

Hadd Promotion Based on the Official Rules

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ABSTRACT

Objective: In the division of common crimes, crimes are divided into three categories: crimes against persons, property and ownership and division of welfare and public safety. In the following discussion as crimes against property or property that has been and it always disagreed whether can be crimes against property and belong to Guilt by one of the partners be considered as a crime or not? In the discussion there. **Methodology:** That's about the same forms of communal crimes against property is located approximately that may be due to the fact that their property is a criminal who has engaged one of the owners, has always been debated. So that, following the precedent of religious foundations and religious views or divisions of opinion about criminal responsibility for crimes committed by each of the partners has the property condominium. **Results:** One of the most important mutual crimes against property that is subject to property belonging to non-theft. One of the subjects in the material element of the crime is investigated is whether the description of diffusion in the material element of the crime of theft make up the breakdown, or not? Do not take the property by partner makes a dent in the incidence of theft or not? The criminalization of steal some bases can be partners' joint ownership mobilization dominance and respect people's property. **Conclusion:** The research investigates jurisprudence and legal perspective to the conclusion that the realization of the subject property as theft is no doubt shared by partners. In addition, such an interpretation more consistent with the logic and principles governing the rights of criminal jurisprudence is compatible with the rules of public order.

1. Introduction

One of the most important principles of law, the legal principle of crime and punishment. Despite the important principle of all sections of society to know what acts prohibited and liable for punishment there and security and corrective measures. Currently, the most common crimes in the human race today, violation of private property ownership and industrial and economic entities due to the world and people are looking for more profits, it is also incorrect and wrong through it. One of the main assault on property rights and private property, trespass share in common property, in terms of partners involved in every part of the common property, the difference between different views in the context of a crime or offense has lack of it, to the extent that some social life is not legal. In crimes against property jointly owned by the partner, just mass destruction precedent that put an end to previous differences, but there is this difference of opinion is a great meet.

1.2 Jurisprudential principles common property crime offenses

Crime can be described as a process whereby the legislator with regard to the basic norms and values of society and relying on theoretical foundations acceptable, act or banned and for that imposes criminal sanction. Accordingly, criminalization is backward and infrastructure-based sciences such as jurisprudence, political philosophy, and social sciences. In other words, criminalization of political power is based on the theoretical principles accepted by the Government or and given the attitude of the dominant ideology of man and his nature and such concepts as freedom, justice, power and security, behavioral choices, and for that criminal sanction is required. Religious political systems that affect them in criminal law from religious teachings and

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divine revelation, criminalization in the field of fundamental religious values, as expressed, declared and criminal legislation on crimes and punishments will be legal.

2. Materials and methods

2.1 First Speech: Dominance Rule

Dominance rule means someone else wield dominate and control the violence and overcome with the and juridical terms as the owner's possession for any of his property seized of the "rule of the monarchy" or "dominance rule" has been likened in the recent period dominance Shiite jurists rule according to the prophetic tradition "that the people dominate their money" naming and have raised. Although the work of early scholars of Hadith and Shia dominance invoked the provisions of rule in the work of Sunni jurists to the requirements of this rule is not expressly stated but it worked (Najafi, 2008). Dominance established rule of patrilineal elements jurisprudence According to the Hadith the Prophet's Shiite rule dominance "Their people money" and proposed labelling. However, in the works of jurisprudence Early Shia tradition and the provisions of this rule has been invoked dominance in the works of Sunni jurisprudence to this rule, but not otherwise specified According to its requirement have done. Dominance established rule of patrilineal elements and properties properties properties kit and kit to the importance of the issue of new law schools have adopted this rule. In Articles 30 and 31 of the civil code of Iran is mentioned. Some jurists' proof of this rule proofs four (Book and the Sunnah, reason and consensus) and that Quran verse 29 of Surah Nisa, Aye 188 of Surah 2 II can be invoked. Of the traditions of jurisprudence The Prophetic Hadith mentioned in mainly to invoke this tradition, although the document is weak and is not in the books of the four but action jurisprudence Shiite and Sunni document compensates for the weakness of its provisions. In addition, there are other authentic traditions that express the same theme. Wise also confirms this rule and may even be innate rules of he said. About the quality of the consensus statement said since the various debates jurisprudence of this rule may be invoked as a matter of fact it happens all the jurists. Examples of the cited jurisprudence According to the provisions of Rule Dominance as follows: permit the seizure of their property, such as digging wells, although neigh boring and other affected neigh boring wells in the vicinity of licenses for conventional running water and lighting fires in the property of the correctness and the need to sale pricing was not permitted properties and hoarding. Some jurists believe that the rule of law Dominance properties also include an addition to the famous prophetic tradition since although it has only dominate the properties, but a fortiori as well, and building rights wise people on their rights is also indicative of dominance. Also mentioned evidence in possession of other people's affairs (mastery of souls) is also fixed. According to the jurisprudence states The rule dominance include prohibitions or possessions that require doing is creating such extravagance and wastefulness, corruption and bribe taking usury not be bought and sold wine and books. On the other hand the necessity and Zakat evidence, including the rule to all cases of knocks.

2.2 Second Speech: respect and ownership properties

Referring to verses and traditions it turns out that in Islam properties and legitimate assets never been dirty and unworthy. But properties are regarded as a divine trust and wealth in the hands of man as God's caliph ground. The Quran states: "He created what on earth all" also: "believe in Allah and His Messenger, and spend of that which it" and even in the two verses (Al-Baqara, 180; Adiat, 7) asset's value is not the most interesting and high quality. So Islam condemns targeting of the properties described, not by putting wealth. The Prophet (pbuh) said: "Yes, the good properties of the good man". Rumi versed in the same theme:

However, the properties to be religion blessings properties Saleh read Messenger
Water is back on the ship perished on the hull of the ship.

That is why in Islam wealth produced by agriculture, animal husbandry, industry, trade and commerce properties and taking legitimate properties many recommendations were on their way and others, and to enact strict laws deals properties situation in punishment for theft properties Others and seized it, and the state of rule of respect properties And Muslim practice, actual position value properties He said the Islamic vision. Even in the hadith of the Prophet demand properties Top vehicle worship, and killed in defence of properties, in giving testimonies emerged. Because the Prophet said: "Seventy best part of worship request Muslim" and also "Kill without its properties is a martyr". Imam Sadiq (AS) also work for a living is considered as the equivalent of jihad in Allah's way. "And the dependents in Allah's way" Thus, in Islamic culture. Properties one of life's necessities and Khams materials and all orders come jurisprudence to maintain the religious life needs in order of importance are concerned. These needs include: religion and belief, the soul and the soul and the intellect, width and honor and properties and Finance (Nobakht, 1999).

In the words of the Holy Prophet said: "H. Muslim tumor properties sanctity of blood" this analogy according to the efforts to save lives and tail respected Islamic law, the necessity to respect the sanctity properties others, and immunity from any occupation without the permission of its owner in Islam. Imam Sadiq (AS) said: "The blood of a Muslim man and his properties not only gives it willingly. The general interpretation of the Holy Qur'an "no properties vanities" and also (verses 161 women and 34 repentance) Muslims unjustly seized in properties others strictly keep.

Jurisprudence According to these verses and sayings of Islam and Muslims juristic principle common behavior need to respect labor and capital Muslims, and the prohibition of any modifications without permission properties if you have inferred harassment and abuse and rape properties the other is ensuring compensation to the owner properties necessary to consider (Habibzade, 1993).

That is why publishing the works of cultural initiatives that the author and the author's material and spiritual wealth is prohibited without his consent know, and unless it is proven that the author of the work and the effect is going freewill and free of charge considered necessary to guarantee compensation and remuneration. Because this kind of addition to the side properties the creator of the social prestige and reputation depends on it, and criminal liability of any person realize his own spiritual and worldly is written and spoken word or idea to another without the permission of the previous transport is not permitted. In the Hadith the prophet "Abscess warranty" From this hadith rule jurisprudence "of his sheep actual pays" or "Pays for

sheep " This means that everyone must take their booty to pay damages, or damages between tolerance and dependence should be established taking concomitant benefits have deduced (Yusuf al-Hakim and Alakhani Riyah, 1984).

3. Discussion and results

3.1 *Third Speech: ownership paced partners in the component properties condominium*

The promotion of civil promotion here. It means the same thing in article 571 BC. D. Come:

"The company is the community of multiple Kane properties of an object to be promotion».

Kane rights to multiple properties of their kit is the right properties; This means that several people at the same time that an object's properties, so that component properties condominium, multiple Kane properties is taken into account and no property, properties kit are independent and properties. Therefore, words (syntax promotion) state properties subject kit properties object is null not clear; Such that each element of the same object at the same time in each of their kit is the right properties (AminPour, 1951).

Otherwise, if each of the two, properties a certain part of an object, so that each of them properties It has to be specific piece of kit, then of community rights properties Kane, is not part of the scope of Article 571 AH. So when the outside community properties Multiple kits of an object is conceivable that, subject properties Kate is determined, otherwise belong to properties Kate also, not an object; But numerous things. The emergence of promotion it is also ineffective and whether it has the authority, compulsory, contract, and action of partners. What is important, how many people to properties real same way promotion the right properties the kit; So that all of them without the consent of the possibility of separation and partition it properties (Jafari Langerudi, 2007).

According to Article 581, none of cannot, without the consent of other partners, subscribers spend on their properties. The capture of each of the seizure of his condominium condominium in the share of other partners. It should be noted that the promotion does not mean that each of the partners, properties components who cannot clear up after partition, the components of each property is determined.

Rather, it means that each of the partners, each component properties condominium properties kit, but the kit properties other partners, in which components are fixed. After acquiring it, in ways that are prohibited by law, can be debated, Bob is a crime. Our assumption is that if the capture unit of partners, properties condominium, without letting other partners, illegitimate and illegal knows, every possession, whether it is necessary to steal abduction and either eliminates fraud by means of fraudulent that it is necessary and whether it is necessary for demolition waste; as appropriate and will be eligible against properties. Component properties Kane condominium to condominium owned properties and thereby can be supposed two assumptions: First, the capture of each of the partners' properties condominium as captured in properties is himself. Secondly, that this appropriation in order to seize the properties is another. In the latter case, any capture that is in it, are illegal and subject to criminal suit. Whether it will take action if properties condominium be destroyed by partners, mass destruction and theft if stolen and cannot be distinguished, and some of the measures considered as a crime, and some will only lead to civil liability. Because in all these cases, or other been achieved or not unrealistic was not in all crimes against properties A sentence and cannot be distinguished.

The Iranian Civil Code properties condominium Belongs to all partners and each of their component parts properties condominium have contributed. As a result, the capture of each of them properties condominium is illegal without the permission of the other partners 581 female. Of civil law what is the meaning does civil remedies, based on the illegality of the partners involved in the properties condominium there is an alternative criminal sanction or not it seems that no conflicts between the two, is unthinkable. Legal logic requires, criminal sanction in coordinating the implementation of civil and criminal provisions goals are physical problems do not conflict with security properties People in the community and no evidence excluded properties property condominium there is no such legal protection. What is certain is that the interpretation of criminal provisions to preserve the rights of the accused, especially the presumption of innocence, the spirit of the law is to protect the victim, shall be considered action (Shahri and Houssien Abadi, 1979).

As the interpretation of the law shall not be such as to members properties to include non-legislator, should not cause harmful justification is accused; but should be part of a crime, leading to anti-social behavior is abnormal. So if unlawful interference partners properties condominium might be stealing, no barriers in order to steal credit for physical element it does not seem to recognize it operates. Capture in properties condominium Not only in terms of both criminal and civil is not permissible in terms of the guarantee is not applicable if the seizure was to trumpet could be subject to a theft. It seems to make the difference on properties condominium in crimes against properties has no legal justification and justice demands that a policy and procedure in all against properties run. Or properties condominium except that it is hardly of any unauthorized acquisition of suitable and qualified as a criminal act is committed, or properties condominium it is to commit to any occupied qualified as criminal (Mohammad Sadeghi, 1997).

Such as the stealing of properties to determine the result hyperplasia. Condominium Partner, to its credit department of properties belonging not to him, is allowed. However, if the perpetrator doubts ownership they cannot be proved to exist or ill will lack credibility among the general elements of the crime of robbery of interference characteristic of the condominium properties. What is important is that the act committed with the knowledge and determination is carried out with malicious intent. This is a proven authentication, checking quality of criminal behaviour and circumstances of each case and the nature of the act committed by the court will have no effect. As the evaluation of the quality of the ore properties and deprive the partner of the efficiency of properties condominium may be intent on stealing the properties necessary condominium. Due to ban on acquisition properties condominium other partners, seem obvious that if a partner's behaviour in occupied properties condominium for the abduction, may be subject to a theft. After the realization of crime in general in crimes against properties than the properties condominium is possible and there is no reason that we adopt in the crimes (Haeri shahbagh, 1950).

3.2 *Provisions properties condominium in crime Hadd steals*

Allah in Surah Al-Ma'idah verse 38, says: "Cut off rustlers thief hands penalty earn from God ". Ayah no definition of theft, robbery, punishable by a sentence stated. Theft and limit the conditions for its implementation, in our narrative. Including the circumstances in which traditions with regard to the implementation of the proposed, is that stolen properties including the properties to be shared between the burglar and the other, otherwise the rule (Dar) is annulled. Imam at the right time has come: the content of this statement is that, Ali was the one who stole the spoils of war, he said, do not cut off her hand, because of what has been stolen has been partner (Boroujerdi Abduh, 1947).

Imam Khomeini says in this regard: "the theft and is the current limit, provided that there is no confusion, doubt whether legal or topic. So if partner properties subscribe to the permissibility of thought into it without the permission of the partner should not interrupt him. Although what has been stolen and to reach quorum. Also, if the science to respect and to split up properties divides it, but going to be cut later this year will not be permitted. However, if Balm to respect and to divide the theft and it should be cut off his hands. Also if properties another illusion ownership should not cut on his hand, because why not steal and if the properties Common share value of the current must be cut, but if it is hijacked, the taxable amount is stolen, the current is cut off ". Sheikh Mofid uncertainty because he knows who committed the robbery spoils doubt it has been through in its own right (Shahidi, 2001). Some jurisprudence The judge Ibn including and Ibn Idris of Sheikh Tusi We eventually have suggested that if one of properties The share of the booty to the current must be cut off, but because it had taken without permission and it is divided which has indicated that it realized in any case of theft. Late Ayatollah Khoei it is also to be accepted. Of the sayings of jurisprudence We conclude that quoted the words jurisprudence The association is often based on the same and despite minor differences arising from the differences in narrative texts, the opinion prevails that the abduction properties condominium If the partner is more than his share and the installer theft, punishable stealing punishment (Hadd) and if less than a quorum of theft, the punishment which finally suggest that the abduction properties condominium The following is theft and punishment as it does not affect the nature of matter, hence the stories and comments jurisprudence Of the theoretical claims kidnapping properties condominium to qualify as theft-proof and eventually belong properties Apart prove that in this case it should not be a difference between theft and vandalism (Chandra, 2013).

4. Conclusion

Intervention and aggression against any of the partners in properties condominium ownership cannot be determined through any of the properties discussed in jurisprudence debated And lawyers have been the way that some person has protested the move as a criminal offense and punishable action against those believed to evil, and they discuss the operation without the person who commits have been a criminal specific sanction. The first argument is that any action against properties that people with hostile intent will be considered a crime; however, if material seized properties condominium, without the permission of the other partners of civil rights is prohibited, whether it be seized in order to carry out a legal action relation to any act or not. Failure to capture license partner in properties condominium without the permission of the other partners, opinion jurisprudence of Shiite and our rights in addition to the aforementioned opinion, the appearance of some of the Civil Code, including Article 579 and 475 can capture the impermissibility partner material without the permission of the other partners said. Such a person has not been convicted and punished treated, questioned the sanctity of ownership other partners and will allow anyone to do such an act is against the reasoning of the first, others believe that such a person be punished ever was not because he actually manipulate its properties and these properties cannot be separated from the share of other partners and said that he has been involved in his share, the other side of the doubt, which is one of the principles rule accepted in jurisprudence Is the main, will lead us to the path where such a situation should be interpreted in favor of the accused and acquitted him issued by the presumption of innocence. Dissension action in dealing with the case law in domestic courts to intervene and attack our country, unfortunately, unit of partners in properties there condominium unity and theoretical perspective that is useful for the same case cannot be found. Incoherence of such events can be found in the comments of the judges and even the judiciary education advisory opinions expressed view that in some cases intervention one of the partners in properties due to partake in every part of his condominium properties have not discussed the crime while the other theories about these titles were given to understand how the argument a bit difficult to the crime. As a result, according to the traditions of theft of trophies note that the subscription feature to the rule jurisprudence maintain ownership of their dignity, their share has taken less than or equal properties because of the ownership right over the properties he used to rule stealing punishment (Hadd) but now is not if the partner more than share properties his condominium if the conditions Hadd steal, according to the noble verse should be compared to him stealing punishment (Hadd) is ongoing.

REFERENCES

- AminPour, M. T. 1951. Criminal law and public opinion to the Supreme Court. Tehran Printing Company.
 Boroujerdi Abduh, S. A. 1947. The Supreme Court of justice. Department of Justice Legal and Judicial Research and Training Commission.
 Chandra, D. R. 2013. A SCENARIO OF MEDIA AWARENESS FOR SOCIAL NETWORKING. Humanities & Social Sciences Reviews, 1(1), 24-33. Retrieved from <https://giapjournals.com/index.php/hssr/article/view/hssr114>.
 Habibzade, M. J. 1993. Specific criminal law.
 Haeri shahbagh, A. 1950. Described the Penal Code. Publication of the World.
 Jafari Langerudi, M. J. 2007. Terminology rights, 213-216. Tehran: publishing Ganj Danesh.
 Mohammad Sadeghi, H. 1997. Crimes against property and ownership.
 Najafi, M. H. 2008. Javaher Al-Kalm Fi Sharha Sharaye Al-Islam, Edited by Mohammad Ghuchani, 22(5), 475-478. Imamiyeh Print.
 Nobakht, Y. 1999. The ideas of justice. Tvlydketab publications.
 Shahidi, M. 2001. The legal status of possessions partner in the joint property. The right quarterly, (6).
 Shahri, Gh., & Houssien Abadi, A. 1979. A series of consultative Legal Department of Justice. Islamic Republic of Iran in civic issues.
 Yusuf al-Hakim, J., & Alakhani Riyah, M. 1984. Alqs Alqvbat law as a specific property. Damascus University.

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