially when this contractual relationship involves a foreign element.

Research Problem: There is no doubt that the connecting factor specific to contracts is clear, and the applicable law is known in the case of a simple contract. However, if the contract is complex, as is the case with the renewable energy contract, the problem of determining the applicable law arises. This contract includes a group of implementation and execution contracts, such as the energy production contract, the equipment import contract, the contract with workers, and transportation and insurance contracts. The question arises: does the applicable law for the main contract extend to these contracts if they are spread across multiple

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Section One: Definition of Renewable Energy Contracts

Renewable energy contracts are considered modern contracts that mitigate environmental damage and represent an important stage in the legal evolution of contracts. Understanding renewable energy contracts necessitates defining both renewable energy and renewable energy contracts. As for the definition of a contract, there is nothing new to mention in that regard.

Regarding the definition of renewable energy at the level of legal literature, it is defined as: "energy derived from natural resources that are renewable or inexhaustible, and it is clean energy that does not result in significant environmental pollution" (Cornell law school, Contract, ٢٠١٧). or as: "the primary sources that exist in nature and are continuously available," or as: "natural resources available for energy generation that are characterized by continuity and are not subject to depletion." The most important features are renewability and limited negative impacts on the environment (Amara, ٢٠١٢: ٣٣).

At the level of national legislation, the Iraqi legislator defined renewable energy in the Iraqi Law for the Protection and Improvement of the Environment No. ٢٧ of ٢٠٠٩, specifically in paragraph (١٩) of Article (٢), as: "energy derived from natural resources that are renewable and cannot be exhausted, including energy released from the sun, water, wind, waves, and tidal movements, differing from energy released from fossil fuels as its waste does not contain environmental pollutants."

It is noted that the text enumerates sources of renewable energy exhaustively, which is debatable, as renewable energy sources cannot be limited; future natural phenomena may lead to the emergence of new renewable energy sources. Thus, it would have been more appropriate to list them as examples rather than exhaustively.

As for the Egyptian legislator, it did not define renewable energy but defined sources of renewable energy in the presidential decree concerning Law No. ٢٠٣ of ٢٠١٤ for encouraging electricity production from renewable

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standards (Chernyakhovskiy *et al.*, ٢٠١٦: ٢-٨)." Similarly, Wisconsin legislation defines renewable energy while defining elect ricity produced from renewable energy as: "electricity derived from renewable sources" (Hawash, ٢٠١٩: ١٢).

According to international bodies and specialized agencies (El-Dakmawi, ٢٠١٨: ٥٧٩), the International Energy Agency (IEA) defines renewable energy as: "energy derived from natural processes that are replenished at a rate faster than the rate of consumption, including energy generated from the sun, wind, biomass, and hydropower, as well as hydrogen derivatives derived from renewable resources." Energy derived from inorganic products is not classified as renewable energy (Osrir et al., ٢٠١٠: ١٣٣).

The International Renewable Energy Agency (IRENA) defines it as: "energy formed from sources that result from natural processes such as sunlight and wind that renew in nature at a rate higher than their energy in Article (١): "A source of renewable energy is a natural energy source that is inexhaustible and can be used to produce electricity." The law also regulates investment in the renewable energy sector. It is worth noting that the Arab Republic of Egypt is the most advanced Arab country in renewable energy in terms of the action plans established for the development of the use of renewable energy, whether in legislative or technical aspects, according to (The Renewable Energy and Energy Efficiency Guide in Arab Countries, published by the Arab League, ٢٠١٣).

Regarding U.S. legislation, the definition varies according to the laws of its states. For instance, New Jersey defines it as: "energy produced from solar thermal and photovoltaic technologies, geothermal energy, wave or tidal energy, and methane gas from landfills, as well as energy derived from biomass, provided that the Environmental Protection Agency has determined that the biomass energy facility meets environmental

It is noted that the aforementioned definitions do not significantly differ from one another, emphasizing that renewable energy is self-replenishing, making it a sustainable source that does not deplete, as well as being clean energy that does not produce any environmental pollution. Most definitions highlight the inexhaustibility and renewability of this energy. The term "renewable energy" is not new; it has become widely recognized and closely associated with natural resources, distinguishing it from depletable resources like fossil fuels such as oil and natural gas, and it is characterized by not producing harmful environmental waste.

As for the definition of renewable energy contracts, based on our findings, they have been defined in the field of electricity generation as renewable energy contracts: a contract concluded for the purpose of generating clean electrical energy by complying with practical standards and environmental laws (Regulatory Review of Power Purchase Agreements, ٢٠٢٢: ١٨). It is noted that this definition examines these consumption rate". The United Nations Environment Programme (UNEP) defines renewable energy as: "energy that does not come from a fixed and limited stock in nature, renewed periodically faster than its consumption rate, appearing in five forms: biomass, sunlight, wind, hydropower, and geothermal energy." The National Climate Change Authority defines it as: "energy obtained from continuous energy flows that include carbon-containing energy technologies such as solar energy, wind energy, and hydropower, or that reduce carbon dioxide emissions such as geothermal energy" (Ottmar *et al.*, ٢٠١٨).

The U.S. Energy Information Administration (https://ar.m.wikipedia.org/wiki) defines it as: "energy resources that are continuously replenished in nature and are not depleted, although they may be limited." OPEC defines it as: "energies that occur naturally and cyclically, meaning energy derived from natural resources that are renewable or inexhaustible" (OPEC, ٢٠٠٧: ١٠٠).

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legal nature. Given the significance of renewable energy contracts in both legal and economic terms, as they are investment contracts linked to the country's economy, there is no consensus among scholars on the nature of these contracts, whether they fall under public law contracts concluded by the state or private law contracts. Some argue for recognizing the special nature of these contracts. In this section of the study, we will outline the main points raised regarding the determination of the nature of this contract, dividing the discussion into three branches. The first branch will focus on renewable energy contracts as public law contracts; the second will address renewable energy contracts as private law contracts; while the third will consider renewable energy contracts with a special nature.

First Branch: Renewable Energy Contracts as Public Law Contracts: An administrative contract is one that is concluded by a public legal entity with the aim of managing or operating a contracts for their purpose rather than their essence, with reference to the safety standards of the generated electricity. It is defined as: a contract in which a company produces and maintains a system of electrical energy from renewable sources, and the government purchases this energy for a specified amount of money over a defined period, at a location agreed upon by the parties to the contract (Renewable Energy Contract development, ٢٠٢٤).

Based on the definitions proposed, we can define renewable energy contracts as: long-term agreements in which the state collaborates with companies to provide energy at an economically viable cost from renewable energy sources to be invested in various fields, such as electricity generation and others.

The Second Requirement: The Legal Nature of Renewable Energy Contracts

Undoubtedly, determining the applicable law for renewable energy contracts depends on defining their

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adhere to the legal rules governing tenders and auctions. Proponents of this view argue that these contracts meet the criteria for distinguishing administrative contracts, which include the administration acting as a representative of the beneficiary (the state) in the contract, the contract's connection to a public facility (Badri, ١٩٥٧: ١١٥: ٥٥٤), and adherence to public law procedures. This is reflected in the conditions of these contracts, such as the administration's right to unilaterally amend the contract and impose penalties on the contractor without resorting to the judiciary or needing to prove harm, along with the concept of public authority. Such conditions are generally not feasible for private law individuals to include in their contracts (Khalifa, ٢٠٠٩: ٧٨).

It is notable that proponents of the view categorizing renewable energy contracts as administrative base their opinion on the known criteria for distinguishing administrative contracts from private contracts. The question arises: Are the aforementioned public facility. It is defined as: "the contract where one party is a public legal entity for the management of a public facility aimed at achieving a public interest, following the procedures established in public law, which means it includes a type of conditions that are not commonly found in private law contracts" (Al-Kanaan, ٢٠٠٥: ٣١٣). Here, the state (the beneficiary) enters the contract as a public law entity, which reflects on the unusual and exceptional conditions (Al-Watari, ١٩٧٩: ٢٠٠). The essence of the administrative contract is that the state is one of its parties and that it connects to the activities of a public facility (Al-Sharqawi, ٢٠١٠: ٣٦٠).

Scholars have disagreed on whether renewable energy contracts are classified as public law contracts, specifically administrative contracts. Some public law theorists (Okasha, ٢٠١٠: ٤) consider contracts related to renewable energy to be a modern form of a concession contract (Al-Banna, ٢٠٠٧: ١٥), as they are commitments involving public facilities. Therefore, they fall under administrative contracts that must

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always aimed at achieving public interest but may also be motivated by economic exploitation of the project and profit generation, which characterizes it as a non-administrative contract, reducing the state to the status of private law entities. Additionally, the similarity between renewable energy contracts and concession contracts does not eliminate the fundamental difference, as the investor in renewable energy contracts bears the full financing costs of the project, whereas in administrative contracts related to public facilities, the investor (the project company) does not incur such costs since they do not involve construction operations, underscoring the distinction between the two (Sheikh, ٢٠٠٠: ٨٦).

Regarding the aforementioned dispute, some argue that the reason for the controversy over the administrative nature of renewable energy contracts is theoretical, as each side seeks to classify these contracts within its academic conditions indeed met in renewable energy contracts?

This approach has faced criticism and rebuttals regarding the arguments and evidence presented (Al-Bahji, ٢٠١٤: ٢٥). Some respond by stating that renewable energy contracts are governed by the principle of contractual freedom, asserting that no party can unilaterally breach or amend the contract without the agreement of the other party. They argue that when the beneficiary (the state) agreed to contract with a private law entity in renewable energy contracts, it accepted to be on equal footing with the other party, as evidenced by the lengthy negotiations preceding the contract signing. This suggests a concession of its sovereignty, implying that it does not possess extraordinary powers in the context of renewable energy contracts and is contractually liable for any breach, thus obligated to pay substantial damages. Furthermore, the entry of the beneficiary (the state) as a party in renewable energy contracts is not

contracts as private law contracts (Salama, ٢٠٠٢: ٥٠). This perspective holds that when the state—one party to the contract—signs the contract, it waives its sovereignty and acts as a private legal entity. Consequently, the state is compelled to amend its investment legislation to align better with investment contracts in this field, indicating that such contracts fall under private law and lack administrative characteristics. This is particularly relevant regarding the non-impact of future legislation issued by the state on these contracts if such legislation harms the interests of the contracting company (Boukhalifa and Al-Saeed, ٢٠١٧: ١٨٧). The Iraqi legislator referenced this condition; Article ١٣ of the amended Iraqi Investment Law No. ١٣ of ٢٠٠٦ states: "Any amendment to this law shall not have any retroactive effect on the guarantees, exemptions, and rights established under it." Similarly, the Egyptian legislator modified some of its laws, including Law No. ١٥٥ of ١٩٩٦ concerning the electricity sector and Law No. ٢٢٩ of ١٩٩٦ concerning roads, as well as Law No. ٣ of ١٩٩٧ discipline, thus favoring its specialization to expand its scientific domain and include renewable energy contracts in its curriculum. This implies that academic interests are behind this dispute. However, we disagree with this perspective because determining the legal nature of any contract contributes to defining the legal framework to which that contract will be subject. The identification of this nature should be based on scientific principles emerging from how these contracts are concluded and the conditions governing them upon conclusion. In general, the administration does not conclude all its contracts under one nature; it can choose to enter into a contract as a public law entity, making it an administrative contract, or as a private law entity, making it a civil contract.

Second Branch: Renewable Energy Contracts as Private Law Contracts: - In response to criticisms directed at the view that renewable energy contracts are public law contracts, specifically administrative contracts, another perspective has emerged that classifies these

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Consequently, renewable energy contracts are classified as private law contracts (Attia, ٢٠٠٩: ٧٠), which may have their provisions detailed as named contracts or be governed by general rules if not explicitly organized, which applies to renewable energy contracts that lack a specific designation in Iraqi law. Thus, these contracts are governed by the principle of pacta sunt servanda (the contract is the law of the parties), meaning that contracts related to the exploitation of natural resources—such as oil, gas, coal, and all renewable energy sources—are not considered administrative contracts, even if not expressly organized under private law, as they do not contain any exceptional conditions. The exploitation of these resources by companies, whether national or foreign, is not intended to provide a continuous and organized public service, as the essence of these companies' operations is to exploit renewable energy resources in preparation for entering service provision (Hamdan, ٢٠١٧: ٦٣).

concerning airports, to create a conducive environment for renewable energy. The same applies to U.S. law, which has enacted various laws allowing governmental entities to contract with companies and individuals interested in this renewable energy sector under private contracts, where the state does not appear as a sovereign entity, such as the Infrastructure and Jobs Investment Law of ٢٠٢١ (Probasco, ٢٠٢١).

Proponents of this perspective argue that the state's reliance on contracting solidifies its efforts to establish projects that it cannot undertake alone, thus necessitating interaction with the other party as a private legal entity. Therefore, the civil and commercial law principles apply to the concluded contract (Abdel Baqi, ٢٠١١: ٣٥). Some advocates within this perspective assert that renewable energy contracts are commercial contracts, and arbitration is responsible for resolving disputes arising from these contracts, or they fall under the ordinary judiciary.

Proponents of this view also note that these contracts often include a "non-modification" clause, wherein the beneficiary (the state) commits not to amend the contract unilaterally without the consent of the other contracting party, utilizing the privileges of public authority granted by its national law (Al-Rashidi, ٢٠١٤: ١٢٣). Furthermore, some states have entirely waived their rights, stripping the contract of its administrative character. Thus, according to supporters of this view, renewable energy contracts are classified as private law contracts where the state acts as one of the private legal entities, standing on equal footing with the investor (Jaber, ٢٠٠٢: ٢٥). The contract is based on the principle of freedom of contract and does not include any exceptional conditions. However, this perspective is not without criticism, and responses to the arguments supporting it include the following:

١. Certain provisions grant the beneficiary (the state) privileges of public authority, which positions it as a public law entity.

٢. The beneficiary (the state) exercises oversight over these projects, which is evidence that these contracts are administrative and subject to public law, not private law.

٣. These contracts affirm the beneficiary's (the state's) right to terminate the contract without consulting the investor (the project company) (Hamdan, ٢٠١٧: ٢٥). However, a dispute arose among proponents of this view, with some considering the renewable energy contract as a sales contract. Others opposed this view, arguing that it has a unique nature similar to other composite contracts, such as those between a hotel owner and a guest. This type of contract also encompasses several agreements, including the rental of the room occupied by the guest, the sale of food and beverages, the safekeeping of the guest's luggage, in addition to other services provided to the guest. The same applies to renewable energy contracts. Advocates of this perspective raised the question: What is the nature of the renewable energy contract (http://arabadvocates.٤t.com),

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renewable energy contract invalid due to the lack of a specified price, based on Article ١٥٩١ of the French Civil Code, despite acknowledging that the renewable energy contract is not a sales contract. However, it applied this provision specific to sales contracts. This position was criticized by French jurisprudence, and as a result, the Court of Cassation changed the legal basis for its ruling of nullity; instead of relying on Article ١٥٩١, it decided to base its ruling on Article ١١٢٩, which pertains to the necessity of determining the subject matter. However, it altered this position when it issued its famous ruling on December ١, ٢٠٢١, declaring that the lack of price specification in a renewable energy contract does not lead to its nullity, and if there is an abuse in price determination later, this would only result in termination or compensation depending on the case.

Third branch: Contracts for Renewable Energy: A Special Nature:

- Under the weight of criticisms directed at those who classify and to which type of contract can it be assigned?

The renewable energy contract is merely an obligation on the part of its parties resulting from their agreement to perform actions in preparation for application and execution contracts that may lead to the conclusion of a final contract. It cannot be said that the renewable energy contract is a sales contract or a promise to sell, whether binding on one party or both. Its purpose is to define the general conditions for subsequent contracts. It differs from a promise to sell, as it does not create an obligation to pay the price or to deliver the product; rather, it creates an obligation to process requests and respond to them, or to refrain from selling to third parties (Al-Fadhli, ٢٠٠٢: ١٧).

It is noteworthy that the issue of price determination in renewable energy contracts, particularly in supply contracts, has been a topic of discussion and debate in French legal theory and jurisprudence. The French Court of Cassation ruled the

public law. This makes this stage subject to administrative law, and any agreement or decision made is governed by public law. The second stage is the contracting phase, where the administration is equal to the other party after defining the conditions and obligations of both parties, the applicable law, and the dispute resolution forum. At this point, the contract is subject to two fundamental principles: equality between the contracting parties and execution of the contract in accordance with the principle of good faith. The contract terms serve as the law that the parties must adhere to, and neither party can unilaterally amend them without the other's consent. This principle applies to private law contracts, where the legal status of each party is equal to that of the other (Ismail, ٢٠٠٣: ٧٥).

Additionally, applying the theory of administrative contracts to renewable energy contracts would lead to its application outside the scope in which it was originally designed, as it has developed within French administrative law, distinguishing it from private law contracts and those concluded by the

renewable energy contracts as either public or private contracts, a middle-ground approach has emerged (Hamada, ٢٠١٢: ٢١٨). This perspective posits that these contracts possess a special or dual nature and are not of a single type; therefore, they are not governed by a single legal system. Instead, they may be subject to administrative law at times and to private law at other times. This approach seeks to avoid the debate raised about the nature of these contracts, as they blend aspects of public law with private law. They are governed by administrative law principles concerning the public facility they are connected to, along with the state's oversight and management, and by private law principles regarding the contractual terms included in these contracts.

The special nature of these contracts stems from the various stages they undergo. The first stage precedes the contract itself, during which the state's persona is predominant, as the administration acts as a representative of the state, often exercising authority derived from

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unconditionally and irrevocably agrees to the following: ١. It will not claim any immunity from proceedings or any of its assets or non-assets that are protected if any proceedings are initiated against it or any of its assets. ٢. It waives any immunity rights it may have for itself or any of its assets, present or future, in any jurisdiction concerning any proceedings. ٣. It generally agrees regarding the enforcement of any judgment against it from proceedings in any jurisdiction to grant any waiver or issue any action concerning these proceedings" (Yassin and Yahya, ٢٠١٧: ٢٤٤).

It is noteworthy that the contract terms strip the state of the sovereign authority it possesses when entering into any administrative contract, indicating the special – commercial and civil – nature of the contract. One of the contracts concluded by an Iraqi ministry states: "The buyer unconditionally and irrevocably agrees that the conclusion and delivery of this contract constitute private and administration (Abdel Sadek, ٢٠٠٥: ٦٥).

In these contracts, the state relinquishes a significant part of its sovereignty to provide the trust needed for investors to participate as parties to these contracts (Shaltagh, ٢٠٠٥: ١٣٩). The state enters into agreements with investors, stipulating specific conditions in favor of the investor, which removes the administrative nature from these contracts and categorizes them as having a special nature. One of the most prominent areas for these contracts is in electricity generation, which sometimes reflects their special nature (Sharaf El-Din, ٢٠٠٣: ٢٥٤), such as the contract concluded between the company (Antgen) for electricity generation. Article (١٨) of the contract states: "The Egyptian Electricity Authority grants unconditional and irrevocable approval for the drafting and execution of this contract, in which its actions are deemed civil and commercial. Accordingly, the authority

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commercial actions" (Yassin and Yahya, ٢٠١٧: ٢٤٥).

Our View on the Subject:

Classifying contracts related to renewable energy as administrative contracts simply because the state is a party to them is inaccurate and insufficient as a criterion. The matter requires a deeper examination of the contract terms and a careful consideration of those conditions. As we have shown, the state does not exhibit the usual sovereign authority it possesses in administrative contracts; rather, the state relinquishes its sovereignty in favor of the investor (the project company), aiming to provide adequate guarantees and privileges to the latter. This enhances trust, encourages investment, and aligns these contracts with the requirements of economic development.

On the other hand, categorizing these contracts as civil contracts is also an untenable opinion because the subject matter and terms of the contract give it a special nature, placing it in a middle ground between administrative and civil contracts. Therefore, we support the latter viewpoint, which asserts that renewable energy contracts are of a special nature.

Chapter Two

Applicable Law for Renewable Energy Contracts

This section addresses the applicable law for renewable energy contracts through two main topics: the first discusses the law applicable to the formation of renewable energy contracts, while the second examines the law applicable to the effects of these contracts (Khalaf, ٢٠٠٦: ٣٩-٥٩).

First Topic: Applicable Law for the Formation of Renewable Energy Contracts: It has been previously stated that a renewable energy contract encompasses a range of implementation and execution contracts. The conflict-of-law rule applicable to the contract assigns the relationship either to the will of the contracting parties or, in the absence of an agreement on a specific law, to the law of the common domicile of the parties or the law of the place where

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Legal scholars differ in their responses to this question in several directions:

First Direction: Some scholars argue that this agreement is permissible, asserting that it is possible to apply a specific law to the renewable energy contract while applying another law to subsequent implementation and execution contracts (Salama, ٢٠٠٢: ٣٧٧). This is based on the premise that although the subsequent implementation and execution contracts are not independent of the renewable energy contract, the differing laws governing them do not affect the law applied to the renewable energy contract. The contract serves as a tool for the exchange of wealth and services among the parties, and the contracting parties are best positioned to choose the law that does not hinder the flow of transactions and aligns with international trade dynamics, whether for the renewable energy contract or the contracts organized thereafter. They are also best equipped to select the contract was concluded if their common domicile differs [Article ٢٥ of the Iraqi Civil Code states: "The law of the state where the common domicile of the contracting parties is located shall apply to contractual obligations if they share a domicile. If they differ, the law of the state where the contract was concluded shall apply, unless the contracting parties agree otherwise or it is evident from the circumstances that another law is intended to be applied." This provision is included in most Arab laws, such as the UAE Civil Transactions Law of ١٩٨٥ in Article ١٩/١, the Syrian Civil Code in Article ٢٠/١, the Kuwaiti Foreign Relations Law No. ٥ of ١٩٦١ in Article ٥٩, and the Sudanese Civil Transactions Law of ١٩٨٤ in Article ١١/١٣.]. The question arises: what if the parties agree to apply a specific law to the renewable energy contract and another law or laws to subsequent implementation and execution contracts? Is it possible to activate this agreement?

applicable law for subsequent implementation and execution contracts, then a governing law must be sought according to national conflict-of-law rules, such as the law of the common domicile of the parties or the law of the place of conclusion of those contracts (DAVID, ٢٠١٨: ١٧٧). This is due to the independence of those contracts from the governing contract. Additionally, applying the agreement made for the renewable energy contract to the implementation and execution contracts might infringe upon the rights of third parties(DAVID, ٢٠١٨: ١٧٧).

From our viewpoint, we lean toward the second direction, considering that implementation and execution contracts, while organized under the renewable energy contract, are independent of it. Furthermore, the application of the governing law from the renewable energy contract to the implementation and execution contracts may harm the rights of third parties. It is not a given that the parties to the renewable energy contract remain unchanged in the implementation and execution contracts (Jackson, ٢٠٠٥: ٣٤٥). the law that matches the economics of the contract and the special nature of the subject matter (Jackson, ٢٠٠٥: ٣٤٤-٣٤٥). However, if there is an agreement on the applicable law for the renewable energy contract only, this law should extend to the implementation and execution contracts, as they are subordinate in nature to the renewable energy contract. In other words, the applicable law for the renewable energy contract must also apply to implementation and execution contracts to maintain individuals' expectations and respect their will, as the parties to the renewable energy contract chose the governing law for their agreement and are also the parties to subsequent implementation and execution contracts, thus their expectations pertain to the application of this law when entering into those

Second Direction: Another perspective among scholars suggests that if the parties agreed upon a specific law when concluding the renewable energy contract, but this agreement does not encompass the

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There are multiple scholarly approaches to answer this question as follows:

First Approach: A segment of legal theory considers the situation of changing the governing law in this case as what is called "dynamic conflict" (Jonne, ٢٠٠٣: ٢١٥). Whenever a continuous legal situation arises regarding a relationship involving a foreign element, and there is a governing law subject to change, as is the case with the place of contract formation and the domicile of the parties involved, along with the succession of laws applicable to the same relationship—such as when the governing law is territorial and a renewable energy contract is concluded in a specific country, while subsequent application and execution contracts are concluded in another country—the change in governing law creates a problem of this dispute (Meyer and Hoze, ٢٠٠٨: ٢٣٤-٢٣٥). If there is a legislative rule to resolve this issue that specifies the time when a particular law applies, this is a contracts, as it is common for the renewable energy contract to be concluded with specific parties while subsequent contracts are made with other individuals for the purpose of executing and implementing what is outlined in the original contract. Thus, applying the governing law of the renewable energy contract to the implementation and execution contracts may adversely affect those individuals.

This applies if the conflict-of-law criterion is the parties' will. However, if the criterion is geographical, such as the place of conclusion of the contract or the domicile of the parties, and the place of conclusion of the renewable energy contract differs from that of the implementation and execution contracts, or if the domicile of the parties at the time of concluding the implementation and execution contracts differs from their domicile when concluding the renewable energy contract, what is the applicable law?

dynamic conflict due to the lack of necessary conditions for its existence. Among the conditions required for a relationship to be affected by what is called dynamic conflict is the succession of laws governing a single continuous relationship tainted with a foreign element. However, concerning the application and execution contracts, they are independent of the renewable energy contract. For example, in a distribution contract, the contract does not specify the type and quantity of goods or even their price, as these elements will be determined by subsequent application and execution contracts. Thus, the independence of such contracts from the renewable energy contract emerges, and consequently, one should look for the applicable law for each contract separately (Cross, ٢٠١٥: ١٥٠–١٥١).

From our side, we lean towards the second approach due to the independence of application and execution contracts from the renewable energy contract. There are also essential elements of the contract, such as the price in a sales service provided by the legislator to the national judge, saving him from searching for solutions at the level of legal theory (Al-Fadhli, ١٩٩٩: ٥٣–٥٥). Thus, if a specific dispute arises, the necessary solutions regarding dynamic conflict should be applied. The Iraqi legislator has specified the time considered for the governing law applicable to the contract, as Article ٢٥ of the Iraqi Civil Code states: "The law of the state where the common domicile of the contracting parties is located applies to contractual obligations if they share a domicile. If they differ, the law of the state where the contract is concluded applies, unless the parties agree otherwise or it is apparent from the circumstances that another law is intended to be applied." The common domicile of the contracting parties is considered when presenting the dispute to the national judge, and the place of contract formation is inherently considered when concluding the contract to determine the applicable law.

Second Approach: Another segment of legal theory argues that this situation cannot be considered a

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law to this contract. Good faith must be present to avoid cases of fraud against the law. However, if the relationship is tainted with a foreign element, legal theory diverges. One segment argues that the contracting parties enjoy absolute freedom in choosing the law governing their contract, even if there is no real connection between the chosen law and the contract, meaning the choice is not linked to the nationality of the contracting parties, their domicile, or the location of the property or the place of contract conclusion or execution (Sadiq, ١٩٨٠: ٢٦٢-٢٦٣). Another segment of legal theory argues the opposite, stating that there must be a real connection between the law chosen by the parties and the contract, such as the law of the common domicile, the law of the location of the property, or the place of contract conclusion or execution (Deeb, ١٩٩٢: ٣٢٠). A third segment believes that the freedom of the contracting parties to choose the applicable law is not absolute as contract, which are determined upon the conclusion of those contracts, thus highlighting the independence of those contracts. On this basis, these contracts are treated independently from the renewable energy contract, according to the governing law in national law, without considering the applicable law to the renewable energy contract.

The question arises regarding the applicable law on the renewable energy contract: is it possible for the parties to choose the law of the state where the application and execution contracts were concluded to apply to their contract?

We must first state that if the relationship is purely domestic in all its elements, the contracting parties cannot exclude national law, as it is the applicable law to their contract. The same applies to the parties of subsequent application and execution contracts; they cannot evade the provisions of national law by fabricating a foreign element in the contract or agreeing to apply another

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or one of these contracts, or choose the law of the state where those contracts are executed? Is it possible to say that there is a connection between the chosen law and the contract, and therefore this choice is free from any blemish? Or is it unrelated to the contract, and thus this choice could be challenged due to the lack of connection between it and the contract?

In our view, there is a real connection between the contract and the chosen law in this case, as the renewable energy contract exists solely to organize subsequent contracts known as implementation contracts. Thus, there is a close connection between them, and consequently between the renewable energy contract and the chosen law. However, the question arises in this context: if the parties to the renewable energy contract choose a specific law, and the choice of the parties to the subsequent implementation contracts is directed toward another law, can we say that the contract is fragmented in this case?

viewed by the first opinion, nor is it restricted to the extent determined by the second opinion; it suffices that the chosen law is not completely disconnected from the relationship. There is no requirement for a connection through one of the elements of the relationship (like the nationality of the parties or the place of conclusion or execution or the location of the property); the connection may be the result of the needs of international transactions, such as when the model contract that the parties conclude for a specific trade (like cotton trade) is subject to the law of a particular state, allowing the contracting parties to agree on the application of that law in that case (Riyad and Al-Tarjuman, ٢٠٠٣: ٣٧٤). Regarding the Iraqi text in Article (٢٥) of the Civil Code, which pertains to the law applicable to contracts, we see that the text is absolute, and the absolute applies as such unless restricted by another text. However, the question arises: what if the parties to a renewable energy contract choose the law of the state where the implementation contracts were made,

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second part, meaning that the contracting parties may choose more than one law to govern the contract, as there is a reasonable justification for this, given that the nature of the contract allows its elements to be , centered in several places (Deeb ١٩٩٢: ٣٢٨).

However, there is another perspective in legal thought that opposes this view, stating that contracting parties may not choose more than one law to govern the contract (Ibrahim, ١٩٩٧: ٣٥١). In other words, contract fragmentation is not permissible, and it is not allowed to apply a specific law to one part of the contract and another law to the second part. This is because the contract is considered a single operation from both psychological and economic perspectives, and thus it is subject to one law.

The question that arises here is: if an agreement is made to apply a specific law when concluding the renewable energy contract and another law is agreed upon for the

It is appropriate to say that the fragmentation of contracts is accepted in the jurisprudence of some countries, as it is permissible for a single contract to be subject to multiple laws (Cass, ٢٠٠٢: ١-٢٤). Some legal scholars argue in favor of the fragmentation of contracts, considering that aspects of the contract may relate to different countries; for instance, the contract may be concluded in one country and executed in another. Therefore, it is possible to speak of contract fragmentation (Riyad and Al-Tarjuman, ٢٠٠٣: ٣٧٤). However, there is little point in raising the previous question regarding the renewable energy contract according to this legal perspective, as the situation does not differ in either case. Whether we consider the implementation contracts an extension of the renewable energy contract or consider them independent, this difference does not affect the applicable law, as contract fragmentation is allowed. Thus, a specific law may apply to one part of the contract and another law to the

subsequent implementation contracts, does this agreement constitute a form of contract fragmentation, thus exposing their actions to a challenge of invalidity? Or are the implementation contracts independent in themselves from the renewable energy contract, allowing for a separate law to govern them?

There is a legal dispute regarding the answer to this question, which can be categorized into two perspectives as follows:

First Perspective: Some legal scholars argue that the implementation and execution contracts are extensions of the renewable energy contract and are part of it. The renewable energy contract exists solely to organize these subsequent contracts, and therefore its existence is contingent upon the existence or non-existence of those contracts. For instance, the contract made by a hotel guest includes a series of implementation and execution contracts (such as the room rental contract, the contract for purchasing food and beverages, and the deposit contract for the guest's belongings). These subsequent contracts are extensions of the main contract and are inseparable from it, lacking any independence. Based on this, it is not permissible to choose another law to govern them, as the contract is considered a single operation that cannot be fragmented from both psychological and economic perspectives (Morris, ١٩٩٩: ١٢٥).

Second Perspective: Conversely, another group of scholars argues that the implementation and execution contracts are independent from the renewable energy contract due to the independence of their essential elements. The contract made by the hotel guest includes a series of subsequent implementation and execution contracts that contain essential elements distinct from those in the main contract. For example, the room rental contract does not include the pricing element of the food and beverages purchased by the guest. Therefore, it is permissible to choose a specific law to govern the main contract and apply other laws to the implementation and execution

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contracts subsequent to the renewable energy contract are independent from the main contract due to their independence, and therefore the applicable law should be sought independently of the renewable energy contract (Manwill, ٢٠٠١: ٢٠٣). Another group of scholars argues that these contracts are part of the renewable energy contract, and thus their elements complement the elements of the main contract (Jackson, ٢٠٠٥: ٣٤٥), making them governed by the same law that applies to the main contract. We tend to favor the first opinion due to the soundness of the argument on which it is based. However, there is a legal perspective that distinguishes between the existence of intention and its expression regarding the element of consent. Consent must be sound, free of defects, and issued by a competent person. Some scholars argue that the existence of intention is related to competency, and therefore the governing rule for it applies to the existence of intention. As for the forms contracts due to the independence they enjoy (Jonne, ٢٠٠٣: ٢٢٥). From our standpoint, we lean toward the second perspective, as these contracts are independent in their elements from the main contract, and it cannot be said that the elements of these contracts are extensions of the main contract since they differ in nature. Thus, it is permissible for them to be governed by a law different from that applicable to the renewable energy contract.

As for the applicable law governing the elements of the renewable energy contract, we have previously outlined its elements: consent, subject matter, and cause. We stated that the uniqueness of these elements lies in their composition, meaning that there is consent, subject matter, and cause in both the renewable energy contract and the subsequent implementation and execution contracts. Disagreement has arisen regarding these elements; some legal scholars argue that the elements of the

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law unless it concerns real estate, in which case the law of the property's location applies. For contracts involving movable property, they are governed by the law of the location concerning the effect of the contract in creating a real right over that movable property. Some scholars maintain that contracts whose subject matter is work are subject to the law of the place of execution (Deeb, ١٩٩٢: ٣٢٧).

As for the cause, it is governed by the law that applies to the contract, as it is one of the contract's elements, concerning its existence and legality, while considering considerations related to public order in the country of the judge.

The Second Requirement: The Applicable Law on the Effects of Renewable Energy Contracts

The question that arises initially when discussing the applicable law on renewable energy contracts relates to the text of Article (٢٥) of the Iraqi Civil Code, specifically regarding what is meant by "contractual obligations." The effects of a renewable energy contract involve the formation and execution of of expression and manifestations of existence and defects in consent, they relate more to the contracting process than to the concept of competency (Deeb, ١٩٩٢: ٣٢٧). On the other hand, another group of scholars argues that the existence of intention and its expression should be governed by the applicable law of competency, as the rules relating to its aim to protect the person in their essence (Al-Kurdi, ٢٠٠٥: ٥١٣).

From our side, we tend to favor the first opinion, as the existence of intention relates more to competency than to the contract, whereas defects affecting consent relate directly to the contract and its validity. Therefore, it is more appropriate for the first to be governed by contract law. Another group of scholars considers the issue of silence in the context of necessity to be connected to the person to whom the offer was addressed, and thus the law applicable to their place of business or habitual residence applies (Abdullah, ١٩٨٦: ٣٥٥).

Regarding the subject matter in the renewable energy contract, its conditions are governed by contract

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governed by the law of will, while its formation and termination are subject to other laws. Thus, it is necessary to search for the law governing them, as the legislator did not specify the conflict of laws rule governing them according to the previous interpretation of Article (٢٥) of the Iraqi Civil Code and Article (١٩) of the Egyptian Civil Code. This cannot be accepted, as previously mentioned, because a contract is a single operation that cannot be fragmented. Applying different laws to a single contract presents significant difficulties. Furthermore, the legislator's intention in formulating the term "contractual obligations" was not aimed at limiting the applicable law solely to the effects of the contract. This is demonstrated in the explanatory memorandum of the Egyptian Civil Code, which states that "contractual obligations are governed by the law that the contracting parties explicitly or implicitly agree to comply with, considering the provisions stipulated in Articles ٤٤-٤٨. This is a future application contracts. Does this mean that the conflict of laws rule applies only to these effects—meaning it applies to the application and execution contracts without covering the formation of the renewable energy contract itself—or does it apply to the contract as a whole? Or are these contracts independent in their own right and not considered effects of the contract, and thus the specific conflict of laws rule does not apply to them? There are two directions in answering this question as follows:

First Direction: Some scholars argue for the unity of the applicable law on the contract in both its formation and effects alike, describing the law governing the subject matter of the contract as indivisible by the contract law (Fahmy, ١٩٧٨: ٥٨٣).

Second Direction: Another group of scholars contends that the reference only pertains to the effects of the contract, adhering strictly to what is mentioned in the text. This viewpoint supports the idea of contract fragmentation, where its effects are

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general rule that allows for the sovereignty of will and ensures the unity of the applicable law on the contract, which is a unity not guaranteed by the idea of analyzing the elements of the contract and choosing the law that fits the nature of each." Additionally, the classification used in both the Iraqi and Egyptian civil codes emphasizes that under the title of obligations in the first section, sources of obligation include the contract, indicating that the legislator used the expression "contractual obligations" concerning the formation, dissolution, and effects of the contract.

The question that arises regarding renewable energy contracts, and the specificity they contain, is that the effects of this contract manifest in the execution and application of future contracts. Does this mean that these contracts are considered effects of it, and therefore the specific conflict of laws rule applies to them, or are they independent in their formation and effects, thus subject to an independent conflict of laws rule?

There are several scholarly directions to answer this question as follows:

First Direction: Some scholars argue that these contracts are independent of the main contract and do not constitute its effects. Consequently, the applicable law on them is entirely separate from that of the renewable energy contract, given that their essential elements are independent of the main contract (Jonne, ٢٠٠٣: ٢٢٥).

Second Direction: Another group of scholars asserts that these contracts complement the renewable energy contract and are essentially an effect of it, as the renewable energy contract holds no value and cannot exist without these contracts. In other words, these contracts are, in themselves, essential elements of the renewable energy contract; thus, their essential elements are simultaneously essential elements of the renewable energy contract. Therefore, the same applicable law governing the renewable energy contract governs its effects manifested in future application and execution contracts. For instance,

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:١٩٧٨ ،or a defect in form (Fahmy). However, another perspective ٥٣٧ holds that they are subject to local law in all cases, as the obligation to compensate or return arising from the nullity of the contract is not a contractual obligation due to the complete non-existence of the contract; rather, it falls under non-contractual obligations resulting from a legal event. Therefore, the law governing non-contractual obligations applies according to the specific provision in the law applicable to non-contractual obligations (Zaki, ١٩٤٤: ٣٥٩).

A third viewpoint suggests distinguishing between two types of nullity (absolute nullity and relative nullity). This perspective differentiates between two cases regarding the applicable law for absolute nullity: if the reason for the absolute nullity is the failure of a condition for its validity that refers back to the law of the court before which the dispute is raised, then that law applies. However, if the reason for the absolute nullity is the the price element in carrying out the necessary work to build an institution, and the price element for purchasing laboratory equipment are essential elements of the contract organizing these subsequent contracts (Jonne, ٢٠٠٣: ٢٣٢).

From our perspective, we favor the first direction, as the application and execution contracts are independent of the renewable energy contract and cannot be regarded as an extension of it due to the independence of their essential elements from the renewable energy contract. The assertion that they are, in themselves, essential elements of the main contract is a contentious argument, as a contract cannot be an essential element of another contract under any circumstances.

Finally, the question arises: what is the applicable law on the effects of a void contract?

Some scholars argue that issues of nullity are governed by the applicable law on the contract unless the nullity is due to a lack of capacity

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conditions governing subsequent contracts, serving as the guide, organizer, and monitor of those contracts. It is not permissible to violate what is stipulated in this contract.

٢. The execution and application contracts following the renewable energy contract are independent of it, except for the condition that they do not violate the rules governing them in the renewable energy contract.

٣. The renewable energy contract cannot be considered a sale or a promise to sell; rather, it is an obligation on the part of its parties, resulting in an agreement among them to perform an action as a precursor to the application and execution contracts, which may lead to the conclusion of the final contract. It is an obligation to perform an action or refrain from acting, and it is not a condition that it includes the essential elements of the subsequent application and execution contracts.

٤. Renewable energy contracts have a special nature; however, the conflict of laws rule applicable to civil failure of a condition that refers to another law, then the law governing that missing condition in the contract applies, such as when the contract law stipulates that the subject of the contract is unlawful, or when the law of the location of the asset states that the asset is not subject to transaction, in which case that law applies. As for relative nullity, it does not prevent the contract from being formed; rather, it serves as a cause for the dissolution of its binding force. Therefore, the law of the contract applies, unless the cause is a lack of capacity, in which case the applicable law on capacity applies (Fahmy, ١٩٧٨: ٥٨٨).

We tend to favor the second viewpoint, as a void contract is non-existent and does not produce any effects; thus, it is more appropriate for it to be governed by the law applicable to non-contractual obligations.

Conclusion

In conclusion, this research has led us to several findings and recommendations as follows:

First – Conclusion:

١. The renewable energy contract is one that includes the main

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contracts applies to them, considering their composite nature.

Second – Recommendations: In conclusion, we recommend adding a provision to Article (٢٥) of the Iraqi Civil Code highlighting the independence of the application and execution contracts from the renewable energy contract concerning the applicable law on them. In other words, application and execution contracts should not be considered extensions of the renewable energy contract; rather, their role is limited to organizing these contracts. Therefore, a different law may apply to them than that applicable to the renewable energy contract, as follows: "In the renewable energy contract, the subsequent application and execution contracts are treated independently from the main contract concerning the applicable law."

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الملخص:

عقد الطاقة المتجددة هو نوع حديث من العقود يتطلب أحكامًا محددة فيما يتعلق بإبرامه وتنفيذه وإنهائه والقانون الواجب التطبيق. ويرجع ذلك إلى الطبيعة المعقدة لعقود الطاقة المتجددة، والتي تنطوي على عقد رئيسي وعقود لاحقة يشار إليها بعقود التنفيذ والتنفيذ. كان هناك نزاع في كل من النظرية القانونية والفقه فيما يتعلق بالطبيعة القانونية لعقود الطاقة المتجددة، مما يؤثر على تحديد القانون الواجب التطبيق بناءً على طبيعة هذه العقود. من ناحية أخرى، هناك خلاف حول القانون الواجب التطبيق على عقود التنفيذ والتنفيذ التي تلي عقد الطاقة المتجددة. فهل يجب أن ينطبق القانون الواجب التطبيق على العقد الرئيسي على هذه العقود اللاحقة، أم يجب البحث عن قانون آخر يحكمها في حال وجود تعارض بين العوامل الرابطة لهذه العقود والعقد الرئيسي؟ وبناءً على ذلك، قمنا بتقسيم بحثنا إلى قسمين: الأول يتناول تعريف عقد الطاقة المتجددة وطبيعته القانونية، والثاني يتناول القانون الواجب التطبيق على عقد الطاقة المتجددة. واختتمنا بحثنا بخاتمة تضمنت أهم النتائج والتوصيات التي توصلنا إليها.

الكلمـات المفتاحيـة: عقـد الطاقـة المتجـددة، القـانون الواجـب التطبيـق، العقـد الرئيسـي، العقـود اللاحقة

Abstract:

The renewable energy contract is a modern type of contract that requires specific provisions regarding its conclusion, execution, termination, and the applicable law. This is due to the complex nature of renewable energy contracts, which involve a main contract and subsequent contracts referred to as implementation and execution contracts. There has been a dispute in both legal theory and jurisprudence regarding the legal nature of renewable energy contracts, which affects the determination of the applicable law based on the nature of these contracts. On one hand, there is a disagreement about the applicable law for the implementation and execution contracts that follow the renewable energy contract. Should the applicable law for the main contract apply to these subsequent contracts, or should another law be sought to govern them in case there is a conflict between the connecting factors of these contracts and the main contract? Based on this, we divided our research into two sections: the first addresses the definition of the renewable energy contract and its legal nature, while the second discusses the applicable law for the renewable energy contract. We concluded our research with a conclusion that included the most important findings and recommendations we reached.

Keyword: renewable energy contract, applicable law, main contract, subsequent contracts.