The Nature and Rules Governing Civil Liability of State-Owned Oil Companies in Iran and France Law

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Abstract

The purpose of this study is to investigate the nature, pillars and effects of civil liability of state oil companies in Iranian and French law. In this study, the main issue of civil liability of state oil companies is stated, then the necessary concepts of the oil and gas industry are explained from a legal perspective. In this way, the principles of civil liability of the government, the state-owned company and the state-owned oil company have been analyzed and important examples of oil damages have been divided. In the process of this research, although an attempt was made to emphasize the Iranian legal system, but in any case where a comparative view of French law was possible, this comparative approach was considered. Finally, from this research, it can be concluded that civil liability is imposed on the legal personality of companies, not on their pillars such as company managers.

Keywords:

State Oil Company, Iran, France, Civil Liability, Legal Personality of Companies

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1.Introduction

In the general sense, a company can be considered as a contract or agreement (even mental) between individuals that is concluded to achieve a specific goal and a common goal. These people can be natural or legal persons with different and specific goals, who work in a group called a company that has clear and fixed goals. If the government or one of its institutions is effective in the formation and continuation of the company's activities, the company is affiliated with the government and can be a state-owned company. However, if the role of the government in the formation and continuation of the company is a key and decisive role, that company will certainly be a government and will be organized in line with the principles, rules, goals and

policies of the government (Shami et al., 2014). What establishes state-owned oil companies is the principle of government ownership of oil and gas resources. The government, as the representative of the people, manages oil companies in two ways (Moradkhani and Esfandiari, 2009). In fact, the state oil company is a commercial organization that is either nationally owned or state-owned (Skinny 2010, 150; Chen et al.2019). In addition, civil liability is a common issue between public law and private law. Private law raises the issue and generalizes public law to the government. The basis of civil liability of the state answers the question of what kind of moral, philosophical and legal considerations cause the state to be held civilly liable for the damage it has caused to another. Oil is fundamentally different from other commodities. Each commodity becomes important when cash is paid for it or it can be the subject of an exchange contract (Katozian 2011, 210; Saffar 1994, 20). But oil, in addition to its economic value, has a fundamental characteristic. Just having oil creates power and privileges for its owner, even if he does not use it at all (Shirvi and Jahromi 2018, 20). The main subject of research is state-owned oil companies. Companies that have broad powers and at the same time can be held civilly liable. Therefore, the rules governing the civil liability of state-owned oil companies are the cases in which these companies are held liable from the perspective of civil law, and in order to examine them more closely, we try to address this issue in more detail by asking the following three questions :

1)What is the nature and philosophy of state oil companies?
2) What are the rules governing the civil liability of state-owned companies?
3) What are the cases in which state oil companies can be held civilly liable?

2.Literature

Khalaji (2015), in his dissertation examines the civil liability of state oil companies in Iranian law with a look at French law. In Iranian law, as in many oil-rich countries, the privilege of upstream oil and gas operations is monopolized by the government. Many oil companies operate this type of operation, nationally or government-wise. In addition, there are other state-owned oil companies that operate downstream operations alongside the private sector. When the government takes over the oil and gas sector, there is a possibility of various types of industrial, environmental and marine, economic and social damages. These damages can lead to civil liability for state-owned oil companies. The statehood and oil nature of these companies are two characteristics that distinguish them from other state-owned companies and non-state oil companies, and on the other hand, it affects the choice of the basis of civil liability and how to compensate. In this research, first the main issue which is the civil liability of state oil companies is stated, then the necessary concepts of the oil and gas industry are explained from a legal perspective. In this way, the principles of civil liability of the government, state-owned companies and state-owned oil companies have been analyzed and important examples of oil damages have been divided. In the process of this research, although an attempt was made to emphasize the Iranian legal system, but in any case where a comparative view of French law was

possible, this comparative approach was considered. In addition to a theoretical view of French law, an attempt was made to investigate the activities of Total Oil Company with the help of field research. Jafari Majd (2010), studied on civil liability due to marine oil pollution. The international system is based on the principles of pure liability, the principle of compulsory insurance, the principle of limitation of liability, the principle of imposing liability on a particular person and the principle of guaranteeing compensation. This system has many advantages that can be considered the most successful system in terms of civil liability and some consider it a revolution in the field of maritime civil liability. Although the focus of the work is on the international regime, other aspects of the issue have been considered. Therefore, regarding other sources of pollution, according to the laws and regulations of the country, as well as regional documents and procedures and laws of other countries, these issues have been dealt with. Dong and Zhou (2019) in a study examined civil liability and compensation in connection with the transport of hazardous and harmful substances. The International Convention on Liability and Compensation for the Carriage of Dangerous and Harmful Marine Substances (HNS Convention) has not been implemented. In China, a reciprocal compensation regime has been established for the damage caused by crude oil pollution, but this regime is not harmed by the transport of HNS (Hazardous and Noxious Substances) by sea. This article examines the Chinese legal approach to civil liability and compensation in this area and discusses how the appropriate framework for resolving issues that may arise.

3. Research method

The present research is a descriptive and analytical research in terms of applied purpose and method of research. In other words, theoretical foundations have been described and expressed, and in the comparative stage with foreign issues, analysis has been done. Therefore, in addition to being descriptive-analytical, the research method is also comparative. Data analysis is also done based on available documents and in a descriptive manner. In this research, the library or documentary method has been used.

4.Researchfindings

The nature of state oil companies in Iranian law

When the government is in a position of enterprise, it establishes state-owned companies. In other words, state-owned companies are government tools in entrepreneurial activities. It is important to note that state-owned companies, although in a position of tenure, can also exercise governance. For example, the National Iranian Gas Company can cancel the privilege of a subscriber in the position of exercising sovereignty (Khalaji and Nazarbigi 2014, 10). What establishes state-owned oil companies is the principle of state ownership of oil and gas resources. The government, as the representative of the people, runs the oil companies in two ways. The first is that the government owns the company and the second is that the people own the company, but the government, on behalf of the people, takes over and manages the company,

like the National Iranian Oil Company. In either case, the philosophy of the state-owned oil company is the same. Exercising government powers in the field of oil and oil operations leads to the establishment of the National Oil Company or a company owned by that government (Shirvi 2014, 160). In Iran, all state-owned companies are formed as joint stock companies. In France, state-owned companies are set up in the same way. In addition, some jurists, using Article 300 of the Trade Law Amendment Bill adopted in 1995, believe that state-owned companies are in the form of joint stock companies as far as it is not stated in their articles of association (Skinny 2011, 78).

The nature of state-owned oil companies in French law

Under French law, World War I required the government to engage in industrial and commercial activities due to the needs of the war and the motivation for national defense. After World War II, the process of nationalization of private companies began and reached its peak in 1981, to the flexibility of some commercial companies to meet public needs. Nationalized companies in France, although owned by the general public, are run by the government and are formed as special joint stock companies and are in fact single-partner companies. The reason for this is that one hundred percent of their shares belong to one person, the government. Joint stock companies in France are incorporated under the law of July 24, 1966 with at least seven shareholders, but this rule does not apply to nationalized state-owned companies. Even the organizational structure of state-owned companies does not necessarily follow the same type of private one. For example, in state-owned companies, there is a state council instead of a general assembly. Dissolution and liquidation of state-owned companies in France is entrusted to the relevant articles of association. Unlike Iran, where the liquidation of state-owned companies is permitted only in accordance with Article 134 of the General Accounting Law. In France, mixed economic corporations that have grown since the nationalization policy are a prime example of a semi-public enterprise. In French law, semi-public companies are considered legal entities under private law and operate under the rule of commercial law (Asgari 2009, 16).

Fundamentals of Civil Liability of State Oil Companies in the Iranian Legal System

The government is a political institution whose power and authority are intertwined. In political philosophy, the basis of state power is the theory of social contract. In any case, the government must exercise power and sovereignty. The greater the government's sovereign powers, the smaller its scope of responsibilities. On the other hand, the more similar the government is to an observer, the wider its scope of civil liability will be (Yazdanian 2015, 22). Thus, in democratic societies where the state has less of a sovereign role, it has more prominent civil and political responsibilities, and many regulatory bodies control government behavior, which in Western political law is interpreted as a system of oversight and balance. Civil liability is a common issue between public law and private law. Private law raises the issue and generalizes public law to the government. Therefore, the civil liability of the government is a function of the civil liability of

natural and legal persons. In other words, the principles of proving responsibility for the government and its agents are the same as those used to prove the responsibility of private individuals and legal entities. But public law is not limited to liability in private law, and adds other principles and theories to these principles. Principles such as the inviolability of the state during the exercise of tenure, the responsibility of states in international law even during tenure, and the right to informal control over the conduct of the state. In general, in the Iranian private legal system, the theory that is the basis of responsibility is the theory of fault. The same principle applies to government civil liability. In general, civil liability is conceivable in the form of three relationships. the first relationship is between a person and a person; the second relationship is between a person and an object; and the third relationship is between a person and a person along with a person and an object. In the case of government, all three types of relationship are conceivable. In other words, whenever the government is on one side of the relationship outside the contract, the civil liability of the government is realized (Hekmatnia 2014, 56). It is worth noting that from the perspective of civil law , according to Alil-Yad rule (In Shiite jurisprudence it is said when a person takes an object which is not his property he will be responsible as long as he holds it) and in accordance with the provisions of Article 301 of the Civil Code, the relationship of civil liability between a person and an object is conceivable. That is, even if the object is not his property but when the person takes it, he will be responsible.

- **The theory of reciprocity**

Some jurists acknowledge the duality of government civil liability, but consider this relationship to be conceivable only between person and person, and believe that if we consider government civil liability to be a legal relationship, the persons involved in this relationship are limited to two- the government and the injured person. As a result, the legal system is governed by a system that regulates and defines the rights and duties that the two have towards each other. From the point of view of these lawyers, the civil liability of the government means the obligation of the government to compensate the damage to the injured person, as they have stated that the civil liability of the government is a relationship that is limited between the government and the injured party. But this view cannot be accepted; because in civil liability law, the injured party is not always a person, but can be an object, such as a benefit, which is considered an object. Therefore, it can be imagined that the government loses the benefit in some cases. By accepting the second view, the government cannot be held responsible in many cases, but the first view has the ability to accept the civil liability of the government in the three mentioned relations.

- **The theory of being three-dimensional**

Some argue that the legal personality of the government can not claim damages independently, but that the emergence of civil liability is possible only by imagining a damage agent who is a person other than the government and is its representative. This means that the government only plays the role of the compensator, while another natural person is the cause of the loss. The two-

way relationship of civil liability cannot be accepted here and a three-way relationship must be imagined. For example, when a government employee complains, it is only by accepting the theory that the government can be required to pay damages. Given that state-owned companies are individuals other than the government itself, but on the other hand their funding is provided by the government, it seems that the best way to accept the theory of a three-way civil liability relationship is to prove the civil liability of state-owned companies. But again, this theory is not enough in some cases because the government directly interferes in some affairs of state-owned companies and hides itself in the veil of the legal personality of the state-owned company and thereby harms the citizens (Khalaji and Nazarbigi 2014, 14).

- **Intermediate theory**

Dealing with examples of civil liability does not eliminate the need for either of the two theories. In other words, it can not be imagined that the government is always independently on one side of the non-contractual relationship of civil liability, and on the other hand it can not be accepted that the cause of the loss is always the government itself. Both theories have been accepted in Iran. Iran's civil liability law system states that in scattered laws and regulations, the government assumes responsibility for some employees and individuals such as judges, members of the armed forces, members of corporate shareholders and fugitives, and in the case of other employees only in accordance with Conditions of Article 11 of the Civil Liability Law, i.e., in case of damage caused by employees due to defective equipment, has accepted responsibility (Khalaji and Nazarbigi 2014, 14).

- **Civil liability based on government fault**

The hypothesis of guilt is based on the view that from the point of view of logic and reason, the person who caused the damage must compensate for the damage caused by his action when he was at fault in committing it. According to some jurists, the theory of fault is not compatible with the principles of Shiite jurisprudence. Because the fault is based on secular law, while Islamic jurisprudence is based on the fact that there must be a reason from the legislator to prove the principle of the need for compensation. Secular law itself constructs legal rules, so fault is based on Western jurisprudence (Hekmatnia 2014, 56). Secular rights do not mean immoral rights. Even if a legal system like French law is based on ethics, since legal rules are not discovered but made in that system, it must still be said that the legal system is secular. Some other jurists, as a result of the French legal system, have introduced the theory of danger and fault into the Iranian civil liability law system. Given that the structure of Iranian civil liability is based on Imami jurisprudence, it seems that this group of jurists have confused the principles of Shiite jurisprudence with the principles of Western law. The legislator in the Civil Liability Law and Dr. Zargoosh in the book Civil Liability of the Government consider the theory of guilt and non-guilt as the basis for proving responsibility. If we base the theory of fault on the civil liability of the government, we must always identify the cause of the damage and prove the causal

relationship as well as its intent. According to this theory, the main reason and aspect of the responsibility of the perpetrator of the harmful act towards the victim is his fault. In addition, the perpetrator of a loss is, in the strict sense of the word, a real person by whom the harmful act is committed or to which the act is attributed. In government civil liability, the loss factor can be classified into one of the following categories:

A) The cause of loss is the public authority.

B) The cause of the loss is a partner of the government.

C) The cause of the loss is neither the public official nor a government employee (third party).

Of course, if we have a positive approach to recognizing the fault in the civil liability of the government, we can imagine situations where the realization of the fault of the government is not associated with the idea of committing an erroneous act by a government agent. In other words, it is not necessary in all cases that the fault of the government be attributed to the harmful action of a particular person. Thus, the theory of fault can be used as the basis of civil liability, as some in classical law considered the theory of fault as the basis of any civil liability.

- **Civil liability based on the fault of the government**

Non-fault liability has the following characteristics: denial of the act of causing harm to a non-natural person; makes the payment of damages exclusively to the government; It does not negate the existence of a human factor as a loss factor. In other words, there is no need for a human factor to identify non-fault-based civil liability; contains only impersonal errors of government agents, i.e., it does not involve gross error or deliberate commission of harmful acts by government agents. When we do not measure fault, then there is no need to place the responsibility on the perpetrator, so that we can hold someone other than the perpetrator responsible. With this statement, it becomes clear that the government is in many cases responsible for the actions of others. There are sporadic cases in Iranian law that mention such a responsibility. In cases 7 and 12 of the Civil Liability Law, this is mentioned in some way, but reflection on some other laws shows that there are many examples of liability arising from other actions in the Iranian legal regime that the principle of personality has exposed the responsibility to the majority (Yazdanian 2013, 25). That being said, proving civil liability to the government based on the theory of no-fault is much easier than when we want to hold the government accountable under the theory of fault; because the main basis of fault is the existence of a loss factor, although a positive approach to it considers the absence of a loss factor possible. What these two theories have in common is that in both there must be a causal relationship.

Fundamentals of Civil Liability of State-Owned Oil Companies in the French Legal System

In 1804, the French Civil Code was drafted and passed. This law adapted the section on obligations and contract law from Roman law, and fault as a basis for civil liability thus entered French civil law and from there into other world laws. This is why in Western legal systems,

liability is based on the theory of fault, although in some cases, the theory of liability without fault has been accepted (Ostvar Sangari 2011, 35).Articles 1382 to 1386 of the French Civil Code are of great importance because they include all cases of civil liability resulting from fault and negligence. These articles are included in the second section (crime and quasi-crime) of Chapter 4 (requirements obtained without a contract) of the French Civil Code. This article specifies the fault of the cause of the damage.So far, French civil liability law has considered one of the cases of compensation as the result of personal fault. Nevertheless, the birthplace of the theory of fault is classical law, and the text of the French Civil Code adopted in 1804 also clarified this theory, but today in the French Supreme Court, instead of fault, the theory of safety obligation is invoked (Yazdanian 2013, 30).In French legal doctrine, the theory of fault has a broader meaning than Article 1382 and also includes the damage caused by the act of another. In French formal law, the liability authority depends on the type of fault alleged by the plaintiff. This means that if the alleged error is a personal error, it will be the authority of the general court, and in cases where the alleged error is a service error, the administrative court will be the competent authority to file a lawsuit.On the other hand, French substantive law, that is, its civil law, holds not only natural persons but also legal persons liable for contracts and transactions as well as damages resulting from fault. With this statement, it can be concluded that the theory of fault is one of the foundations of the proof of civil liability in French law, as well as the basis for the realization of civil liability of the state, as a legal entity.On the other hand, the government is responsible for the actions of its employees and agents, and if they make a mistake, the government must take responsibility for the actions of others. Therefore, this general rule in French civil law can be generalized to the civil liability of the government and the government can be considered against the damage caused by the irresponsible civil act. In general, the civil liability of the government in French law is based on the act of causing harm and other act. In some cases, the government, as the ruling power, should be the defendant and compensate, and in other cases, the agents of the government should be the defendant. The conclusion is that in both the Iranian and French legal systems, the basis of government civil liability is the theory of fault; whether the fault is due to the act of the government, or whether the fault is due to the act of another, such as government agents (Khalaji and Nazarbigi 2014, 10)

A comparison of the basis of civil liability of state-owned and state-owned oil companies in Iran and France

• Similarities

It is obvious that the government can not escape responsibility under the pretext of establishing a company. In other words, the government cannot hide itself in the veil of the legal personality of a state-owned company. Proving the civil liability of the government based on the theory of fault requires a causal relationship.On the other hand, a state-owned company is a legal entity separate from the government, but if a state-owned company is a means of expressing government behavior, the state-owned company will also be civilly liable because the government is

responsible for holding office.The government cannot evade and breach the obligation in domestic and international contracts, as well as in the treaties it has concluded with other countries, on the pretext that it has entrusted the fulfillment of the obligation to a state-owned company. If the company mask is a means to escape responsibility and breach of obligation by the government, domestic and international courts can pass it (Akhavan Fard and Taqdir 2010, 40). This issue is based on the theory of influencing the hijab of the legal personality of the company. In other words, the existence of a state-owned oil company does not cut the causal link between the state in which the person is responsible and the act is harmful. Thus, the responsibility of the government is intertwined with the responsibility of state-owned companies. A state-owned company can be responsible in two ways: A) Because of his behavior b) Because of the behavior of the government. Not all behaviors of a state-owned company can be attributed to the government, but nevertheless behaviors that result from the exercise of state sovereignty or tenure and that the state-owned company is held accountable make it possible to hold the government accountable. In other words, if the state-owned company breaks the causal relationship between the government and the damage, it acts as an informed and responsible agent. But if the state-owned company is merely a tool of the state and does not cut the causal link between the state and the damage, the state itself is held liable.

•The differences

The specificity of the rules of civil liability of state-owned companies and state-owned oil companies is the reason for their case study on civil liability. But the difference between these two types of companies in being oil is one of them, which in itself makes the rules of civil liability of state oil companies more specific:

1.The political responsibility : Oil gives its owner political power. This power can create political responsibility towards the judiciary and the legislature in the field of domestic law. Subsequently, if this political power causes financial and human damage to the rights of citizens under the pretext of sustainable development and expansion of investment, it carries civil liability; Because the oil-producing government, which uses its political power to price, invest, carry out upstream and downstream operations, etc., should no longer be allowed to use its sovereignty as a means of redress.

2. Civil liability even when exercising sovereignty: According to the author, even the exercise of sovereignty in the field of oil and gas will lead to civil liability. For example, where the government terminates oil contracts due to nationalization, it must pay damages to the contracting party. Accordingly, any non-contractual damage that originates from the process of nationalization and the government as the cause of that damage must compensate it, even if the government is in a position to exercise sovereignty. This exception is based in part on the international responsibility of governments. Of course, in cases where the termination of the contract is due to the permission of the law and to protect the public interest, it does not seem to lead to compensation.

3. International Responsibility of State-Owned Oil Companies State-owned companies operate more domestically. The exercise of sovereignty by them, even if it causes damage, is still in the public interest. But state-owned oil companies will face the principle of international responsibility of governments because they are more likely to enter into contracts or agreements with foreign parties if they intend to exercise sovereignty. This is how the basis of civil liability of state-owned oil companies differs from that of state-owned companies.
4. Theory of Absolute Liability: Another difference is that the implementation of oil projects faces high risks. As the risk of project implementation increases, so will the liability of the state oil company. That is why the Energy Charter Treaty considers absolute liability as the basis for proving the civil liability of state-owned companies operating in the energy sector. Although Iran has not acceded to the treaty, foreign investors, as well as oil insurance companies, which are mostly European, do not follow Iranian law and are required to comply with European law, especially the provisions of the Energy Charter, if they implement a project in Iran. On the other hand, France has been influential in shaping the text of the Charter of Energy Charter. This treaty is a binding example for all oil companies, to which the international courts also comply.

5. Conclusion

State-owned oil companies play a very important role in the world economy, as the World Bank publishes an annual report on their activities. In some cases, these companies are the tools of governments, and it is these governments that hide in the veil of state-owned oil companies in order to avoid international responsibility. But from the point of view of international law, even if governments exercise sovereignty in their oil activities through state-owned oil companies, and as a result of this sovereignty, damage is inflicted on the outside world, they still have international responsibility and must compensate. This is an exception to the principle of state immunity in the exercise of sovereignty. Civil law and civil liability law are the main sources of civil liability of state oil companies in Iranian law, and French civil law as well as the European Convention on Government Immunity and the Energy Charter are also external sources of civil liability of such companies. What is the difference between the basis of civil liability of state and state-owned companies and the basis of civil liability of state-owned oil companies is that the implementation of oil projects faces very high risks and in some cases the risks can not be predicted. For this reason, the basis of civil liability of state oil companies is the theory of absolute responsibility. The Energy Charter Treaty also emphasizes this issue and states that the basis of civil liability of state-owned companies operating in the energy sector is based on the principle of absolute liability. However, in the legal systems of Iran and France, the government will be responsible for holding office based on the theory of fault. Therefore, to prove the civil liability of state oil companies, there is no need to prove the causal relationship between the harmful act and the company.

6.Research suggestions

Based on the obtained results, it is suggested that the legislator adopt a comprehensive law on compulsory liability insurance for oil pollution. It is also suggested that in the international arena, existing conventions need to be amended to include oil pollution of any origin and vessels of any capacity, including insurance, and to determine the jurisdiction of the courts.

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