

## FOREWORDS

The Author would like to thank Allah SWT for His blessings and Grace that He has given so that the author is able to finish this thesis as an academic requirement to obtain a Master Degree in Law at the University of Pelita Harapan. Within this time, so many experiences and knowledge are gained by the Author in the making of this Thesis. Without the motivation, guidance, advice, and input from various people, this thesis may not be completed. On this occasion, the Author would like to thank all those who helped the Author in completing this Thesis, in particular to:

1. Prof. Dr. Bintan R. Saragih, SH., as Professor and Dean of the Faculty of Law, University of Pelita Harapan. Thank you for always being so friendly towards the Author;
2. Dr. Henry Soelistyo, S.H. LL.M, as Head of Master Program of Law of the University of Pelita Harapan and who also have given the time to provide advice and guidance to the Author for the course of subjects;
3. Dr. Rusli Pandika, S.H. LL.M, as my Advisor for guiding and supporting me through the writing process of this Thesis; your discussion, ideas and feedback has been absolutely helpful.
4. The entire faculty of law lecturer and staffs that I cannot mention here one by one, I would like to thank the lecturers who have to taught and shared knowledge to me during the study period and to the staffs in both administrative and technical affairs;

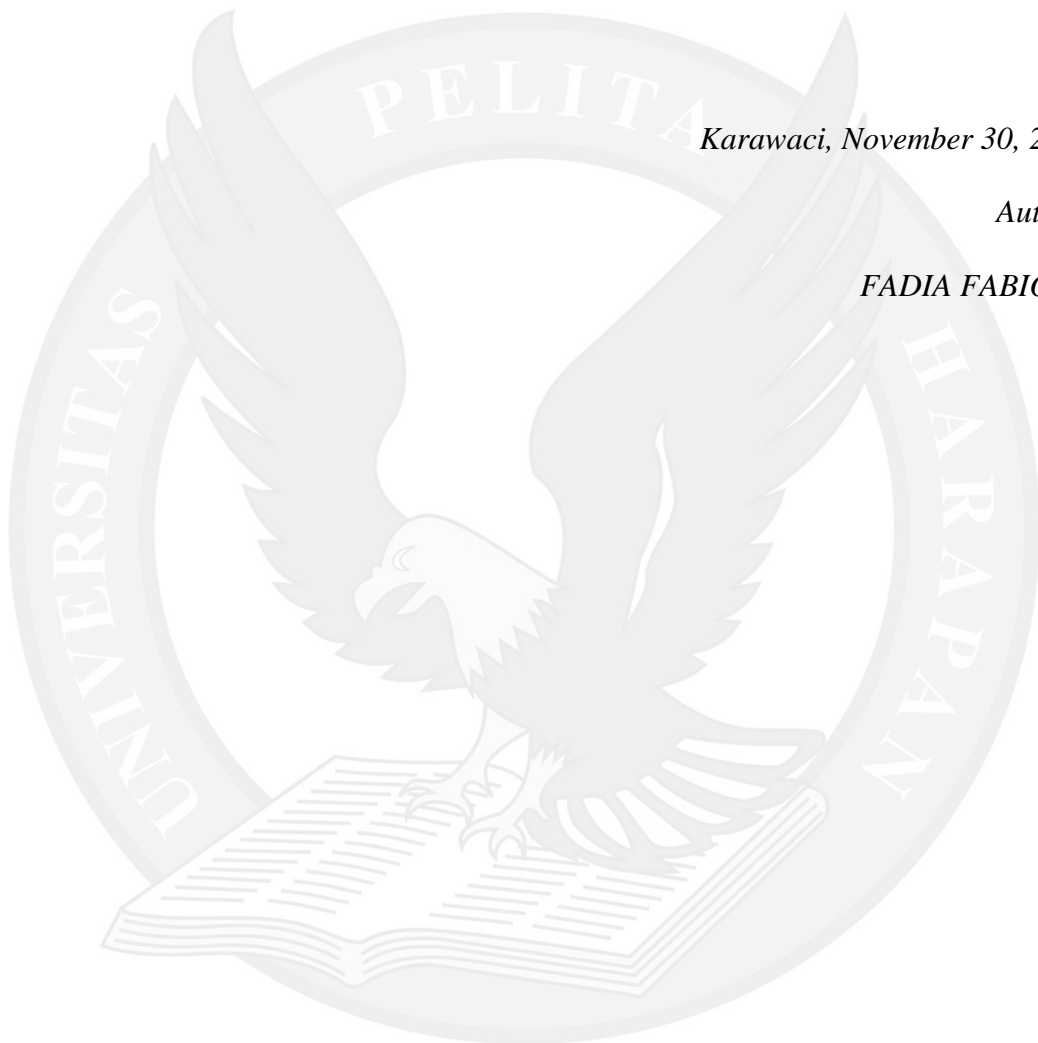
5. I would especially like to thank my amazing husband, Mukti Adi Prabowo and my two wonderful kids, Talitha Assanta Zahira and Tiegan Arganta Zavier, for your unconditional love, support, and constant encouragement I have gotten over the years. I undoubtedly could not have done this without you and I dedicated this Thesis for you guys!
6. My beloved family papa, mama, my sister Fila Faliona, my niece Adzra Rayhana Kartiwa and my nephew Iffat Marufiza Kartiwa for their constant love and support. I love them so much, and I would not have made it this far without them. My sister has been my best friend all my life and I love her dearly and thank her for all her advice and support.
7. My fellow graduates students of MTIC Program, the High Five team, Mr. Kevin Sumawan, Mr. Indra Alamsyah, Mr. Danu Ega and Mr. Toto Edrinal Sebayang for the friendship and support along the way, I am very grateful for that.
8. Mr. Makky Ananda as General Counsel and Mr. Aris Munandar as VP Commercial, Marketing & Business Planning of Kangean Energy Indonesia Ltd. for being a great source of knowledge, materials, and information on issue related to law, petroleum industry, petroleum investment, economic and fiscal policies. Your help both research as well as on my career have been invaluable.
9. My colleagues in Kangean Energy Indonesia Ltd. Legal Department, Ms. Irma Yunita, Ms. Yulia Rachmavianti, Mr. Helmi Yulianto and Mr. Suryanto Hadi Wibowo. All of you have been there to support me.

Finally, with all the love and humility, the Author realizes that this Thesis is still far from perfect. Therefore, criticism and suggestions from readers would be very beneficial for the Author. Hopefully, this Thesis can contribute positively to academic readers and society.

*Karawaci, November 30, 2017*

*Author,*

**FADIA FABIONA**

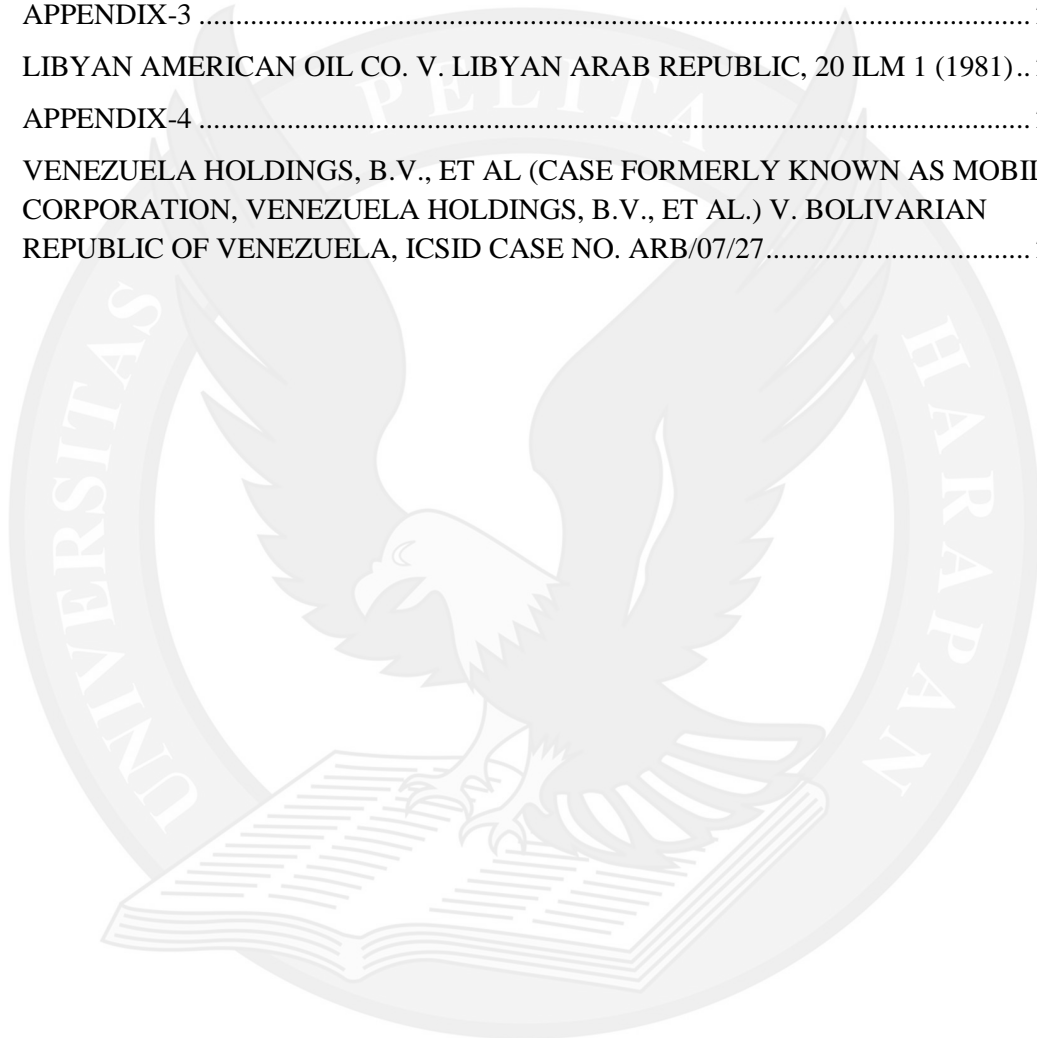


## Table of Contents

ABRREVIATIONS .....	xii
CHAPTER I.....	1
INTRODUCTION .....	1
1. Background.....	1
2. Formulation of Issue .....	12
3. Objective of Research.....	12
4. Benefit of Research.....	12
5. Systematic of Writing .....	13
CHAPTER II.....	16
LITERATURE REVIEW .....	16
2.1.Theoretical Framework.....	16
2.1.1 Political Risks .....	16
2.1.2 Sovereignty over Natural Resources.....	36
2.1.3. Pacta Sunt Servanda.....	48
2.1.4. Petroleum Investment .....	68
2.1.4.1. The Parties: Host States and investors .....	70
2.1.4.2. The Nature of the Investment.....	80
2.1.4.3. Types of Petroleum Agreement .....	82
2.1.5. Stabilization Clause .....	98
2.1.5.1. Stabilization by Contract.....	99
2.1.5.1.1. Types of Stabilization Clauses.....	103
2.1.5.1.2. Example of Stabilization Clause .....	109
2.1.5.1.3. The Enforcement of Stabilization Clause .....	112
2.1.5.2. Stabilization by Treaty .....	114
2.1.5.2.1. BITs.....	118
2.1.5.2.2. Regional and Multilateral Investment Treaties (MITs).....	120
2.1.5.2.3. Stabilization Tools in Investment Treaty .....	126
2.1.5.3. The Need of Stabilization in Petroleum Investment .....	129
2.1.5.4. Purpose of Stabilization Clause .....	134
2.1.5.5. International Investment Arbitration.....	137
2.2.Conceptual Framework.....	141
2.2.1. Political Risks .....	141

2.2.2. State’s Sovereignty .....	142
2.2.3. The Sanctity of Contract .....	142
2.2.4. Stabilization Clause .....	142
2.2.5. ICSID .....	143
CHAPTER III .....	144
RESEARCH METHODS .....	144
3.1.Types of Research.....	146
3.2.Research Materials and Research Procedures .....	147
3.2.1. Primary Legal Material .....	147
3.2.2. Secondary Legal Material .....	148
3.2.3. Non-Legal Material.....	149
3.3.Nature of Analysis .....	149
3.3.1. Approach / Instrument Analysis .....	149
3.3.2. Qualitative Analysis.....	151
3.4.Obstacles and Countermeasures .....	151
3.4.1. Difficulties .....	151
3.4.2. Countermeasures.....	152
CHAPTER IV .....	153
RESULT AND ANALYSIS OF RESEARCH .....	153
4.1 International Arbitration Views on State’s Sovereignty over Sanctity of the Contract .....	153
4.1.1. The Libyan Cases.....	158
4.1.1.1. BP Exploration Company (Libya) Ltd. v. Government of Libya Arab Republic .....	159
4.1.1.2. TOPCO v. Government of Libya Arab Republic.....	163
4.1.1.3. LIAMCO v. Government of Libya Arab Republic .....	168
4.1.2. The Venezuela Case: Venezuela Holdings, B.V, Mobil Cerro Negro Holding, Ltd., Mobil Venezolana de Petroleos Holdings, Inc., v. The Bolivarian Republic of Venezuela.....	173
4.1.3. Arbitration Award Views on Stabilization Clause.....	178
4.2 Determine the Model of Stabilisation Clause that Able to Promote Investors and Host States Interests.....	184
CHAPTER V .....	190
CONCLUSIONS & SUGGESTIONS .....	190
5.1. Conclusion.....	190
5.2. Suggestions.....	191

BIBLIOGRAPHY .....	193
APPENDIX-1 .....	198
BP EXPLORATION CO (LIBYA) V. LIBYAN ARAB REPUBLIC, 53 ILR 297 (1979) .....	198
APPENDIX-2 .....	202
TEXAS OVERSEAS PETROLEUM COMPANY AND CALIFORNIA ASIATIC OIL COMPANY V. GOVERNMENT OF THE LIBYAN ARAB REPUBLIC, 17 ILM (1978) .....	202
APPENDIX-3 .....	204
LIBYAN AMERICAN OIL CO. V. LIBYAN ARAB REPUBLIC, 20 ILM 1 (1981)..	204
APPENDIX-4 .....	211
VENEZUELA HOLDINGS, B.V., ET AL (CASE FORMERLY KNOWN AS MOBIL CORPORATION, VENEZUELA HOLDINGS, B.V., ET AL.) V. BOLIVARIAN REPUBLIC OF VENEZUELA, ICSID CASE NO. ARB/07/27.....	211



## ABBREVIATIONS

BAPPENAS	Badan Perencanaan Pembangunan Nasional
BC	Before Century
BITs	Bilateral Investment Treaties
BP	British Petroleum
CEO	Chief Executive Officer
FCNs	Friendship, Commerce and Navigation Treaties
FDI	Foreign Direct Investment
GDP	Gross Domestic Products
ICC	International Chambers of Commerce
ICJ	International Court of Justice
ICSID	International Centre for the Settlement of Investment Disputes
IAs	International Investment Agreements
ILC	International Law Commission
IMF	International Monetary Fund
IOC	International Oil Company
LIAMCO	Libyan American Oil Co.
MITs	Multilateral Investment Treaties
NAFTA	North American FTAs
PDVSA	Petróleos de Venezuela, S.A.
PSC	Production Sharing Contract
TOPCO	Texaco Overseas Oil Petroleum Co/California Asiatic Oil Co
UNCITRAL	United Nations Centre for Investment Trade and Law
UNGA	United Nations General Assembly
VCLT	Vienna Convention on the Law of Treaties