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The Application of the Rebus Sic Stantibus Principle in Oil Sales and Purchase Agreements by PT Pertamina (Persero) Amidst Geopolitical Instability in the Middle East

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ABSTRACT

Geopolitical instability in the Middle East—triggered by armed conflict, economic sanctions, disruptions to energy distribution routes, and global oil price fluctuations—has brought about significant changes in the execution of international crude oil sales contracts. These conditions potentially affect the ability of the parties involved, including PT Pertamina (Persero), to fulfill their agreed-upon contractual obligations. This study aims to analyze whether geopolitical instability in the Middle East can be classified as a "fundamental change of circumstances" that meets the criteria for invoking the rebus sic stantibus principle, and to examine the legal implications and dispute resolution mechanisms should this principle be applied to oil sales agreements involving PT Pertamina (Persero). The study employs a normative legal research method utilizing statutory, conceptual, and case-based approaches. Legal materials—comprising primary, secondary, and tertiary sources—were analyzed qualitatively using a descriptive-analytical method. The findings indicate that, under certain conditions, geopolitical instability in the Middle East can be categorized as a fundamental change of circumstances if it meets the elements recognized under the rebus sic stantibus doctrine: namely, a change that was unforeseeable at the time the contract was concluded, occurred beyond the parties' control, significantly altered the contract's economic balance, and rendered performance excessively burdensome without making it impossible to execute.

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INTRODUCTION

States are the primary and foremost actors in international cooperative relations. In the era of globalization, the landscape of international cooperation has become increasingly dynamic due to the presence and recognition of international organizations as key players in international relations. Cooperative relations between subjects of international law—particularly between states—are on the rise. Differences in state systems, forms of government, worldviews, cultures, religions, or beliefs do not hinder cooperation; rather, they can actually intensify relations between states.

According to international law expert J.G. Starke, international treaties play a crucial role as one of the most important sources of international law. Possessing binding force, they function as written law—or "law-making treaties"—that establish general rules and legal certainty in interstate relations.

International law encompasses legal norms governing the functions of international institutions and organizations, as well as their relationships with states and individuals. It also includes norms regulating the interests of individuals and non-state entities, provided that the rights and obligations of these parties stem from agreements between states embodied in treaties. Some scholars equate the concept of asas (fundamental tenet) with prinsip (principle). According to the Kamus Umum Bahasa Indonesia (General Dictionary of the Indonesian Language), asas is defined as a foundation, basis, or guideline for truth—serving as a fundamental truth, a basis for reasoning, or an underlying ideal.

Based on the definition above, it can be concluded that an asas serves as a foundation or starting point for reasoning in the pursuit of truth. Consequently, the formulation of practical law must be oriented toward legal principles. Rebus sic stantibus is a legal principle stating that a contract ceases to be binding due to a fundamental change in circumstances. This principle applies when the terms and conditions of a contract are altered—not because performance has become impossible, but because fulfilling the contract has become extremely difficult for one of the parties involved. A concrete example of an event in the Middle East involving the application of this principle is Egypt's 1956 cancellation of the Suez Canal Base Agreement; following the 1952 Egyptian Revolution, Egypt unilaterally withdrew from the agreement in 1956. One of the legal arguments underpinning Egypt's action was the doctrine of a fundamental change of circumstances. Another instance involves business contract disputes following the 1980 Islamic Revolution in Iran; when the revolution occurred and the Iranian regime changed, many contracts were cancelled or rendered impossible to perform. The Iranian side argued that the massive shift in the political situation and the freezing of assets by the US had fundamentally altered the conditions under which the contracts operated.

The Indonesian Civil Code (KUHPerdata) regulates agreements in Book III, Article 1313; an agreement is defined as an act whereby one or more persons bind themselves to one or more other persons. Based on this definition, it can be concluded that an agreement comprises the following elements: the parties involved, mutual consent between the parties, the performance to be executed, a lawful cause, a specific form (oral or written), specific terms constituting the content of the agreement, and an intended objective.

Several important matters must be considered or fulfilled when drafting an agreement. These include the legal regulatory system—specifically the "open system"—which stipulates that individuals are free to enter into agreements, whether or not such agreements are already regulated by relevant statutes.

The requirements for the validity of an agreement are set forth in Article 1320 of the Indonesian Civil Code and include:

a) Mutual consent between the parties.
b) Legal capacity to perform legal acts.
c) The existence of an object of the agreement.
d) The existence of a lawful cause (causa).

Civil law recognizes several principles governing agreements, namely: the Principle of Consensualism, the Principle of Freedom of Contract, the Principle of Binding Force (pacta sunt servanda), the Principle of Good Faith, the Principle of Trust, the Principle of Personality, the Principle of Legal Equality, the Principle of Balance, the Principle of Legal Certainty, the Principle of Morality, the Principle of Propriety, and the Principle of Custom.

As a State-Owned Enterprise (BUMN), PT Pertamina (Persero) bears a significant responsibility for maintaining national energy security. To meet domestic demand, Pertamina routinely enters into long-term crude oil purchase agreements with various producers or traders in the Middle East.

Geopolitical instability in the Middle East refers to a volatile and insecure situation triggered by conflicts—such as struggles for power and influence—as well as disputes over global oil routes. Amidst geopolitical instability in the Middle East, Pertamina faces a massive legal and economic dilemma:

a) If it insists on adhering to existing contracts despite abnormally soaring prices or hazardous logistics routes, Pertamina risks incurring massive financial losses that could potentially be classified as a State Financial Loss (given its status as a State-Owned Enterprise).
b) If Pertamina unilaterally terminates a contract without a strong legal basis, it could face lawsuits for default or breach of contract in international arbitration forums.

In general, contracts entered into by the parties contain provisions that are binding upon them. These provisions are grounded in the principle of pacta sunt servanda. The parties are expected to fulfill their obligations to the best of their ability until the agreement concludes.

Agreements in general, including international agreements, are grounded in certain fundamental principles regarding their implementation. Foremost among these is the principle of pacta sunt servanda, which dictates that a promise is binding as law upon those who make it; consequently, the parties are obliged to properly fulfill the terms of the agreed-upon contract. However, the operation of an agreement—including an international one—may also be influenced by, or must take into account, other legal principles such as pacta tertiis nec nocent nec prosunt (agreements neither harm nor benefit third parties), non-retroactivity, jus cogens (peremptory norms), and rebus sic stantibus (things standing thus).

Crude oil trading is a sector heavily influenced by international geopolitical conditions. As the world's largest oil-producing region, the Middle East holds a strategic position in maintaining global energy supply stability. Armed conflicts, inter-state political tensions, economic embargoes, and disruptions to oil distribution routes frequently cause spikes in global oil prices and disrupt the execution of international trade contracts.

As a state-owned enterprise operating in the energy sector, PT Pertamina (Persero) enters into various oil sales and purchase agreements with international partners. Changes in geopolitical conditions occurring after a contract has been concluded have the potential to affect the parties' ability to fulfill their contractual obligations.

International law recognizes the principle of rebus sic stantibus, which allows for the review of an agreement in the event of a fundamental change in circumstances. This principle serves as an exception to the principle of pacta sunt servanda, which generally mandates that every agreement be fulfilled in good faith.

Contracts play a vital role in daily life. A contract is an agreement between parties regarding a specific matter that creates a legal obligation or relationship, establishes rights and duties, and entails sanctions in the event of a breach. For a contract to be valid, it must satisfy the requirements set forth in Article 1320 of the Indonesian Civil Code. Contracts are grounded in principles that serve as guidelines for their execution. Article 1338 paragraph (1) of the Indonesian Civil Code states: "All agreements legally entered into shall serve as law for those who made them." Parties are free to determine the content of a contract, provided it does not conflict with the law, public morality, or public order. A contract gives rise to an obligation that entails legal consequences for the parties involved—specifically, the creation of rights and duties that must be fulfilled in good faith.

Literally, the meaning is that a valid agreement remains in force only if conditions stay the same as they were when the agreement was concluded. In other words, if conditions change, the agreement ceases to be valid. At first glance, there appears to be no difference between force majeure and the clausula rebus sic stantibus; both represent exceptions to the principle of pacta sunt servanda.

The embodiment of the rebus sic stantibus principle in positive law can be found in Article 62 of the 1969 Vienna Convention, which governs the termination and suspension of international treaties. According to Article 62 of the Vienna Convention, the fundamental changes in question are as follows:

1) A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: a. the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty.
2) The effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

3) A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the treaty establishes a boundary; or
4) The change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

The phrase rebus sic stantibus does not appear in Article 62 of the 1969 Vienna Convention; rather, the article merely provides the definition, examples, and limitations of the rebus sic stantibus principle. However, according to D.J. Harris notes that during the 18th session of the International Law Commission, the term rebus sic stantibus was modified—or rather, the doctrine of "fundamental change of circumstances" was preferred—based on the principles of equality and justice.

The embodiment of the rebus sic stantibus principle in Indonesian positive law is found in Article 18 of Law Number 24 of 2000 concerning International Agreements, which states that an international agreement terminates if there is a fundamental change affecting the agreement's implementation. In international law, this principle essentially serves as an exception to the rule of pacta sunt servanda (agreements are legally binding). This principle is enshrined in Article 62 of the 1969 Vienna Convention. Under this article, a state may invoke the principle to terminate an agreement if the changed circumstances formed the basis of the state's intent to be bound by the agreement. The rebus sic stantibus clause is a legal principle stating that a contract ceases to be valid due to a fundamental change in circumstances. The rebus sic stantibus principle has become a general principle of law, much like other principles in international (contract) law. In Indonesia, this doctrine is better known within the context of international (contract) law and, to a lesser extent, insurance law. Within Indonesian legislation, the rebus sic stantibus clause is recognized in Article 18(c) of Law Number 24 of 2000 concerning International Agreements. Research into the application of the rebus sic stantibus principle serves as a form of legal protection for PT Pertamina (Persero) regarding international agreements. This principle allows the company to renegotiate or terminate long-term oil contracts if extreme geopolitical instability in the Middle East alters the fundamental conditions originally agreed upon. In Indonesia, the application of the rebus sic stantibus principle can be observed in cases involving the Round Table Conference (KMB) Agreement and the international agreement between Australia and Indonesia regarding the cooperation zone in the Timor Gap. The Indonesian Government’s decision to unilaterally terminate the KMB Agreement based on the rebus sic stantibus principle was driven by national interests—specifically, vital domestic changes. The UNIDROIT Principles of International Commercial Contracts (UPICC) represent an effort to harmonize laws and regulations within international contract law; Indonesia ratified them through Presidential Regulation of the Republic of Indonesia Number 59 of 2008. Civil law does not recognize the concept of "hardship," though it does provide for force majeure—concepts that are distinct from one another. In the realm of business contracts, hardship refers to a situation where unforeseen changes in circumstances render the performance of the contract significantly more burdensome or economically disadvantageous for one of the parties. The crux of this issue lies in the dialectic between two fundamental principles of contract law: legal certainty versus flexibility.

Problem Formulation

The issues to be examined in the study titled "The Application of the Rebus Sic Stantibus Principle in Oil Sale and Purchase Agreements by PT Pertamina (Persero) Amidst Geopolitical Instability in the Middle East" are as follows:

1) How can indicators of geopolitical instability in the Middle East be categorized as a "Fundamental Change of Circumstances" that meets the requirements of the Rebus Sic Stantibus principle within PT Pertamina's contracts?
2) How is the Rebus Sic Stantibus principle applied to crude oil sale and purchase agreements entered into by PT Pertamina (Persero) amidst geopolitical instability in the Middle East?

LITERATURE REVIEW

The principle of *rebus sic stantibus* constitutes an important doctrine in the law of agreements because it recognizes that the binding force of an agreement may be affected by a fundamental change in the circumstances existing when the agreement was concluded. Historically, the doctrine developed from the understanding that agreements involving continuing obligations are based on the assumption that the surrounding circumstances will remain substantially unchanged during their implementation. Nussbaum and Admawiria explain the historical development of this principle in international law, particularly its connection with the idea that an agreement is expected to operate within the circumstances underlying the parties' original consent (Nussbaum & Admawiria, 1969, pp. 90, 123). Similarly, Purwanto emphasizes that *rebus sic stantibus* may operate as a legal basis for terminating, withdrawing from, or suspending the implementation of an international agreement when a fundamental change of circumstances occurs. Thus, the principle represents an exception to the strict application of *pacta sunt servanda*, while maintaining the importance of legal certainty and the good-faith performance of contractual obligations.

In contemporary international legal discourse, the application of *rebus sic stantibus* is not intended to provide parties with an unrestricted opportunity to avoid contractual obligations whenever economic or political conditions become unfavorable. Gogiashvili describes the doctrine through the tension between the static character of law and the dynamic nature of social and international relations, indicating that legal obligations must sometimes respond to substantial changes in the circumstances underlying an agreement (Gogiashvili, 2006, p. 109). Purwanto further explains that the application of *rebus sic stantibus* requires a fundamental change that was not anticipated by the parties and that significantly transforms the scope of obligations to be performed under the agreement. In this context, the doctrine must be distinguished from *force majeure*: *rebus sic stantibus* concerns a fundamental transformation of the circumstances underlying the agreement, whereas *force majeure* generally concerns circumstances that make performance physically or legally impossible. This distinction is particularly relevant to long-term oil sales and purchase agreements, where changes in geopolitical conditions may substantially alter the economic and legal environment without necessarily making contractual performance absolutely impossible.

The relevance of this doctrine becomes particularly significant in examining oil sales and purchase agreements entered into by PT Pertamina (Persero) amid geopolitical instability in the Middle East. International economic relations are inherently influenced by political, security, and strategic developments, and international agreements serve as important legal instruments for regulating rights and obligations among parties. Mauna emphasizes the significant role of international law in regulating relations within an increasingly dynamic global environment (Mauna, 2004, p. 20), while Sunggono highlights the importance of systematic legal research in identifying and analyzing legal norms and their application in particular circumstances (Sunggono, 2003, p. 27). Therefore, the *rebus sic stantibus* principle provides an appropriate theoretical framework for assessing whether substantial geopolitical developments—such as armed conflict, disruption of oil supply routes, sanctions, or extraordinary changes in the international oil market—can constitute a fundamental change of circumstances affecting the implementation of Pertamina's oil sales and purchase agreements. The literature indicates that the principle may provide a legal mechanism for addressing extraordinary changes while preserving the balance between contractual stability, good faith, and the need for contractual adaptation.

METHODOLOGY

The research method employed in this study is the normative legal research method. The scope of the research addresses how indicators of geopolitical instability in the Middle East can be categorized as a "Fundamental Change of Circumstances" that satisfies the requirements of the Rebus Sic Stantibus principle within the context of PT Pertamina (Persero)’s contracts, as well as the application of the Rebus Sic Stantibus principle in crude oil sale and purchase agreements entered into by PT Pertamina (Persero) amidst Middle East geopolitical instability. The research data and sources comprise three categories—primary, secondary, and tertiary legal materials—including:

1) Primary Legal Materials:
   a) The Indonesian Civil Code (KUHPerdata) provisions regarding agreements;
   b) Law No. 24 of 2000 concerning International Agreements;
   c) Presidential Regulation of the Republic of Indonesia No. 59 of 2008;
   d) Vienna Convention on the Law of Treaties 1969;
   e) Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia 1980; and
   f) Treaty on Development Cooperation between the Netherlands and Suriname 1975.

2. Secondary Legal Materials: Legal materials that explain or elaborate upon the primary legal materials used, such as scholarly writings, academic journals, research findings by academics (both domestic and international), and similar sources.
3. Tertiary Legal Materials: Materials that provide guidance or explanations regarding primary and secondary legal materials, offering understanding and definitions of other legal materials; examples include legal dictionaries (in Indonesian or foreign languages), magazines, and the like.

Data collection techniques include document and library research—where the researcher reads, records, and classifies written legal materials sourced from libraries, international regulations, and digital archives regarding Pertamina's contract performance—and structured interviews (optional). If necessary, the researcher conducts discussions or interviews with international law experts or legal practitioners at PT Pertamina to understand how the company responds to such geopolitical conflicts in actual business practice. Regarding data analysis, the collected legal materials are analyzed using a qualitative method involving deductive reasoning. This means the researcher does not employ statistical formulas or numerical data; instead, the study examines a general legal theory or principle (such as Rebus Sic Stantibus) and applies it to a specific case—namely, PT Pertamina's oil contracts amidst Middle East conflicts—to derive a prescriptive legal conclusion (offering a legal solution or recommendation).

RESEARCH RESULT AND DISCUSSION

Indicators of geopolitical instability in the Middle East can be categorized as a "Fundamental Change of Circumstances" that satisfies the requirements of the rebus sic stantibus principle within the context of PT Pertamina's contracts.

In the discussion within this research journal, indicators of geopolitical instability in the Middle East are analyzed as a "Fundamental Change of Circumstances" that potentially meets the criteria for the rebus sic stantibus principle in PT Pertamina's contracts, subject to verification against applicable legal standards.

Indicators of geopolitical instability in the Middle East—such as regional armed conflicts, military escalations threatening global energy supply routes (e.g., the Suez Canal or the Strait of Hormuz), and international economic sanctions—can be analyzed within the framework of international commercial contract law and treaty law as a "Fundamental Change of Circumstances" closely linked to the rebus sic stantibus doctrine.

The following is a comprehensive analysis of how these indicators may be categorized and satisfy the relevant requirements within the framework of PT Pertamina (Persero)'s contracts:

1. Contextualization of the Rebus Sic Stantibus Principle and Hardship

Doctrinally, the Rebus Sic Stantibus principle (or what are known in modern international contract law instruments—such as the UNIDROIT Principles—as "Hardship Clauses") posits that while an agreement binds the parties (pacta sunt servanda), this is based on the tacit assumption that the fundamental circumstances existing at the time the contract was concluded remain unchanged.

If there is a radical change in circumstances—one that is beyond the parties' control, unforeseeable, and imposes an extreme burden (fundamental hardship) on one party regarding contract performance—then the contract may be mitigated, renegotiated, or adjusted.

2. Criteria for Establishing a "Fundamental Change" in PT Pertamina's Contracts

For PT Pertamina—particularly regarding long-term energy procurement contracts (such as crude oil imports, international tanker charters, or exploration joint ventures)—Middle East geopolitics may meet the legal qualifications for this principle if the following parameters are satisfied:

Radical (Fundamental) Nature of Change: The conflict in the Middle East is not merely a routine market fluctuation but a systemic disruption that massively impacts the global energy supply chain. Unforeseeable at the Time of Signing: An extreme escalation of conflict occurring beyond reasonable business projections at the time the contract clauses were agreed upon. Beyond the Parties' Control: Neither PT Pertamina nor its business partners possess the capacity to prevent or halt the geopolitical crisis in question.

Imbalance of Contractual Burden (Extreme Hardship): The change does not necessarily render the contract a case of force majeure (making physical performance impossible); rather, it triggers such a sharp surge in operational costs, freight costs, or maritime insurance premiums that the economic balance of the contract is fundamentally undermined.

3. Legal Implications and Resolution Mechanisms

In practice within the national and international energy sectors, the application of the principle of fundamental change of circumstances is generally implemented through the following mechanisms:

Adjustment Clause (Hardship/Price Adjustment Clause): Many of Pertamina's energy contracts explicitly incorporate mechanisms for adjusting prices or volumes in the event of geopolitical disruptions along major global energy routes.

Obligation to Renegotiate (Duty to Negotiate in Good Faith): Based on UNIDROIT principles, the aggrieved party is entitled to request a contract renegotiation without immediately and unilaterally terminating obligations.

Distinction from Force Majeure: It is important to note that the impact of geopolitical instability must be assessed on a case-by-case basis: whether it meets the elements of force majeure (if a port or route is completely closed and inaccessible) or falls within the realm of Rebus Sic Stantibus/Hardship (if the goods remain available, but costs and risks have surged to extreme levels beyond commercial reasonableness).

Geopolitical instability in the Middle East may be categorized as a fundamental change of circumstances if it meets the essential elements of the rebus sic stantibus doctrine—namely, a radical, unforeseen change that drastically alters the balance of obligations within PT Pertamina (Persero)'s procurement or upstream oil and gas contracts.

Legal doctrines in civil law jurisdictions recognize the clausula rebus sic stantibus. The meaning of clausula rebus sic stantibus—or, in full, omnis conventio intellegitur rebus sic stantibus—is literally that an agreement remains valid only if conditions persist as they were when the agreement was formed. In other words, if conditions change, the agreement ceases to be valid.

Regarding the Rebus Sic Stantibus principle found in the section titled "Hardship"—concerning contracts that must be observed—there are two fundamental provisions:

a) The binding character of the contract as the general rule.
b) The change in circumstances is relevant only to specific contracts (such as contracts where performance has not yet commenced or long-term contracts that remain in effect).

The risk arises from an event unforeseen by the parties. In the context of PT Pertamina's commercial law, it is important to distinguish this principle from Force Majeure:

Table 1. Difference With Rebus Sic Stantibus Vs Force Majeure

Parameter	Force Majeure	Rebus Sic Stantibus (Hardship)
Condition	Fulfillment of contractual obligations is completely impossible (impossible).	Contract performance remains possible, but becomes excessively onerous (excessively onerous).
Legal Impact	Temporary suspension or cancellation of obligations without compensation.	The right to propose contract renegotiation to restore contractual balance.
Pertamina Case Example	Tanker completely destroyed by a missile or supplier refinery completely burned down.	Shipping routes are significantly diverted, insurance costs increase by 400%, and oil prices surge drastically, disrupting the economic viability of the contract.

Not all conflicts in the Middle East automatically qualify for the application of the principle of the principle of boil sic stantibus. A new situation can be categorized as a fundamental change of circumstances if it meets the following indicators.

Table 2. Criteria for Applying the Rebus Sic Stantibus Principle to PT Pertamina Contracts

Criteria	**Explanation**	**Example in PT Pertamina Contract**
Extraordinary Change	Not a normal market fluctuation.	Closure of the Strait of Hormuz due to military conflict.
Unforeseeable	Could not reasonably be predicted when the contract was signed.	Outbreak of a regional war after the contract was signed.
Occurred After Contract Formation	The change arises during the period of contract performance.	A newly imposed international embargo.
Alters Contractual Balance	Performance becomes extremely burdensome or nearly impossible.	Shipping costs increase several-fold.
Not Caused by the Claiming Party	The change originates from external factors.	Geopolitical conflict between states.
Directly Related to the Contract Subject Matter	Affects the supply, delivery, or payment of oil.	Oil production stops due to attacks on energy facilities.

As a crude oil importer, PT Pertamina faces geopolitical risks inherent in international energy trade. However, a mere rise in oil prices is insufficient to be categorized as a "fundamental change of circumstances," as price volatility is a common characteristic of the oil industry and is generally factored into contracts. Conversely, if geopolitical instability results in:

a) a halt in oil production,
b) the closure of distribution routes,
c) export bans due to international sanctions,
d) or a drastic change in the costs and ability to execute the contract,

A. Middle East Geopolitical Indicators in PT Pertamina's Contracts

1) PT Pertamina (Persero) has strong ties to the Middle East through several strategic business units:
2) Pertamina Patra Niaga: Procurement of crude oil and fuel/LPG products.
3) Pertamina International Shipping (PIS): Global energy transportation and maritime logistics.
4) Pertamina Internasional EP (PIEP): Upstream oil and gas operations (such as in Basra, Iraq).

Indicators of geopolitical instability in the Middle East that could trigger the Rebus Sic Stantibus clause include:

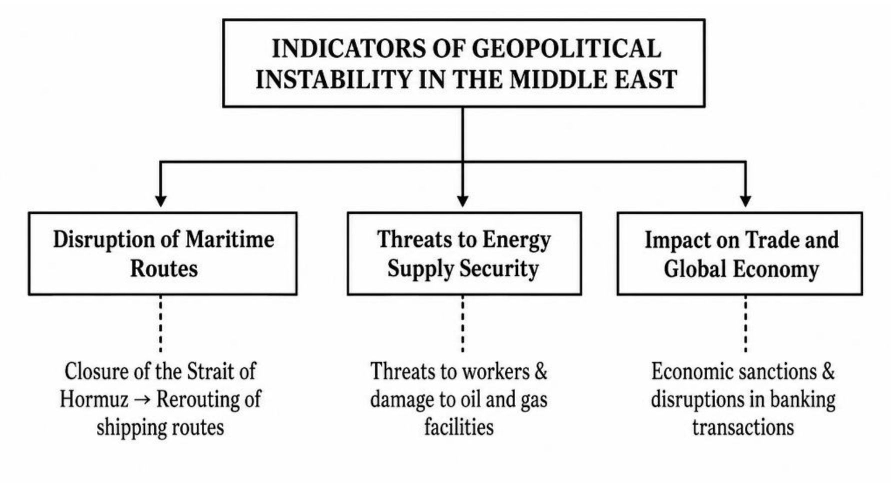
1) Closure or Restriction of Key Maritime Routes: Blockades of the Strait of Hormuz or the Red Sea forcing tankers to divert routes (e.g., around the Cape of Good Hope), thereby inflating fuel costs, war risk insurance premiums, and transit times.

2) Escalation of Physical Conflict / Open War: Attacks on refineries, oil and gas pipelines, or tankers in the Gulf region that threaten worker safety and cargo integrity.
3) Economic Embargoes and Banking Sanctions: Sudden international sanctions against producer nations or trading partners that hinder financial transactions or the legal receipt of commodities.

In the context of PT Pertamina's international contracts, geopolitical instability in the Middle East may be categorized as a fundamental change of circumstances if it meets the following indicators:

1) The occurrence of armed conflict or the escalation of war. 2) Disruptions to global energy supply chains.
2) Extreme oil price fluctuations.
3) Imposition of economic sanctions or international embargoes.
4) Changes in international regulations affecting energy trade.

The following are the analysis parameters for assessing whether the conditions for invoking the rebus sic stantibus principle in PT Pertamina's contracts have been met.



Picture 1 . Scheme Indicators Of Middle East Geopolitical Instability For Invoking The Rebus Sic Stantibus Clause

Application of the Rebus Sic Stantibus Principle in Crude Oil Sale and Purchase Agreements by PT Pertamina (Persero) Amidst Middle East Geopolitical Instability

The application of the rebus sic stantibus principle (fundamental change of circumstances) within the context of international commercial contracts—such as crude oil sale and purchase agreements entered into by PT Pertamina (Persero) amidst geopolitical instability in the Middle East—represents a highly crucial legal issue. From both theoretical and practical perspectives, this dynamic involves the intersection of civil law/international business contract law, customary international law, and risk mitigation clauses commonly adopted in the global energy industry.

1. Basic Concept of the Rebus Sic Stantibus Principle in Oil and Gas Contracts

Definition: Rebus sic stantibus is a legal doctrine stating that an agreement (typically within public international law or treaties) binds the parties based on the assumption that the circumstances existing at the time the agreement was concluded will persist. If an unforeseen and uncontrollable fundamental change of circumstances occurs, the performance of the agreement may be reviewed, suspended, or terminated.

Relevance in Commercial (Civil) Contracts: In strict civil law (including Indonesian contract law based on the Indonesian Civil Code/KUHPerdata), the rebus sic stantibus principle is not explicitly recognized in its pure form. Indonesian civil law instead recognizes the concept of force majeure (Articles 1244 and 1245 of the Civil Code) as well as the doctrine of extreme change of circumstances or extraordinary difficulty (hardship), which has been adopted through international commercial contract principles (such as the UNIDROIT Principles). In international crude oil sales and purchase agreements (SPAs), this principle is typically translated into concrete terms via a Hardship Clause or a Force Majeure Clause, rather than relying directly on the international law doctrine of rebus sic stantibus (such as Article 62 of the 1969 Vienna Convention), given that contracts between Pertamina and foreign suppliers are governed by private international law.

2. Manifestation of Middle East Geopolitical Instability on Pertamina's Contracts

Conflict and instability in the Middle East—ranging from military escalations and threats to close vital distribution routes like the Strait of Hormuz to disruptions in refinery production within supplier nations—have a direct impact on Pertamina's energy supply chain: Surge in Transportation and Logistics Costs: Rerouting oil tankers to avoid conflict zones (e.g., taking longer alternative routes) triggers spikes in freight costs and maritime insurance premiums. Supply Chain Disruption: The risk of a halt in the physical supply of crude oil from Middle Eastern refineries compels Pertamina to seek alternative sources of supply (alternative sourcing/import diversification).

3. Legal Analysis: Can Pertamina Invoke This Principle?

If Pertamina intends to rely on the grounds of a fundamental change in circumstances (rebus sic stantibus or hardship) regarding its crude oil sales and purchase contracts, several legal parameters must be met:
Unforeseeable Nature of the Change (Unforeseeability):
Turmoil in the Middle East is often chronic in nature. However, if geopolitical escalation reaches an unprecedented extreme (e.g., the permanent or prolonged total closure of a major international maritime route), such conditions could be categorized as events falling outside the reasonable assumptions held at the time the contract was signed. Collapse of Contractual Balance (Fundamental Imbalance):

This doctrine may be invoked if the performance of the contract—or the delivery of crude oil under the initial pricing terms—becomes extremely burdensome (causing "extreme hardship") for one party to the point of undermining the commercial essence of the agreement, even though physical delivery remains possible.

Contract Renegotiation Mechanism:

Based on the principle of hardship (a modern contractual adaptation of the rebus sic stantibus doctrine), the aggrieved party (which could be either Pertamina or its partner) cannot simply terminate the contract unilaterally. The standard legal requirement is to submit a request to renegotiate the contract—honestly and in good faith—in order to adjust volumes, pricing formulas, or delivery schedules.

4. Pertamina's Mitigation Strategies and Business Practices

Rather than rigidly relying on legal disputes or contract termination based on the doctrine of rebus sic stantibus—which entails lengthy and risky international arbitration—Pertamina generally employs the following contractual and operational mitigation measures:

Invocation of Force Majeure/Hardship Clauses in Contracts:

Pertamina's standard crude oil contracts with National Oil Companies (NOCs) or global traders typically include specific clauses addressing geopolitical disruptions, war, or actions by authorities, allowing for the temporary suspension of obligations without penalty.

Portfolio Diversification and Supply Source Flexibility:

Pertamina mitigates risk by shifting or expanding its supply scope beyond the Middle East (e.g., securing cargoes from Africa, the United States, or Southeast Asia) and optimizing domestic crude oil production (lifting).

Corporate-State Coordination:

Given that Pertamina is a State-Owned Enterprise (SOE) charged with the mandate of ensuring national energy security, the resolution of geopolitical contractual challenges is often pursued through high-level business diplomacy, fully supported by strategic coordination with the Ministry of Foreign Affairs and relevant government agencies.

CONCLUSIONS AND RECOMMENDATIONS

1. Indicators of geopolitical instability in the Middle East may be categorized as a "Fundamental Change of Circumstances" if they meet the criteria of being extraordinary and unforeseen, occurring after the contract was formed, lying beyond the parties' control, and fundamentally altering the balance of rights and obligations within the contract. In the context of crude oil sale and purchase agreements involving PT Pertamina (Persero), such indicators include armed conflicts disrupting oil production, the closure of strategic shipping lanes, international embargoes and sanctions, political regime changes affecting energy exports, extreme spikes in logistics and insurance costs, global oil supply disruptions, and changes in international regulations that directly impact contract performance.
2. The application of the rebus sic stantibus principle to crude oil sale and purchase agreements involving PT Pertamina (Persero) is permissible if the

geopolitical instability in the Middle East meets the criteria of a fundamental and unforeseen change of circumstances that lies beyond the parties' control and radically alters the balance of contract performance. This principle does not serve as an automatic ground for contract termination; rather, it is a legal instrument aimed at maintaining fairness and balance in the contractual relationship through renegotiation, contract adjustment, or dispute resolution in accordance with agreed-upon mechanisms. Consequently, the application of the rebus sic stantibus principle must still take into account the principle of pacta sunt servanda, good faith, and the specific provisions of the contract and applicable law.

Recommendations

Recommendations that may be included in the conclusion of the research journal, based on the problem formulation:

1. It is recommended that PT Pertamina (Persero) draft crude oil sale and purchase agreements that are more adaptable to international geopolitical dynamics by incorporating hardship clauses, force majeure clauses, and renegotiation mechanisms.
2. It is recommended that policymakers and regulators draft guidelines or regulations providing clarity regarding the application of the rebus sic stantibus principle in international commercial contracts, particularly within the energy sector.
3. Energy sector business operators are advised to conduct periodic risk assessments regarding global geopolitical developments—particularly in the Middle East, a key global oil-supplying region. The findings of such assessments can serve as a basis for formulating strategies regarding contractual risk mitigation and the diversification of energy supply sources.
4. Parties drafting international contracts are advised to explicitly define within the contract those indicators of geopolitical instability that could potentially be categorized as a "Fundamental Change of Circumstances."
5. Academics and future researchers are encouraged to conduct further studies using empirical legal or comparative legal approaches to analyze the application of the Rebus Sic Stantibus principle in the resolution of energy contract disputes across various jurisdictions and international arbitration institutions.
6. Based on the research findings, it is concluded that not every instance of geopolitical instability in the Middle East automatically meets the criteria for a "Fundamental Change of Circumstances." Therefore, it is recommended that the Rebus Sic Stantibus principle be applied cautiously, taking into account whether the change is extraordinary, unforeseeable at the time of contract formation, beyond the parties' control, and significantly alters the contractual balance. This approach maintains a balance between the principle of pacta sunt servanda and the principle of fairness in the performance of international contracts.

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