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OPEN PEER REVIEW

Analysis of the Lawsuit for Invalidation of the Condition Waiving the Principal's Right to Dismiss the Attorney within a Separate Binding Contract, Incorporated in Official Powers of Attorney Due to the Non-Realization of the Separate Binding Contract, with Emphasis on Judicial Practice

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1. Round 1

1.1. Reviewer 1

Reviewer:

The authors repeatedly assert that "the mere inclusion of this phrase in official powers of attorney… cannot be regarded as proof of the realization of such a contract," but the evidentiary basis of this claim remains underdeveloped. The manuscript should more rigorously distinguish between the evidentiary force of an official instrument, the authenticity of its text, the truth of declarations recorded therein, and the external realization of the alleged separate contract. Without this distinction, the central thesis risks appearing to contradict the formal probative value of official instruments.

The article should clarify the exact legal nature of the phrase "within a separate binding contract." At several points, the manuscript treats this phrase as a condition embedded in the power of attorney, while elsewhere it treats the separate binding contract as an independent innominate contract governed by Article 10. The authors should explain whether the official power of attorney merely reports the prior existence of another contract, incorporates the separate contract by reference, or itself evidences the formation of that contract.

In the section "First Clause: Concept," the authors write that examining the concepts of "condition, waiver, and right of dismissal" is "beyond the scope of this article." This is problematic because these concepts are central to the article's thesis. The manuscript should not avoid defining the core legal elements on which its argument depends. At minimum, the authors should provide concise doctrinal definitions of "condition," "waiver," "right of dismissal," and "non-dismissal condition," and distinguish waiver from limitation, suspension, and contractual undertaking not to dismiss.

The section "The Right to Seek Justice and Petition for Redress" provides long definitions of "action," but it should distinguish between admissibility of a lawsuit and substantive success on the merits. The fact that Article 34 of the Constitution recognizes the right to seek justice does not by itself prove that this particular claim should be accepted substantively. The authors should clarify that the right to bring the action is procedural, whereas invalidation of the condition depends on evidentiary proof of non-realization of the separate binding contract.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The discussion of validity under Articles 232, 233, and 234 is useful, but the analysis remains largely descriptive. The authors should more explicitly classify the disputed clause as a condition of result, condition of act, negative undertaking, waiver of right, or ancillary contractual obligation. The legal consequences differ depending on the classification, especially regarding nullity, enforceability, breach, damages, and the possibility of dismissal notwithstanding contractual liability.

The manuscript should develop the tension between Articles 679 and 959 of the Civil Code more deeply. The authors state that Article 679 is not inconsistent with Article 959 and that implied abrogation is unfounded, but this conclusion is asserted rather than fully argued. The article should explain why waiver of the right to dismiss an attorney in a particular agency does not amount to a prohibited general deprivation of civil rights, and should specify the limits of such waiver in terms of subject matter, duration, scope, and public order.

The paragraph discussing Katouzian's view that a non-dismissal condition is valid for a specific act or limited period but conflicts with public order where the agency covers all affairs without a fixed term is very important, yet the authors quickly state that they accept the second view favoring validity. This transition is too abrupt. The manuscript should reconcile its accepted view with the limiting criteria of specificity and duration, because unlimited and general powers of attorney are among the most practically dangerous contexts for abuse.

The section on the "separate binding contract" defines contract and transaction at length but does not sufficiently address what evidence can prove the existence of such a contract. Since the article's central thesis concerns non-realization of the separate binding contract, the authors should discuss admissible evidence, including written agreement, notarial record, witness testimony, conduct of the parties, payment, possession, acknowledgment, and circumstantial evidence, as well as the evidentiary hierarchy applicable in Iranian civil procedure.

The "prohibition view" is presented as relying on contractual freedom, estoppel, official instruments, and public order, but the authors should strengthen the exposition of this opposing view before refuting it. For instance, the paragraph stating that "the condition waiving the right of dismissal inserted in official powers of attorney by the principal's own will is valid, effective, and binding" should be supported with stronger doctrinal sources and possible judicial examples. A more robust opposing argument would make the authors' preferred position more persuasive.

The discussion of estoppel requires refinement. The authors rely on the concept that a person cannot contradict a previous admission, but the manuscript should distinguish between admission of a legal fact, admission of a legal conclusion, mistaken declaration, sham declaration, absence of intention, and formal notarial wording inserted by default. If the phrase is pre-drafted by notarial offices and not the result of a real separate agreement, the operation of estoppel is not straightforward and must be analyzed with greater precision.

The article's treatment of public order is too general. The paragraph defining public order and economic public order does not adequately explain how accepting or rejecting the action affects transactional security, notarial reliability, protection of principals, prevention of fraud, or stability of property transfers. The authors should add a more concrete policy analysis showing why their preferred view promotes public order rather than destabilizing official powers of attorney.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.