

Criteria for Distinguishing the Supplementation and Modification of Law in Government Rulemaking within the Iranian Legal System (The Scope of Government Rulemaking from the Perspective of Modifying and Supplementing the Law)

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the Literature Review, the paragraph beginning “Within the first axis, scholarship focusing on the regulatory competence of the executive branch...” would benefit from a more explicitly critical synthesis of prior scholarship. The current formulation mainly reports what earlier authors examined and then states that they did not provide an operational criterion distinguishing supplementation from modification. To substantiate the claimed research gap, the manuscript should identify the specific conceptual limitations of these studies: for example, whether they focus primarily on source-based competence, formal hierarchy, parliamentary control, or ultra vires review, and precisely why none of these approaches independently resolves the substantive-effects problem addressed here. The originality of the present study will be more persuasive if the literature review demonstrates a doctrinal problem rather than merely an absence of identical terminology.

The Literature Review paragraph stating that there is an “analytical discontinuity and gap” among competence theory, supervisory practices, and regulatory proliferation is potentially one of the strongest parts of the manuscript, but the claim requires sharper methodological support. The authors should explain how the literature was selected and reviewed. Even in a doctrinal legal study, some indication of the search strategy, selection criteria, temporal scope, and types of sources examined would improve transparency. If the term “systematic review” is retained, a recognizable systematic procedure should be described; otherwise, the phrase should be replaced with a more accurate characterization such as “structured doctrinal review” or “thematic review of Iranian public-law scholarship.”

The discussion under “Requirement of an Implementing Regulation for Execution of Legislation and Its Relationship with Article 85” contains an important distinction between “making implementation of legislation dependent on a regulation” and “making determination of the content of legislation dependent on a regulation.” This distinction should be elevated into the article’s principal doctrinal test and developed with greater precision. In particular, the authors should define what constitutes the “essential elements” or “legislative core” of a legal rule. Comparative public-law concepts such as essentiality, reservation of law, primary versus secondary norms, or non-delegation could be used analytically, even if the article ultimately remains focused on Iranian law. The manuscript should explain how a court or administrative authority can identify whether subject matter, beneficiaries, conditions, exceptions, sanctions, or legal consequences constitute essential elements that must remain legislatively determined.

In Section 1-5, the paragraph stating that the Administrative Justice Court reviews governmental regulations from both “the competence of the issuing authority” and “the substantive conformity of the regulation with legislation” identifies a critical distinction, but the article would benefit substantially from direct engagement with judicial decisions. The manuscript currently relies predominantly on secondary literature while repeatedly emphasizing judicial annulment as the mechanism protecting the supplementation/modification boundary. The authors should analyze several representative decisions of the General Board of the Administrative Justice Court and classify them according to the proposed framework—for example, cases involving unauthorized restrictions, additional eligibility requirements, expanded exceptions, or alteration of statutory procedures. Such jurisprudential analysis would provide empirical doctrinal support for the proposed criteria.

In Section 2-1, the sentence “one of the first indicators of legitimate supplementation is that an administrative regulation addresses the ‘manner of implementation’ rather than adding to the ‘substance of the legal rule’” is persuasive but currently somewhat circular. The article defines supplementation by implementation and modification by alteration, but the difficult cases are precisely those in which procedural rules have substantive effects. The authors should therefore develop a method for identifying when a formally procedural requirement becomes substantively restrictive. Factors might include whether non-compliance results in loss of a statutory right, whether the procedure adds eligibility conditions, whether compliance imposes disproportionate burdens, and whether the legislature itself prescribed the relevant procedural safeguards. This would make the framework applicable to borderline cases rather than only obvious examples.

Section 2-3-2 states that administrative bodies may establish “technical standards and criteria necessary for implementing legislation,” while warning against conditions not contemplated by statute. This is an important area requiring substantially more analytical depth because technical regulation is precisely where the distinction between supplementation and modification becomes difficult. The authors should examine whether broad statutory terms such as “technical standards,” “public safety,” “professional requirements,” or “necessary conditions” themselves constitute sufficient legislative authorization for detailed regulatory restrictions. The manuscript should also discuss how expertise affects judicial intensity of review: does technical complexity justify broader administrative discretion, or does it merely affect the court’s scrutiny of factual and technical judgments without enlarging legal competence? Clarifying this point would considerably strengthen the treatment of the regulatory state.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In the first paragraph of the Conceptual Framework, the sentence “the governing principle of governmental rulemaking is the supplementation of law within the limits of legal competence, rather than the creation of an autonomous rule parallel or superior to legislation” requires greater qualification. Iranian administrative law may recognize forms of independent administrative regulation in organizational or administrative matters, and the manuscript itself later acknowledges “independent regulations.” The present formulation risks suggesting that every valid governmental rule must be directly supplementary to a specific statute. The authors should therefore distinguish between regulations enacted specifically for implementation of a

statute and regulations based on constitutionally or statutorily conferred autonomous administrative competence. The analytical model should then explain whether the supplementation/modification distinction applies identically to both categories.

The paragraph in the Conceptual Framework proposing “four complementary criteria... purpose, content, scope of effect, and relationship with legislative intent” requires more precise operationalization. At present, the four criteria substantially overlap: “purpose” and “relationship with legislative intent” may point to the same inquiry, while “content” and “scope of effect” may both capture substantive consequences. The authors should define each criterion independently, explain how conflicts among them are resolved, and preferably establish a sequence of analysis. For example, the manuscript could first ask whether a legal basis exists, then whether the regulation remains within the subject matter delegated, then whether it alters the statutory entitlement or obligation, and finally whether its practical effects frustrate legislative purpose. A structured test would be more useful doctrinally than four broadly formulated considerations.

In Section 1-2, the statement that governmental regulatory authority under Article 138 “is neither original nor independent, but derivative and functional” is central to the manuscript but requires more nuanced constitutional analysis. The authors should distinguish the authority to issue regulations “for the implementation of laws” from the authority connected with “administrative duties” and “organization of administrative bodies.” If Article 138 supports more than one basis for executive rulemaking, the proposition that the competence is universally derivative from ordinary legislation may be too categorical. The manuscript should examine the textual components of Article 138 separately and clarify which component supports executive regulations tied to legislation and which, if any, permits regulations based directly on constitutional or organizational authority.

In Section 1-3, the sentence “a distinction must be drawn between ‘executive rulemaking’ and ‘executive legislation’” is analytically valuable, but these concepts need formal definitions. The article should specify which legal characteristics transform executive rulemaking into substantively legislative activity. Possible indicators include creation of a new primary obligation, determination of essential elements of a legal status, restriction of fundamental rights, creation of sanctions, establishment of exceptions, or modification of statutory beneficiaries. Without such specification, “executive legislation” remains rhetorically effective but doctrinally indeterminate. This distinction should ideally be linked directly to the later supplementation/modification test so that terminology remains consistent throughout the article.

The paragraph in Section 1-3 stating that “in public law... the governing principle is ‘lack of competence’ unless competence is established by law” should be refined doctrinally. The general proposition is important, but the article should distinguish the principle of attributed competence from a simplistic presumption that every administrative act requires detailed express statutory authorization. Modern administrative systems frequently recognize implied, incidental, or necessarily consequential powers derived from an expressly conferred function. Since the article later accepts governmental authority to adopt certain implementing measures even without explicit statutory delegation, the theoretical account of competence should explain how implied implementation powers are reconciled with the principle of legality. Otherwise, an internal tension appears between the strict competence theory in Section 1-3 and the broader implementation authority accepted in Section 2-2.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.

Editor in Chief’s decision: Accepted.