Interdisciplinary Studies in Society, Law, and Politics 2027; 6(4)

ISSLP
Interdisciplinary Studies in Society, Law and Politics

OPEN PEER REVIEW

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

Feyzollah. Norouzi[1], Seyed Hamid. Shamerizi[2*], Seyed Mahdi. Mansouri[3]

[1] Department of Law, Ya.C., Islamic Azad University, Yazd, Iran
[2] Department of Theologic and Islamic Studies, Ya.C., Islamic Azad University, Yazd, Iran
[3] Department of Law, May. C., Islamic Azad Universit, Maybod, Iran

*** Corresponding author email address**: shsham@iau.ac.ir

Received: 2026-05-25	**Revised:** 2026-08-16	**Accepted:** 2026-08-16	**Initial Publish:** 2026-08-19	**Final Publish:** 2027-07-01

EDITOR:
Eman Shenouda
Associate Professor, Department of Psychology, Isfahan (Khorasgan) Branch, Islamic Azad University, Isfahan, Iran. Email: ens01@fayoum.edu.eg
REVIEWER 1:
Shehzad Raj
School of Law, Universiti Geomatika Malaysia, Kuala Lumpur, Malaysia. Email: shehzadraj@geomatika.edu.my
REVIEWER 2:
Jeremiah Thuku Thuku
Department of Literary and Communication Studies, Laikipia University, Nyahururu, Kenya. Email: jerethukuthuku@gmail.com

1. Round 1

1.1. Reviewer 1

Reviewer:

In the second paragraph of the Introduction, the sentence “The no-harm rule is among the most important foundations restricting an owner’s powers” is conceptually important but presently too categorical. The manuscript should distinguish between at least three possible jurisprudential functions of the lā ḍarar rule: negating a harmful primary ruling, restricting the exercise of an otherwise legitimate right, and providing a basis for governmental intervention against harmful conduct. These functions are not necessarily identical and have different implications for criminalization. The authors should clarify which interpretation they adopt and explain whether lā ḍarar merely removes legal protection from harmful proprietary conduct or affirmatively authorizes the state to impose criminal punishment. This distinction is essential to the article’s thesis that the legitimacy of restriction does not automatically establish the legitimacy of penal intervention.

The third paragraph of the Introduction states that “the greater the severity of the harm inflicted, the more justifiable the use of criminal-law instruments to restrict individual rights and freedoms becomes.” This proposition should be reformulated as a structured criminalization criterion rather than a general assertion. Severity of harm alone is insufficient under contemporary criminalization theory; the manuscript should additionally address wrongfulness, culpability, remoteness of harm, likelihood of harm, availability of less restrictive alternatives, enforceability, and proportionality between the protected interest and the penal response. I recommend developing an explicit analytical test that can subsequently be applied consistently to agricultural land-use conversion, groundwater extraction, mining, construction violations, environmental pollution, and destruction of green spaces.

In the fourth paragraph of the Introduction, the manuscript correctly observes that "many studies have not precisely distinguished between the legitimacy of restricting ownership as such and the legitimacy of employing criminal punishment." This appears to be the principal research gap and should be developed much more systematically. The authors should identify precisely what previous scholarship has established, where it stops, and what doctrinal question remains unresolved. A concise literature synthesis should distinguish studies on the rule of taslīṭ, studies on administrative restrictions of ownership, studies on expropriation and municipal acquisition, and studies specifically addressing criminal intervention in agricultural or environmental property rights. This would make the article's novelty demonstrable rather than merely asserted.

The final paragraph of the Introduction states that the study uses a "descriptive–analytical method" and that data were collected from "jurisprudential sources, legal scholarship, relevant laws and regulations, and scientific research." The methodology is currently too general for a doctrinal legal study of this scope. The authors should specify the criteria for selecting jurisprudential authorities, whether primary jurisprudential sources were prioritized over secondary scholarship, the statutory period examined, how amendments and judicial precedents were treated, and how conflicts among legal sources were resolved. Because several parts of the article rely on Supreme Court unification decisions and administrative regulations, the methodology should explicitly explain the hierarchy of legal sources and the method used to interpret statutory provisions in light of jurisprudential principles.

In Section 1.1, the sentence "In Imāmī jurisprudence, ownership denotes a legally and religiously recognized form of exclusivity and authority" would benefit from a more rigorous distinction between milk, ḥaqq, ikhtiṣāṣ, and sulṭana. The article currently employs "ownership," "proprietary rights," "authority," "dominion," and "right of possession" in closely related senses, although these categories are not interchangeable in jurisprudence or private law. Since the article later extends its analysis to rights of construction, land-use designation, mineral exploitation, groundwater, and environmental restrictions, the authors should define whether "proprietary rights" includes only incidents derived from ownership or also legally regulated privileges connected to landholding. A terminologically precise conceptual framework would significantly strengthen subsequent analysis.

In Section 1.1, the paragraph beginning "Proprietary rights constitute a broader concept than ownership itself" lists construction, use designation, exploitation, transfer, lease, mortgage, subdivision, consolidation, and exclusion of others as manifestations of proprietary rights. This taxonomy should be analytically refined. Some of these are classical incidents of ownership, whereas others—particularly construction density, subdivision, and land-use designation—are powers that exist only within public-law regulatory frameworks. The manuscript should distinguish inherent incidents of ownership from legally conditioned development rights. This distinction is particularly important because the state's restriction of an inherent proprietary power may require a different justification from its refusal to confer or expand a development entitlement created by planning legislation.

In Section 2.3, the statement that "ownership of land does not necessarily entail absolute ownership of all natural resources located on or beneath it" is correct but should be conceptually connected more clearly to Article 45 of the Constitution and the doctrine of anfāl. The article currently moves rapidly from private landownership to public control over minerals and water without distinguishing resources that are constitutionally public, resources subject to licensing despite private ownership, and resources in which private rights may coexist with public regulatory powers. The authors should clarify whether criminal liability in mining and groundwater cases restricts a pre-existing proprietary entitlement or protects a resource that was never legally within the landowner's unrestricted dominion. This distinction materially affects the article's characterization of such offenses as "restrictions on proprietary rights."

In Section 3.1.1, the discussion of Article 10 of the Agricultural Land and Gardens Use Preservation Act raises an important legality concern by stating that "an administrative directive should not expand the scope of criminal liability." This issue should be examined through the distinction between blank criminal norms and impermissible delegation of the definition of criminal conduct. The authors should analyze whether the statute itself contains sufficiently determinate essential elements and merely delegates technical identification to the Ministry, or whether the administrative authority effectively creates new prohibited conduct. This is a central criminal-law issue and deserves a more doctrinal treatment grounded in the principle of legality, foreseeability, strict construction, and the prohibition on administrative creation of offenses.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In Section 1.2, the statement that the rule of dominion “does not encompass prohibited, harmful, or infringing conduct” risks resolving the central conflict too easily. If harmful conduct is conceptually excluded from the scope of taslīṭ from the outset, there would be little need to analyze a genuine normative conflict between taslīṭ and lā ḍarar. The authors should clarify whether they understand the relationship as internal limitation, governmental limitation, ḥukūma of the no-harm rule over the evidence of dominion, or tazāhum between competing protected interests. These doctrinal models produce different consequences for burden of proof, the presumption in favor of ownership, and the extent of permissible state intervention.

In Section 1.3, the sentence “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” is one of the article’s strongest normative propositions, but it appears later without a fully articulated doctrinal foundation. The authors should define “substantial,” “serious,” and “customarily significant” harm and distinguish actual-harm offenses from endangerment offenses. Environmental and land-use regulation frequently criminalizes risk creation before actual damage occurs. Therefore, the article should address when sufficiently concrete danger, rather than completed harm, may justify criminalization and what evidentiary threshold is required to avoid converting speculative risk into penal liability.

In Section 2.1, the paragraph concerning agricultural land states that unauthorized change of use should be justified where conduct generates “demonstrable public harm.” This section would be substantially improved by distinguishing the immediate legal interest protected by the Agricultural Land and Gardens Use Preservation Act from broader policy objectives such as food security, rural employment, environmental sustainability, and control of urban expansion. At present, these interests are grouped together without establishing which one constitutes the primary protected legal interest. Identifying the precise protected interest is necessary for determining whether a particular land-use change is sufficiently harmful to warrant punishment and for assessing proportionality of demolition, fines, or imprisonment.

In Section 2.1, the sentence stating that unauthorized conversion may “jeopardiz[e] food security, self-sufficiency, and sustainable employment in rural communities” requires greater attention to causation. A single owner’s land-use change may have only a negligible relationship to national food security, while cumulative changes may produce significant systemic effects. The manuscript should therefore distinguish individual causation from cumulative or aggregate harm. If criminalization is justified on the basis of cumulative risk, the authors should explain how such risk is legally attributable to an individual offender and how the principle of personal criminal responsibility can be reconciled with broad societal harms arising from numerous individually minor acts.

In Section 2.2, the paragraph beginning “The no-harm rule constitutes the most important jurisprudential foundation for urban and construction restrictions” is overly broad because not all building or planning regulations are designed primarily to prevent harm. Some pursue aesthetic, spatial, infrastructural, heritage, density-management, or distributive objectives. The authors should differentiate safety-oriented building controls, land-use planning restrictions, heritage conservation requirements, and municipal acquisition measures. Each category may require a different jurisprudential justification. Reliance on lā ḍarar may be convincing for unsafe construction, but public interest, preservation of order, or governmental regulatory authority may be more appropriate for density limits or urban zoning.

In Section 2.2, the discussion of Article 688 of the Islamic Penal Code states that industrial use of private property may become criminal when it causes pollution or threatens public health. The article should analyze more precisely the transition from an administrative land-use violation to a public-health offense. Specifically, the authors should identify whether criminal liability requires actual pollution, a demonstrable threat, violation of technical standards, or an expert determination by the competent administrative authority. This would allow the manuscript to demonstrate concretely how a single act may move across administrative, civil, and criminal domains and would support the later argument regarding uncertainty at the boundary between offenses and administrative violations.

Authors revised the manuscript and uploaded the document.

2. Revised

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