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An Analysis of the Jurisprudential Foundations of Regulations Restricting Proprietary Rights over Land and Real Property in the Iranian Criminal Legal System

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Private ownership is one of the fundamental rights of individuals and an institution protected under Imāmī jurisprudence and the Iranian legal system. Nevertheless, the exercise of proprietary rights over land and real property is neither absolute nor unlimited because of its connection with natural resources, environmental protection, and the public interest. The principal issue addressed in the present study is the jurisprudential foundations of regulations restricting proprietary rights and the extent to which these foundations can justify the criminalization of owners' conduct and the imposition of criminal sanctions. The study adopts a jurisprudential–legal approach and employs a descriptive–analytical method. Its data were collected from sources of Imāmī jurisprudence, relevant laws and regulations, and legal scholarship. The findings indicate that the rule of dominion (qāʿidat al-taslīṭ) establishes, as a general principle, the owner's authority to lawfully possess, use, and benefit from property; however, principles such as the no-harm rule (lā ḍarar), preservation of social order, public interest, and the powers of the Islamic governing authority constitute the principal jurisprudential grounds for restricting proprietary rights. Nevertheless, the legitimacy of restrictions on ownership does not necessarily entail the legitimacy of criminalization and punishment. Recourse to criminal law is defensible only where the owner's conduct causes serious and demonstrable harm or risk, possesses sufficient criminal blameworthiness, and administrative and civil sanctions are inadequate to prevent or remedy its consequences. The findings further demonstrate that the fragmentation of regulations, ambiguity in the boundary between criminal offenses and administrative violations, the expansive interpretation of public interest, and the disproportionality of certain sanctions are among the most significant challenges in this field. Accordingly, criminal intervention should be confined to intentional, serious, repeated conduct that causes substantial harm or creates a serious risk, while administrative and civil-law instruments and mechanisms for restoration of the prior state should be prioritized in other cases. Ultimately, the study emphasizes the need to give precedence to preventive approaches and non-criminal measures, clarify the constituent elements of offenses, observe the principle of proportionality, and establish an appropriate balance between the protection of private property and the safeguarding of public interests.

Keywords: *proprietary rights, land and real property, rule of dominion (taslīṭ), no-harm rule (lā ḍarar), criminal law.*

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1. Introduction

Private ownership is regarded as one of the most fundamental institutions of jurisprudence and law and is also recognized under Article 47 of the Constitution of the Islamic Republic of Iran. In Imāmī jurisprudence, legitimate ownership is protected on the basis of the rule of dominion (*qāʿidat al-taslīṭ*). The maxim "people have dominion over their property" (*al-nās musallaṭūn ʿalā amwālihim*) signifies that, as a general principle, an owner has authority over his or her property. This foundation has also been accepted in Iranian law, and Article 30 of the Civil Code recognizes the owner's authority to undertake any form of possession and enjoyment, except where otherwise provided by law.

Nevertheless, ownership in Imāmī jurisprudence and the Iranian legal system is not regarded as an absolute, unlimited right independent of social interests. Proprietary powers are protected only insofar as their exercise does not cause harm to others, disrupt public order, infringe the rights of third parties, or threaten the fundamental interests of society. From this perspective, the rule of dominion is interpreted alongside other principles, including the no-harm rule, the prohibition against causing harm to others, preservation of social order, and observance of the public interest. Accordingly, an owner cannot, merely by invoking private ownership, regard every harmful form of possession or exploitation as legitimate. The no-harm rule is among the most important foundations restricting an owner's powers and, where the owner's use of property causes unjustified harm to others or to society, it limits the otherwise general application of the rule of dominion (Mohaghegh Damad, 2022).

Article 40 of the Constitution and Article 132 of the Civil Code recognize limitations on an owner's proprietary rights in order to prevent harm to others and protect the public interest. The significance of this issue is greater with respect to land and real property than movable property, because land and real property are closely connected with public order and social interests. For this reason, the Iranian legislature has enacted numerous regulations concerning land and real property. Some of these regulations merely establish administrative or civil restrictions, whereas others, by prescribing punishment, bring the owner's conduct within the domain of criminal law. Accordingly, an owner may be prosecuted for changing land use, undertaking construction without authorization, unlawfully exploiting resources located on the property, or destroying trees and green spaces. The expansion of criminal intervention in this field raises the fundamental question of the jurisprudential grounds upon which restrictions on proprietary rights and the punishment of owners are based, and whether principles such as the no-harm rule and public interest can justify all forms of criminal intervention. The legislature may resort to criminal intervention with respect to particular conduct only when that conduct results in serious harm to members of society. Accordingly, under the no-harm rule, the greater the severity of the harm inflicted, the more justifiable the use of criminal-law instruments to restrict individual rights and freedoms becomes (Afzalian et al., 2020). The mere existence of a public interest is not necessarily sufficient to justify criminalization; rather, the necessity, proportionality, and effectiveness of the criminal sanction must also be established.

A review of previous studies shows that the existing literature has primarily addressed particular manifestations of restrictions on proprietary rights, such as changes in the use of agricultural lands, acquisition of property for public projects, building violations, or restrictions arising from municipal regulations. Some studies have also examined the relationship between the rule of dominion and the no-harm rule; however, the aggregate jurisprudential foundations of criminal regulations restricting proprietary rights over land and real property have rarely been analyzed within a coherent framework. Furthermore, many studies have not precisely distinguished between the legitimacy of restricting ownership as such and the legitimacy of employing criminal punishment. The rule of dominion grants owners the authority to undertake all forms of material and legal disposition with respect to their property. At the same time, the requirements of urban planning necessitate that municipalities and other executive bodies take possession of privately owned properties for the implementation of public and urban-development projects (Doustmohammadi, 2021). This is while, despite the necessity of restricting proprietary possession in certain circumstances, there is often no need to enact criminal regulations, and administrative or civil sanctions may suffice.

Accordingly, the present article, adopting a jurisprudential–legal character within the framework of criminal law, analyzes the jurisprudential foundations of regulations restricting proprietary rights over land and real property in the Iranian criminal legal system. The study employs a descriptive–analytical method, and the required data were collected through examination of jurisprudential sources, legal scholarship, relevant laws and regulations, and scientific research. The principal issue is to determine the conditions under which jurisprudential rules restricting ownership may serve as a basis for criminal intervention and to identify the legitimate limits of such intervention. The study proceeds from the fundamental assumption that the no-harm rule, preservation of social order, and priority of the public interest justify the principle of restricting certain proprietary powers, whereas resort to criminal sanctions is legitimate only where the owner's conduct causes significant and demonstrable harm to the rights of individuals or the public interest and civil and administrative sanctions are insufficient to prevent such harm. Clarifying these criteria may help establish an appropriate balance between the protection of private ownership and the safeguarding of public interests.

2. Conceptual and Jurisprudential Foundations of Restricting Proprietary Rights over Land and Real Property

Proprietary rights are among the most fundamental rights of individuals in the Iranian jurisprudential and legal systems, and their protection plays an important role in ensuring economic independence, transactional stability, and legal certainty within society. Nevertheless, protection of private ownership does not entail recognition of an unlimited power of the owner to engage in every form of possession or exploitation. In Imāmī jurisprudence, the principle of an owner's dominion over property is interpreted alongside such principles as the no-harm rule, preservation of social order, observance of public interests, and the powers of the Islamic governing authority. Accordingly, although the general principle is that the owner is free to use land and real property, where the manner in which this right is exercised harms the rights of individuals, public resources, or the fundamental interests of society, certain proprietary powers may be restricted. Analysis of the legitimacy of regulations restricting ownership therefore requires, first, clarification of the concept of proprietary rights and the scope of the owner's powers; second, examination of the status of the rule of dominion; and, finally, analysis of the jurisprudential rules that justify restrictions on ownership.

2.1. The Concept of Proprietary Rights and the Scope of the Owner's Powers in Imāmī Jurisprudence

In Imāmī jurisprudence, ownership denotes a legally and religiously recognized form of exclusivity and authority that arises for a person through one of the legitimate means of acquisition, such as contract, inheritance, appropriation, or revival of land. The principal consequence of this exclusivity is the owner's entitlement to possess and use the property and the prohibition against interference by others. In *Sharāʾiʿ al-Islām fī Masāʾil al-Ḥalāl wa al-Ḥarām*, al-Muḥaqqiq al-Ḥillī analyzes the effects of ownership and individuals' entitlements to property and usufruct in the chapters on transactions and leases on the basis of legally recognized exclusivity and the authority arising from it (Al-Hilli, 1988). This perspective demonstrates that, in Imāmī jurisprudence, ownership is not merely a material relationship with property but rather a normative legal status that enables the owner to assert claims, derive benefits, and prevent interference by others.

In Iranian law, ownership is the most complete real right and is defined as "a permanent right by virtue of which a person may, within the limits of the law, appropriate possession of property to himself or herself and enjoy all of its benefits." The holder of this right is, in principle, entitled to use, exploit, and transfer the property. Nevertheless, these powers are exercised within the framework of the law and with due regard for the rights of others, and ownership alone does not authorize every harmful act or any conduct contrary to public order (Katouzian, 2007).

Proprietary rights constitute a broader concept than ownership itself and encompass the set of rights, powers, and privileges arising from the ownership relationship. The right to construct a building, determine the manner in which property is used, exploit the benefits of land, transfer the property itself or its usufruct, lease, mortgage, subdivide, consolidate, and prevent possession by others are among the most significant manifestations of these rights. With respect to land and real property, the scope of ownership may extend to the surface of the land, the space above it, and subterranean areas; however, this scope is affected by regulations governing urban planning, natural resources, water, mines, and the environment. Consequently, a landowner is not necessarily the owner of all natural and public resources located within the boundaries of the property, nor is the owner necessarily authorized to exploit such resources in any manner whatsoever.

In *Jawāhir al-Kalām fī Sharḥ Sharāʾiʿ al-Islām*, ownership and the owner's authority are invoked as established principles across various areas of jurisprudence. Al-Najafī regards the rule of the owner's dominion as a principle from which no departure is permissible, in cases of doubt, without valid evidence (Al-Najafi, 1984). On this basis, the starting point in proprietary relations is the owner's freedom and respect for the owner's authority, while any restriction must rest upon a clear legal or jurisprudential basis. Nevertheless, the same work indicates that an owner's dominion is exercised within the framework of religious rules and that ownership does not render legitimate conduct that constitutes a prohibited act, causes harm, or infringes the rights of another.

Accordingly, a distinction must be drawn between ownership itself and the manner in which rights arising from ownership are exercised. A person's ownership of land may be entirely valid while a particular use of that land, such as a harmful change of use, drilling a well without regard for public rights, or constructing an unsafe building, may be restricted. In such cases, ownership itself is not extinguished; rather, one mode of exercising ownership is subjected to legal regulation. This situation differs from expropriation, because in expropriation the ownership right itself is taken from the owner, whereas in the restriction of ownership, the proprietary relationship remains intact and only the scope of certain powers is limited. The legitimacy of such restrictions depends upon the existence of a valid basis, social necessity, and observance of proportionality.

2.2. The Rule of Dominion and Its Role in Protecting Proprietary Rights

The rule of dominion is among the most important jurisprudential rules protecting private ownership. Its substance is expressed in the well-known maxim "people have dominion over their property" (*al-nās musallaṭūn ʿalā amwālihim*), which denotes the authority of individuals to administer, possess, and exploit their own property. Under this rule, the owner enjoys dominion over his or her property within the limits of Islamic law, and private persons or public institutions may not interfere with that property without the owner's consent or a valid legal basis. In this respect, the rule of dominion constitutes a jurisprudential foundation for freedom of transactions, the validity of contracts, the economic exploitation of property, and the prohibition against interference with legitimate ownership.

In *Kitāb al-Makāsib*, Shaykh al-Anṣārī, when examining the scope of the rule of dominion, emphasizes that the rule recognizes individuals' authority over their property but does not mean that they possess authority over the rules of Islamic law. In other words, an owner may undertake any disposition that is intrinsically permissible under Islamic law, but cannot invoke ownership to render permissible an act that is religiously prohibited. Consequently, the general application of the rule of dominion operates from the outset only within the sphere of legitimate and permissible dispositions and does not encompass prohibited, harmful, or infringing conduct (Al-Ansari, 1995).

At the same time, prohibiting an owner's disposition must itself rest upon clear and valid evidence, because the general principle is the continuation of the owner's dominion, while restriction is exceptional in nature. Imam Khomeini likewise regards dominion over property as a rationally recognized rule from which any departure must possess sufficient religious and rational justification (Khomeini, 2000).

This analysis is of fundamental importance in explaining regulations restricting proprietary rights. The rule of dominion permits an owner to determine the ordinary use of his or her land and property; however, where such use conflicts with the rights of others, public health, or the vital resources of society, the owner cannot rely solely upon dominion over the property. At the same time, restrictions on the owner's rights must not be imposed extensively or without criteria, because continuation of the owner's dominion is the general principle, and any departure from that principle requires a clear justification.

Consequently, the rule of dominion has two important effects: first, it establishes the principle of the owner's freedom to make legitimate use of his or her property; second, it requires the legislature and public institutions to provide a clear, necessary, and proportionate basis for every restriction on proprietary rights. The rule does not prevent legal regulation of ownership, but it precludes intervention in proprietary rights that is unprincipled, unpredictable, or excessive in relation to necessity.

2.3. Jurisprudential Rules and Foundations Governing Restrictions on Proprietary Rights

The principal jurisprudential foundation for restricting proprietary rights is the no-harm rule. According to this rule, no right or religious rule may be transformed into an instrument for imposing unjustified harm upon others. In the field of ownership, where an owner's use of land or real property causes significant harm to neighbors, public resources, or society, the general application of the rule of dominion becomes subject to limitation. Accordingly, an owner may not invoke his or her right to undertake a disposition that results in extensive destruction of natural resources, severe depletion of water resources, threats to public safety, or infringement of the rights of others.

In *ʿAwāʾid al-Ayyām min Muhimmāt Adillat al-Aḥkām*, al-Narāqī, in analyzing the traditions concerning the no-harm principle, interprets the negation of harm as indicating that harmful rules are not recognized in Islamic law. This interpretation makes it possible to prevent the exercise of a right where such exercise leads to abnormal or excessive harm. Nevertheless, not every reduction in benefit or every administrative restriction may be regarded as jurisprudential harm; rather, the harm must be significant, abnormal, and attributable to the owner's conduct (Al-Naraqi, 1996).

Sayyid Muḥammad Ḥasan Bojnourdī likewise treats the no-harm rule in *Al-Qawāʿid al-Fiqhiyya* as a governing rule capable of limiting the general application of certain primary rules and rights where actual harm exists. The work also examines harmful proprietary conduct and demonstrates that the relationship between the no-harm rule and the rule of dominion requires a balancing of the owner's harm against the harm suffered by another. Thus, restricting the owner is justified only where the harm inflicted upon another is real and substantial and preventing it does not expose the owner to a more severe and disproportionate harm (Bojnourdi, 1998).

The principle of preservation of social order constitutes another basis for regulating and restricting proprietary rights. The administration of society, protection of vital resources, organization of cities, and prevention of disorder in land use cannot be achieved without the establishment of general restrictions. In *Kitāb al-Bayʿ*, Imam Khomeini regards preservation of social order as an emphatic obligation and disruption of societal affairs as objectionable. This basis may justify regulations concerning construction, protection of agricultural lands, water resources, and natural resources, provided that the restriction is genuinely necessary to preserve social order and does not exceed what is required (Khomeini, 2000).

Public interest may also be analyzed within the same framework. Whenever a particular use of property by an owner conflicts with societal interests, the public interest may take precedence. Nevertheless, the priority of public interest does not constitute an unlimited license to disregard proprietary rights. Restrictions must be imposed only to the minimum extent necessary, prohibited conduct must be clearly defined, and where an owner is subjected to special and abnormal harm, appropriate compensation should be considered.

Taken together, the rule of dominion, the no-harm rule, preservation of social order, observance of public interests, and the powers of the Islamic governing authority form a balanced framework. The rule of dominion establishes the principle of protecting ownership and freedom of disposition, while the other rules permit regulation or restriction of this freedom in exceptional and necessary circumstances. Nevertheless, these foundations justify only the principle of restriction; for resort to criminal punishment to be legitimate, the necessity of intervention, severity of harm, proportionality of punishment, and insufficiency of civil and administrative sanctions must also be established independently.

3. Reflection of Jurisprudential Foundations in Regulations Restricting Proprietary Rights over Land and Real Property

The jurisprudential foundations for restricting proprietary rights acquire practical significance when reflected in laws and regulations governing the manner in which owners use land and real property. The Iranian legislature has imposed restrictions on owners' powers in areas such as preservation of agricultural land use, urban construction, exploitation of mines and water resources, protection of natural resources, and environmental conservation. The common feature of these regulations is that they respect private ownership while subjecting the manner of its exercise to legal regulation where it conflicts with the rights of others or the public interest. From a jurisprudential perspective, the legitimacy of these restrictions cannot be established merely by a general invocation of public interest; rather, the connection between each restriction and such principles as the no-harm rule, preservation of social order, and governmental authority to regulate public affairs must be specifically established. Furthermore, the legitimacy of a restriction itself does not necessarily entail the legitimacy of punishment, and the use of criminal sanctions requires proof of necessity, proportionality, and the insufficiency of non-criminal measures.

3.1. Jurisprudential Foundations of Restrictions on Changes in the Use of Agricultural Lands and Gardens

Under the rule of dominion, the owner of agricultural land or a garden is, in principle, entitled to exploit his or her property and determine the manner in which it is used. Nevertheless, agricultural land is not merely private property serving an individual function; it also forms part of the capacity for food production, preservation of rural employment, prevention of unbalanced urban expansion, and protection of the interests of future generations. Widespread conversion of such land may generate harmful effects extending beyond the boundaries of the property and reduce agricultural production capacity. Accordingly, the legislature has adopted preservation of agricultural and garden use as the general principle and has prohibited changes in use except in necessary cases and after obtaining authorization. Under the implementing regulations, an act constitutes an unauthorized change of use only where it prevents the continuation of production, exploitation, and agricultural activity. This restriction does not compel the owner to engage in agriculture; rather, it prevents the owner from undertaking activities incompatible with the agricultural use of the land. Restrictions on proprietary rights over agricultural land in the Iranian legal system have been imposed with the objective of preventing harm to others. By enacting such regulations, the legislature has provided a framework for implementation of the no-harm rule and has accorded it priority over the rule of dominion (Afzalian et al., 2020).

In *Al-Qawāʿid al-Fiqhiyya*, Sayyid Muḥammad Ḥasan Bojnourdī states that the no-harm rule governs legal authorities that ordinarily establish a right for an individual and that, where substantial harm occurs, the scope of exercising that right may be restricted (Bojnourdi, 1998). Accordingly, prohibition of a change in land use may be justified through this rule where the owner's conduct creates demonstrable public harm.

The second foundation is preservation of social order. In *Kitāb al-Bayʿ*, Imam Khomeini regards preservation of the social order as a fundamental matter and considers disruption of it among the circumstances toward which the government cannot remain indifferent (Khomeini, 2000). One instance in which reliance on the rule of dominion may result in infringement of social rights is the exercise by an individual of ownership over agricultural land, because the perpetrator of the offense of unauthorized conversion of agricultural land may, even indirectly, cause agricultural land to be destroyed and removed from the production cycle, thereby jeopardizing food security, self-sufficiency, and sustainable employment in rural communities. In such cases, where the owner's right conflicts with the rights of society and the exercise of proprietary dominion causes harm to society, social rights take precedence and the owner's right of possession and dominion must be restricted (Nazari & Ahmari, 2021).

3.2. Jurisprudential Foundations of Urban and Construction Restrictions and Restrictions on the Use of Real Property

Ownership of urban land or buildings does not confer unlimited authority to construct, determine density, or select the type of use. Comprehensive urban plans restrict the manner in which individuals exercise proprietary rights over their property by determining density and land use, the amount of occupiable surface area and space, methods of subdivision and consolidation, and allocation of public spaces. Such measures may restrict owners' rights to some extent; however, the Supreme Council of Urban Planning and Architecture may not adopt measures that extinguish proprietary rights (Doustmohammadi, 2021).

The no-harm rule constitutes the most important jurisprudential foundation for urban and construction restrictions. By constructing a building without observing technical and engineering standards and applicable regulations, an owner may cause harm to others. Therefore, requiring owners to comply with technical and land-use regulations is consistent with jurisprudential principles insofar as such requirements are intended to prevent harm and protect the rights and interests of others.

Where the basis of legislation simultaneously consists of responding to public needs and preserving public authority, that basis is the public interest. Municipal acquisition of property relates more closely to public interest than to the private interests of individuals (Abedi, 2023).

The apparently absolute character of ownership under Article 38 of the Civil Code concerning the airspace above and the subsurface beneath property has been qualified and restricted by numerous statutes, including municipal legislation. The need to secure social interests compels the government to restrict or extinguish private ownership that would otherwise be protected from interference under the rule of dominion (Sanchouli & Keikha, 2022).

Public benefit, the primacy of society, public rights, and preservation of social interests have all been invoked as grounds for restricting individuals' private rights; however, these grounds cannot justify unlawful restriction or infringement of private rights. Any restriction on the exercise of owners' lawful rights and any departure from the rule of dominion must be based on the rule of law (Hosseinpour et al., 2022).

An owner is entitled to determine the use of his or her property, and where an activity is undertaken without the required authorization, the owner may be subject to disciplinary and administrative sanctions. Accordingly, violation of land-use requirements does not, in itself and in every case, constitute a criminal offense. An owner who, without authorization, converts a building into a workshop or industrial premises falls within the scope of sanctions under municipal regulations; however, where the industrial activity causes air, water, or soil pollution, releases pollutants, threatens public health, or creates risks to public safety, the legislature, because of the importance of public interests and the no-harm rule, may classify such conduct as criminal and prescribe punishment. Article 688 of the Islamic Penal Code (Taʿzirat), which criminalizes any act recognized as a threat to public health, constitutes an example of a criminal restriction on proprietary rights.

3.3. Jurisprudential Foundations of Restrictions on the Exploitation of Natural Resources, Mines, Water Resources, and the Environment

Ownership of land does not necessarily entail absolute ownership of all natural resources located on or beneath it. Because of their public character and vital importance, natural resources, mines, water resources, and the environment are subject to special legal regimes in Iranian jurisprudence and law. Accordingly, a landowner cannot, merely by invoking ownership of the property, exploit a mine, groundwater, or natural resources located within the property without authorization. Article 45 of the Constitution likewise places *anfāl* and public wealth under the authority of the Islamic government so that they may be administered in accordance with the public interest.

The government may deprive individuals of private ownership over property whose benefits are public and universal where exclusive control or exploitation causes harm to the public; accordingly, mines should, in light of public interests, be regarded as *anfāl* and public wealth (Sanchouli & Keikha, 2022). Where an owner exploits a mine located within his or her land without authorization, such conduct is criminalized under Article 19 of the Mining Act and its subsequent amendments.

National development depends upon securing sustainable water supplies, of which groundwater constitutes one of the most important sources; accordingly, water resources must be protected through an approach grounded in public interests and the common good (Jafari Nadoushan, 2016). Excessive extraction of groundwater causes harm to others, and for this reason the legislature, under the Fair Water Distribution Act, has criminalized unauthorized exploitation of groundwater resources and prescribed punishment for such conduct.

Protection of the environment and green spaces rests upon the same foundations. Felling trees, destroying vegetation, or polluting water and soil may formally occur on the owner's private property, but the consequences do not remain confined to the owner and may cause harm to other members of society. The no-harm rule and public interests therefore justify restrictions on such conduct.

4. Jurisprudential and Criminal-Law Challenges of Regulations Restricting Proprietary Rights and Reform Measures

Recognition of the possibility of restricting proprietary rights where necessary does not mean that all prohibitions and punishments prescribed in laws concerning land and real property are legitimate. Under the Iranian criminal legal system, an owner may be subjected to criminal punishment for changing the use of agricultural land, drilling a well, extracting mineral materials, damaging the environment, or cutting trees. The common feature of these offenses is that, in many cases, the offender owns or has a lawful right to possess the land or structures concerned, yet the manner in which that right is exercised is criminalized because it conflicts with public interests or the rights of others and causes harm. Accordingly, the central issue is not criminal protection of ownership against interference by others, but rather the limits of governmental criminal intervention in the sphere of an owner's use and possession.

This situation requires a distinction among three stages: first, establishing the jurisprudential legitimacy of restricting proprietary conduct; second, establishing the necessity of transforming violation of that restriction into a criminal offense; and third, determining a sanction proportionate to the seriousness of the conduct. Principles such as the no-harm rule, preservation of social order, and public interest may justify preventing harmful exploitation, but the necessity of punishment—including imprisonment, flogging, or demolition and removal—cannot be inferred directly from those principles. Criminalization and punishment require supplementary grounds, including the severity of harm, breadth of consequences, intentionality of the offender, repetition of the conduct, and ineffectiveness of administrative and civil sanctions.

4.1. Jurisprudential Challenges in Restricting Proprietary Rights over Land and Real Property

The principal jurisprudential challenge lies in determining the relationship between the rule of dominion and the rules that restrict it. The rule of dominion establishes, as a general principle, the owner's authority to possess and enjoy property; in contrast, the no-harm rule, preservation of social order, and public interest make it possible to prohibit certain forms of possession or use. These rules can serve as a basis for criminal intervention only where their subject matter and conditions of application are precisely defined. Unrestrained expansion of any of these grounds would result in excessive restriction of proprietary rights and disregard of the rule of dominion. Taken together, these foundations support the conclusion that an owner's use of his or her property is the rule, restriction of such use is the exception, and the imposition of criminal punishment is an even more exceptional measure requiring statutory authorization.

4.1.1. Expansion of the Concept of Public Interest and Its Effects on the Rule of Dominion

Public interest is among the most important grounds invoked to justify criminalization of proprietary conduct. Preventing the destruction of agricultural land, ensuring construction in accordance with regulations, protecting water resources, and conserving mines and the environment are all matters of public interest. Nevertheless, the concept of public interest is so broad that, in the absence of clear criteria, it may become a basis for criminalizing every undesirable use of property. An example is Article 10 of the Act on the Preservation of the Use of Agricultural Lands and Gardens. This provision criminalizes, when undertaken without authorization, the construction of buildings, removal or addition of sand and gravel, and other acts deemed by the Ministry of Agriculture Jihad to constitute a change of land use. The implementing directive likewise identifies numerous acts as changes of use where they prevent exploitation and continuation of agricultural activity. Delegating determination of part of the scope of criminal conduct to an administrative authority, although intended to protect agricultural land, raises concerns from the perspective of the principle of legality of crimes and punishments, because the constituent elements of an offense must be determined by statute and an administrative directive should not expand the scope of criminal liability.

The interest in preserving agricultural land is not, by itself, sufficient to render every unauthorized act criminal. The legislature is justified in employing criminal-law instruments only where the protected subject matter possesses fundamental value for all citizens. The fundamental interests and values of society are those protected under the broader category of public interests. Conversion of agricultural land harms both the agricultural sector and the national environment, which are directly connected with food security, welfare, and public health and therefore fall within the public interests of society. In relation to conversion of agricultural land, the seriousness of the resulting harm must likewise be sufficient to justify intervention by criminal law (Afzalian et al., 2020).

In the field of urban green spaces, Article 6 of the Legal Bill on the Preservation and Expansion of Green Spaces in Cities prescribes, in addition to compensation for damage, a fine for intentional and unlawful cutting of trees covered by Article 1 of the relevant law or for causing their destruction and, where more than thirty trees are cut, imprisonment. This provision highlights the significance of both the type of conduct and the number of trees involved.

Accordingly, public interest may restrict the rule of dominion and provide grounds for criminalization only where the relevant interest is specific and fundamental, a direct relationship exists between the owner's conduct and the threat to that interest, and criminal regulations are enacted only where necessary.

4.1.2. Conflict Between the No-Harm Rule and Proprietary Powers

The no-harm rule is among the most important jurisprudential foundations for prohibiting harmful proprietary conduct. An owner may not invoke the rule of dominion in order to appropriate water belonging to another person, destroy water resources, expose public interests to danger, or otherwise harm others. Article 45 of the Fair Water Distribution Act criminalizes such conduct as intentionally and without authorization opening water gates or division structures, altering the distribution of water, unlawfully interfering with water-measuring equipment, disrupting the operation of water installations, transferring water without right or authorization to one's own channels or irrigation network, causing another person to be deprived of his or her lawful water entitlement, wasting water to another's detriment, taking another person's water without legal authorization, and drilling wells or qanats or exploiting water resources in violation of applicable regulations. In addition to restoration of the status quo ante and compensation for damage, the provision prescribes flogging or imprisonment. Thus, restoration, compensation, and criminal punishment are combined within a single provision.

Nevertheless, reliance on the no-harm rule is insufficient, by itself, to justify a criminal sanction. The rule may justify prohibiting the taking of another person's water, stopping harmful extraction, restoring the previous condition, and compensating damage, but it does not necessarily determine the imposition, type, or severity of punishment. It must be separately determined whether the conduct was intentional, how much water was extracted, what damage resulted, whether the offender continued the conduct after receiving notice, and whether civil sanctions were insufficient to prevent the conduct. Treating limited well drilling undertaken to satisfy an essential need in the same manner as extensive commercial extraction from a water source is inconsistent with the principle of proportionality.

Another problem concerns ambiguity in the criterion of public harm. Article 688 of the Islamic Penal Code (Taʿzirat) criminalizes any act recognized as a threat to public health, such as contamination of drinking water, distribution of contaminated drinking water, and unhygienic disposal of waste, and, in the absence of a more severe punishment under a special statute, prescribes imprisonment for up to one year. Under Note 1 to that article, determination of threats to public health and environmental pollution is assigned, as appropriate, to the Ministry of Health and Medical Education, the Department of Environment, and the Veterinary Organization. Such expert involvement is necessary, but the opinion and determination of these bodies must not replace judicial establishment of the elements of the offense, causation, and degree of risk. By using the expression "such as," Article 688 of the Islamic Penal Code (Taʿzirat) also presents examples of threats to public health in a non-exhaustive manner. Although this approach permits emerging and diverse forms of conduct to be subsumed under the criminal prohibition, in practice it may expand the scope of criminal liability and increase the domain of interventions restricting individual rights. Accordingly, in order to comply with the principle of legality of crimes and punishments, ensure legal certainty, and delimit the scope of criminal intervention, the conduct falling within the provision should, as far as possible, be enumerated clearly, precisely, and restrictively.

Article 690 of the Islamic Penal Code (Taʿzirat) likewise criminalizes operations undertaken without authorization from the Department of Environment or other competent authorities where they cause destruction of the environment or natural resources. Consequently, polluting or destructive conduct may simultaneously fall within Articles 688 and 690 of the Islamic Penal Code (Taʿzirat) and relevant special legislation. The concluding clause of Article 688, which gives precedence to a special law prescribing a more severe punishment, resolves part of this overlap; however, the boundary between a "threat to public health," "environmental destruction," and a technical administrative violation continues to require judicial clarification.

The no-harm rule can provide a legitimate basis for criminalization only where the harm is substantial, serious, significant according to customary standards, and attributable to the offender's conduct. A mere possibility of harm should not be sufficient for criminal conviction. Otherwise, the no-harm rule would be transformed from an instrument for protecting individual rights into a means of unlimited expansion of punitive power.

4.1.3. Limits of the Powers of the Islamic Governing Authority and the Necessity of Compensating Proprietary Restrictions

In securing public interests, government must necessarily take account of collective welfare. Protection of natural resources and public wealth and prevention of the destruction and depletion of forest reserves reflect this necessity. Municipalities likewise seek to secure the public interest through the exercise of governmental authority delegated to them by the people (Zourmand et al., 2024).

Article 19 of the Mining Act regards exploratory drilling, extraction, removal, and exploitation of mineral substances without obtaining a license or authorization as unlawful possession of public and state property and requires law-enforcement officers, upon the request of the Ministry of Mines and Metals, to stop such operations and refer the accused persons to the judicial authorities. Nevertheless, the provision is ambiguous with respect to the determination of the criminal sanction because it does not prescribe a specific punishment for the prohibited conduct and instead refers the manner of response to "the relevant laws and regulations." From the perspective of the principle of legality of crimes and punishments and the requirement that criminal rules be foreseeable, this legislative technique raises serious concerns. The governing principles of criminal law require that persons be able, before engaging in conduct, to determine clearly and specifically from the statute the criminal sanction applicable to that conduct. Accordingly, a general referral of criminal sanctions to relevant laws and regulations, without precise specification of the punishment in the statutory text, may be inconsistent with the requirements of legality, clarity, and foreseeability in criminal law.

Governmental authority to halt unlawful operations should not be equated with authority to impose any form of punishment. Immediate action to prevent destruction of a mine, pollution of water, or conversion of land use is preventive in nature; punishment of the offender, by contrast, requires proof of *mens rea* and the statutory elements of the offense. Under Article 10 of the Act on the Preservation of the Use of Agricultural Lands and Gardens, officials of the Agriculture Jihad are required to halt operations and report the matter to the relevant administrative body for referral to the judicial authorities. Under Note 1 to that article, where the offender continues the activity after notification by the Agriculture Jihad, law-enforcement authorities are also required, upon request, to prevent further operations. This structure demonstrates that notice and suspension of operations may perform an effective role prior to the issuance of a criminal judgment.

On the other hand, Article 3 of the Act on the Preservation of the Use of Agricultural Lands and Gardens prescribes demolition and removal of the unauthorized structure together with a fine, and Unification of Judicial Precedent Decision No. 707 regards demolition and removal as an inseparable component of the criminal judgment. Unification of Judicial Precedent Decision No. 730 likewise, because of the penal nature of demolition and removal, rejected its application to offenses committed before the relevant provision entered into force. This jurisprudence demonstrates that demolition and removal are not merely civil measures designed to eliminate the consequences of unlawful conduct but possess a criminal character within the structure of this legislation.

The legitimacy of demolition and removal must be assessed in light of the seriousness of the violation and the possibility of remediation. Demolition of a building that has completely destroyed the agricultural use of land cannot be governed by the same logic as removal of limited facilities constructed without authorization but not preventing agricultural production.

Restriction or deprivation of ownership is defensible only where necessity and public interest have been established and no other effective alternative exists (Fazli Maqsoudi et al., 2022). Accordingly, *a fortiori*, resort to criminal-law instruments for restricting proprietary rights must satisfy an even stronger requirement of necessity and must be confined to circumstances in which existing civil and administrative sanctions are, by themselves, insufficient to protect the public interest effectively and prevent harmful conduct. Criminalization of conduct affecting proprietary rights should therefore not operate as an ordinary or primary instrument but rather as a measure of last resort, applied within the principles of necessity and proportionality of criminal intervention.

4.2. Criminal-Law Challenges of Regulations Restricting Proprietary Rights

Criminal-law challenges arise because, in the field of restrictions on proprietary rights, no clear and coherent distinction has been established between civil and administrative sanctions, on the one hand, and criminal responses, on the other. In some fields, the mere commission of an act without obtaining the legally required authorization is treated as criminal, whereas in others the violation is initially addressed by administrative bodies and commissions and criminal sanctions are applied only where particular conditions or consequences are established; in still other instances, unlawful possession or a threat to public health constitutes a prerequisite for criminal intervention. These differences in legislative approach create ambiguity in the boundary between administrative violations and criminal offenses and may lead to an uneven expansion of criminal law and reduced foreseeability of regulations restricting proprietary rights. Accordingly, when designing a system of sanctions, the legislature must, in accordance with the principles of necessity and proportionality, precisely distinguish the scope of criminal intervention from administrative and civil sanctions and expressly define the conditions giving rise to criminal liability.

4.2.1. Expansion of Criminalization Within the Sphere of Proprietary Conduct

Article 3 of the Act on the Preservation of the Use of Agricultural Lands and Gardens responds to unauthorized changes of use through demolition and removal of the structure and a fine equal to one to three times the value of the agricultural land or garden at the current market value of the land under its new use; in cases of repetition, imprisonment is also added and the maximum prescribed fine is imposed. Article 10 of the same Act expands the scope of criminal conduct to include construction, removal or addition of sand and gravel, and other acts deemed by the Ministry of Agriculture Jihad to constitute a change of use. In addition, Unification of Judicial Precedent Decision No. 822 held that the offense of changing land use is not a continuing offense and that the limitation period for prosecution is governed by the general provisions of Article 105 of the Islamic Penal Code enacted in 2013.

Regulations governing preservation of the use and agricultural character of land are justifiable insofar as they protect agricultural land and ensure the continuation of agricultural production and exploitation. Nevertheless, the scope of criminalization should be confined to conduct that actually and effectively causes the elimination, cessation, or serious disruption of agricultural production and exploitation. Absolute criminalization of every unauthorized act, without regard to its actual consequences for land use and production, carries the risk that criminal law may depart from its fundamental function and become merely a sanction for violation of administrative formalities and requirements. Accordingly, “preventing the continuation of production and exploitation and the continuation of agricultural activity,” which is expressly mentioned in the relevant directive determining examples of change of use, should be treated as an operative criterion for establishing the criminal character of the conduct, and the mere absence of authorization, without proof of such an effect, should not be considered sufficient to attribute criminal liability.

Examination of existing regulations concerning land and real property demonstrates that, although the legislature has enacted restrictive criminal regulations with the objectives of protecting land, preventing destruction of natural resources, preserving public and agricultural land uses, and securing social interests, in some instances the mechanisms adopted have not only failed fully to achieve the legislature's objectives but have also generated consequences in practice that conflict with the philosophy and original purpose of the legislation. In other words, in certain circumstances, the restrictive regulations themselves, because of the manner in which they are enacted or implemented, create conditions conducive to the very outcome the legislature intended to prevent. This issue is particularly evident in regulations designed to prevent changes in the use of agricultural land. Protecting agricultural land and preventing uncontrolled changes of use are, in principle, supported by jurisprudential, rational, and public-interest considerations; nevertheless, the imposition of severe and sometimes inflexible restrictions, without sufficient regard for the economic and social realities of land ownership, may produce counterproductive effects. Where many agricultural parcels, because of subdivision and fragmentation, lack the area and economic viability required for agricultural activity, broad prohibition or restriction of ordinary construction reasonably necessary for the owner may reduce the owner's incentive to invest in, cultivate, plant trees on, irrigate, equip, and maintain the land. In such circumstances, rather than exploiting and rehabilitating the land, the owner may refrain from incurring the costs necessary for agricultural activity; consequently, a regulation enacted for the purpose of preserving agricultural use may, in some cases, lead in practice to abandonment, erosion, degradation, or non-use of the land and ultimately its removal from the production cycle. From this perspective, protection of agricultural land should not be reduced merely to "preventing change of use"; rather, the legislature's ultimate objective should be preservation of the functional, economic, and productive capacity of the land. The distinction between these two approaches is fundamental, because land may formally and legally continue to be classified as agricultural while, in practice, because of fragmentation, lack of economic viability, absence of infrastructure, or inability to engage in ordinary exploitation, it has left the production cycle and effectively lost its agricultural function. Therefore, the success of restrictive regulations should not be measured solely by the extent to which prohibited conduct is prevented, but also by the extent to which the ultimate purpose and interest for whose protection the legislature intervened are actually achieved.

From a temporal perspective, examination of regulations restricting proprietary rights also demonstrates the need to reconsider certain existing laws. Some of these regulations were enacted under social, economic, demographic, agricultural, and urban-planning conditions different from those prevailing today, and their continued application without revision and without regard to fundamental changes in land structure and ownership patterns may cause the law to become detached from the objective realities of society. A statute that responded to a genuine need when enacted does not necessarily remain effective, with the same mechanisms and degree of severity, under transformed social and economic circumstances. Continuous review, evaluation of the effects of implementation, and adaptation of restrictive regulations to contemporary realities are therefore essential components of legislative policy concerning ownership of land and real property.

The expansion of criminalization becomes more problematic where the owner's conduct does not cause serious harm or lacks criminal intent. Criminal law must distinguish among an administrative error, remediable negligence, and intentional and culpable encroachment. A person who intentionally destroys public resources for profit after repeated warnings is not equivalent, in terms of criminal culpability, to an owner who undertakes a limited act on his or her own property.

4.2.2. Ambiguity in the Boundary Between Criminal Offenses, Administrative Violations, and Civil Liability

Article 100 of the Municipalities Act places construction undertaken without a permit or contrary to the terms of a permit, in principle, within the jurisdiction of an administrative commission and permits, as appropriate, demolition of the structure or imposition of a fine. Thus, not every unauthorized urban construction constitutes a criminal offense. Nevertheless, knowingly resuming use of commercial premises that have been closed because of an impermissible use is punishable under Clause 24 of Article 55 of the Municipalities Act by imprisonment and a fine. This distinction demonstrates that the legislature has, in certain instances, treated the initial violation as administrative and conscious defiance of an enforcement decision as criminal.

By contrast, construction on agricultural land outside the excluded areas may constitute a criminal offense from the outset under Articles 3 and 10 of the Act on the Preservation of the Use of Agricultural Lands and Gardens. Consequently, the place where the structure is built, the type of land, and the effect of the act on land use may transform similar conduct from an administrative violation into a criminal offense. Such distinctions are not always foreseeable for ordinary individuals and demonstrate the need for harmonization among urban, rural, and agricultural legislation.

The boundary between civil and criminal liability is likewise ambiguous. Article 45 of the Fair Water Distribution Act prescribes restoration of the status quo ante and compensation for damage together with punishment. Combining these responses may be necessary, but courts should consider their cumulative effect when assessing proportionality. Compensation aims to restore the injured party's position, restoration of the status quo seeks to eliminate the effects of the conduct, and punishment responds to criminal blameworthiness; nevertheless, their cumulative application should not result in a response exceeding the seriousness of the offense.

Article 19 of the Mining Act provides another example of ambiguity because it characterizes the conduct as unlawful possession of public and state property but refers the applicable punishment to relevant laws and regulations. Such a referral may facilitate application of Article 690 of the Islamic Penal Code (Taʿzirat), but it makes it difficult for the accused to identify the precise criminal charge. The principle of legality requires special legislation to define expressly the elements of the offense and its sanction.

4.2.3. Disproportionality of Certain Criminal Sanctions to the Owner's Conduct

Proportionality must exist among the seriousness of the harm, degree of fault, benefit obtained, offender's history, and type of sanction. Under current regulations, certain responses are fixed or cumulative and do not permit sufficient differentiation among varying circumstances. Article 3 of the Act on the Preservation of the Use of Agricultural Lands and Gardens determines the fine on the basis of the current market value of the agricultural land or garden under its new use and also requires demolition and removal. This method is appropriate for counteracting the economic gain derived from unlawful land-use conversion; however, where the structure is limited, remediable, or has no serious effect on agricultural production, complete demolition and removal may be disproportionate.

Article 45 of the Fair Water Distribution Act likewise prescribes criminal sanctions for a wide range of conduct, from interference with measuring equipment to taking another person's water and drilling a well in violation of regulations. The widely differing consequences of these forms of conduct require the law to prescribe clearer and differentiated penalties based on intent, volume of extraction, amount of damage, and repetition.

Article 690 of the Islamic Penal Code (Taʿzirat) likewise groups together numerous forms of conduct, including creating signs or evidence of possession, environmental destruction, encroachment and unlawful possession, nuisance, and obstruction of rights. The imprisonment prescribed by this article in cases concerning private property has been affected by the Law on Reduction of Discretionary Imprisonment and the amendment of Article 104, under which such offenses have been classified as subject to private complaint; however, with respect to public and state lands, the rationale of protecting public interests remains more prominent. This distinction demonstrates that the character of the ownership and the identity of the victim affect criminal policy, although Article 690 itself continues to place heterogeneous forms of conduct within a single framework.

The solution is not complete elimination of severe sanctions but rather grading of conduct. Extensive intentional destruction, repetition following notice, organized activity, and acquisition of substantial profit may justify a more severe response. By contrast, limited and remediable conduct should initially be addressed through suspension of operations, requirements to obtain authorization, restoration of the status quo, and civil and administrative sanctions.

4.3. Criteria and Reform Measures for Regulations Restricting Proprietary Rights

Reform of these regulations should be based on a model that treats ownership as the rule, restriction as the exception, and criminal punishment as the last resort. Such a model does not weaken protection of public resources; rather, it makes criminal intervention more targeted and legitimate.

4.3.1. Establishing Serious Harm to Individual Rights or Public Interests

The first criterion for criminalization should be the existence of serious and demonstrable harm or risk. Accordingly, mere violation of an administrative authorization requirement, without any real and significant effect on land use, safety, water resources, or the environment, should not in every case be treated as criminal. In offenses involving changes in land use, it should be established that the conduct actually prevented the continuation of agricultural production and exploitation. In water-related offenses, the volume extracted, reduction in the water entitlement of others, and damage to the resource should be determined.

The degree of harm should be specified in legislation or in regulations confined strictly to technical matters through measurable indicators; nevertheless, definition of the criminal conduct itself, the constituent elements of the offense, and the punishment must remain within the competence of the legislature and be set forth in statutory law. Administrative bodies may therefore identify and evaluate technical and specialized matters but must not create new criminal offenses or expand the statutory scope of criminalization through circulars, regulations, or administrative decisions.

4.3.2. Observance of Necessity and the Principle of Criminal Law as a Last Resort

Before conduct is criminalized, the effectiveness of administrative and civil instruments should be assessed. Immediate suspension of operations, notice, suspension of licenses, orders to remedy violations, compensation, and restoration of the status quo ante may achieve the intended objective in many cases. Criminal intervention should be confined to conduct that is intentional, serious, repeated, or distinctly criminal in character, or where the offender continues the conduct after receiving notice and an order to stop.

The model used in municipal legislation, under which most building violations are addressed by the Article 100 Commission and only certain deliberate acts of defiance are criminalized, may, with appropriate modifications, be used in other fields. Nevertheless, an administrative sanction should not become merely a calculable cost of noncompliance; otherwise, an offender may accept the fine while continuing to retain the economic benefits of unlawful conduct. Accordingly, fines should be set at a level that, at minimum, neutralizes the profit or economic benefit derived from the violation while remaining proportionate to its seriousness and consequences.

There is a need for the legislature to move away from an exclusively reactive and punitive approach toward a preventive and context-sensitive policy. Experience with existing regulations demonstrates that, in many cases, intervention after prohibited conduct has occurred cannot fully restore the previous condition even where statutory sanctions are imposed. In certain situations, following alteration of the condition of land, destruction, construction, cutting of trees, degradation of natural resources, or creation of physical and economic consequences, merely punishing the offender or even ordering removal of the effects does not necessarily permit complete restoration of the previous state; in some cases, restoration may be fundamentally impossible or economically and technically unjustifiable. Accordingly, in the field of proprietary rights and land, prevention often takes precedence over ex post enforcement, because the true value of criminal policy in this area lies not merely in punishing offenders but in preventing damage that is difficult, costly, or impossible to repair. The preferred legislative policy should therefore shift from a model of "prohibition, enforcement, and punishment" toward one of "identification of the conditions giving rise to violations, prevention, guidance and regulation of the owner's conduct, and ultimately criminal enforcement as a last resort." Within this framework, rather than relying excessively on criminal sanctions, the government and legislature may employ economic incentives, facilities and support measures for agriculture, consolidation and integration of land parcels, reform of subdivision and fragmentation rules, economically viable exploitation models, and limited and controlled authorization of construction that is necessary and proportionate. Such an approach may encourage owners to preserve and properly exploit land rather than merely exposing them to criminal sanctions.

4.3.3. Observance of Proportionality, Clarity, and Foreseeability of Regulations

The law should expressly and clearly determine the prohibited conduct, the mental element, the competent authority for determination, the type of sanction, and the relationship between general and special legislation. Expressions such as "other acts," "such as," "public interest," and "environmental destruction," without clear supplementary criteria, create the possibility of expansive interpretation of criminal provisions.

Sanctions should likewise be graded in proportion to the seriousness of the offender's conduct, the extent of damage, and the offender's intent. Aggravating factors may include repetition of the criminal conduct, scale of the operation, intention and motive of the offender, continuation after notice, and infliction of irreparable damage. Conversely, factors such as the limited nature of the conduct, existence of a personal necessity, remediability of its effects, absence of damage, and the offender's cooperation in restoring the status quo ante may justify mitigation of the sanction.

It is also necessary to define explicitly and clearly the relationship between Article 690 of the Islamic Penal Code and Article 19 of the Mining Act, as well as special environmental legislation. Clarifying the scope of application of general and special laws and identifying the governing provision would prevent multiple prosecutions, parallel sanctions, and conflicting decisions, thereby enhancing legal certainty and the foreseeability of the criminal justice system.

From a jurisprudential perspective, this approach is also more consistent with the foundations governing restrictions on ownership, because public interest is not confined merely to preventing the owner's conduct but also encompasses preservation of the protected subject matter itself and achievement of its proper function. Where a prohibition or restriction, because of disproportionality or failure to take account of economic and social conditions, discourages an owner from proper exploitation and ultimately causes the land to deteriorate or remain unused, the practical legitimacy and effectiveness of that restriction should be reconsidered, because the means employed should not produce a result contrary to the religious and legal objective.

Restriction of proprietary rights is fully legitimate and justifiable only where the three elements of "legitimacy," "proportionality," and "effectiveness" are considered concurrently. The mere existence of a jurisprudential foundation for restricting ownership, without assessment of its actual effects, is insufficient to justify a legislative policy. The legislature must continuously maintain proportionality between the degree of interference with proprietary rights and the benefit thereby obtained and must evaluate the direct and indirect effects of regulations both before enactment and after implementation.

4.3.4. A Model for Balancing the Rule of Dominion, the No-Harm Rule, and Public Interest

The proposed model may be formulated in five stages. First, under the rule of dominion, the general principle is that an owner is free to exercise lawful rights and dispositions with respect to his or her property, and every restriction on that freedom requires a legitimate legal basis. Second, the existence of substantial harm or a serious and demonstrable risk arising from the conduct must be established; a mere possibility of harm or violation of administrative formalities, in the absence of a significant harmful effect, should not serve as the basis for criminal intervention. Third, the importance of the public interest and its relationship to the owner's conduct must be identified; public interest, as a general and abstract label, cannot alone justify restrictions on proprietary rights. Fourth, among available interventions, the least harmful yet effective means of achieving the public objective should be selected, and resort to criminal law should be justified only where less severe and non-criminal instruments are insufficient to achieve that objective. Fifth, whenever implementation of a public restriction imposes serious and abnormal harm upon an owner, fair compensation should be provided in order to preserve the balance between public benefit and proprietary rights.

Within this model, the rule of dominion prevents unjustified intervention in ownership; the no-harm rule defines the limits of the owner's freedom; public interest justifies the importance and legitimacy of the objective pursued by intervention; the principle of necessity restricts the sphere of resort to criminal law; and the principle of proportionality controls the type and severity of the response. Accordingly, criminal punishment, as the most severe form of intervention, should be applied only to conduct involving substantial seriousness, danger, or harm where milder responses are insufficient to prevent the conduct or remedy its consequences.

On this basis, legal reform should include consolidation of fragmented regulations, clear definition of the elements of offenses, differentiation between administrative violations and criminal offenses, elimination of imprisonment for minor conduct, provision for severe responses to organized criminal conduct, and the availability of effective challenges to determinations made by administrative agencies. Such reform could both protect public resources and prevent legitimate ownership from being subjected to broad and unpredictable criminal intervention.

Revision of laws restricting proprietary rights over land and real property should adopt an outcome-oriented approach based on evaluation of the actual effects of legislation, so that public interests are preserved and harm to society prevented while restrictions that reduce owners' incentives to preserve, improve, and exploit their property are avoided. Criminal policy in this field should also be founded upon prevention, education, guidance, and the creation of economic and social incentives for regulatory compliance, with criminal sanctions confined to cases in which they are necessary and effective.

Protection of the public interest does not necessarily require increasingly severe restrictions or harsher punishment. In some circumstances, actual realization of that very interest requires reducing disproportionate restrictions, reforming economic and legislative structures, creating incentives for owners, and adopting preventive measures. Rather than responding to owners only after violations occur, the legislature should create conditions in which owners do not perceive proper preservation and exploitation of land as conflicting with their own economic interests. Such an approach, in addition to being more consistent with the jurisprudential foundations of restrictions on ownership, can establish a balance among respect for private ownership, protection of public interests, conservation of land and natural resources, legislative effectiveness, and social justice, while preventing situations in which a law enacted to protect a public interest itself becomes, in practice, a factor contributing to the weakening or destruction of that same interest.

5. Conclusion

The present study sought to analyze the jurisprudential foundations of regulations restricting proprietary rights over land and real property in the Iranian criminal legal system. The findings demonstrate that ownership is a fundamental and protected right in Iranian jurisprudence and law and that the rule of dominion establishes, as a general principle, the owner's freedom to possess and make legitimate use of property. Nevertheless, this authority is not absolute and may be restricted to the extent necessary where it conflicts with the rights of individuals, public interests, social order, natural resources, the environment, or other values protected by society. The principal jurisprudential foundations for these restrictions are the no-harm rule, preservation of social order, public interest, and the powers of the Islamic governing authority. However, the legitimacy of restricting ownership does not, by itself, suffice to justify criminalization. Resort to criminal sanctions is justified only where the owner's conduct entails serious and demonstrable harm or risk, possesses criminal blameworthiness, and administrative and civil sanctions are insufficient to address it. Examination of criminal regulations demonstrates that numerous forms of conduct within the sphere of proprietary rights have been criminalized under statutes including the Act on the Preservation of the Use of Agricultural Lands and Gardens, the Fair Water Distribution Act, the Mining Act, and the Islamic Penal Code. Nevertheless, fragmentation of regulations, overlap among criminal offenses, ambiguity in certain constituent elements, and failure to define clearly the relationship between general and special laws have reduced the foreseeability and coherence of the criminal legal system. Moreover, the boundary among criminal offenses, administrative violations, and civil liability is unclear in certain cases, and a single act may be subjected to multiple sanctions. At the same time, imposition of certain responses—including demolition and removal, substantial fines, and imprisonment—without sufficient regard to the seriousness of the conduct, extent of damage, intentionality of the offender, benefit obtained, repetition, and possibility of remediation may be incompatible with the principle of proportionality. Criminal responses should therefore correspond to the seriousness and consequences of the conduct and distinguish between limited and remediable acts and intentional, extensive, and organized conduct. The findings further indicate that some laws, despite having been enacted to protect public interests, have not fully achieved the legislature's intended objectives in practice and have, in certain instances, produced consequences inconsistent with the original legislative purpose. A notable example is the regulation of changes in the use of agricultural land. Although protection of agricultural land and prevention of uncontrolled conversion possess jurisprudential and public-interest justifications, severe restrictions on necessary construction in small, economically nonviable, or ordinarily unusable parcels may reduce the owner's incentive to invest in, cultivate, plant trees on, and maintain the land and may ultimately remove the land from the production cycle. Preservation of the legal classification of land therefore does not necessarily amount to preservation of its actual productive function, and legislative policy should address not only prevention of land-use conversion but also maintenance of the productivity and economic and agricultural function of the land. Furthermore, some existing regulations were enacted under different social, economic, and ownership conditions and, in light of contemporary developments, may in some cases have lost the necessary proportionality and effectiveness. Continuous legislative review and adaptation to present realities—particularly land fragmentation, the economic viability of agricultural activity, and owners' ordinary needs—are therefore necessary. In this respect, legislative policy should move away from an exclusively punitive and ex post approach toward prevention, guidance of owners' conduct, and creation of economic and legal incentives for compliance, because once violations occur and physical or economic changes are made to land, punishment cannot necessarily restore the previous condition completely, and restoration may in some cases be impossible or economically unjustified. Under the preferred model, the rule of dominion establishes the principle of protecting ownership; the no-harm rule defines the boundary of harmful exercise of rights; public interest establishes the legitimate objective of intervention; and necessity and proportionality determine the limits and severity of the criminal response. Accordingly, restrictions on proprietary rights are legitimate and effective only when their legitimacy, necessity, proportionality, and effectiveness are established concurrently. While respecting the principle of ownership and securing public interests, the legislature should evaluate the direct and indirect consequences of regulations before and after enactment and implementation and refrain from imposing restrictions that themselves undermine the interest intended to be protected. Ultimately, desirable legislative policy concerning land and real property should move from a model of "prohibition and enforcement" toward a model of "prevention, guidance, support, incentive creation, and ultimately criminal enforcement," employing criminal sanctions as the last and most proportionate instrument. Such an approach can protect private ownership and remain consistent with the jurisprudential foundations of its restriction while establishing an appropriate balance among conservation of land and public resources, legislative effectiveness, and social interests.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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