

## The Ratification process of criminal Responsibility of Legal Persons in Legal System of Iran

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**Abstract:** The liability of legal person same as to natural person divided into two categories: civil liability and criminal liability. In the past, civil aspects of legal person was more important and less priority was gave to criminal liability. Iran's Jurisdictional system was also accepted it but today in most countries, this kind of liability accepted under specific circumstances. Iran's legislator unlike previous Islamic criminal law that doesn't mention criminal liability of legal person, beside punishing natural person, also punishing legal person too. Thus criminal liability of legal person is one of basic challenging matter's of Iran's criminal law, but also the general view of legislator before approbation of network criminal law in 1388, was not accept it Acceptance of criminal liability of legal person make some mutations in general instructions of criminal law and investigation for accusing a legal person which bring up many more views and arguments in Iran's legal system. So in first step we should discuss the acceptance process of this kind of liability In Iran's law system. Through Iran's law system, three kinds of responsibility related to legal person anticipated: (1) First: criminal liability for executives and high position managers which is legal person liability. (2) Second: civil liability which makes legal person in charge for any damage. (3) Third: social liability (security) that in regard to crucial status of legal person can be implied and criminal liability of this kind not long ago granted by legislator in 1388. In this article, more than recognition of legal person concept and it's origins of liability, also recognition of criminal liability related to legal person concerned.

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**Key words:** legal person, criminal liability, civil liability, natural person

### Introduction

In criminal jurisdiction, legal persons are the facts and legal phenomenon that in two folds is reflected: The first perspective, the activities of these individuals and their crimes, crimes for which referred to the legal personality as a result of crime and criminal responsibility of individuals. The second perspective is important, the criminal liability of legal persons as independent creature is the center of focus. The responsibility that isn't attributable to the Group or legal person and not its members and constituents. The legal system has long been that knocked off hesitant in accepting the civil liability of legal persons and put them in category of their civil rights. Although In criminal jurisdiction, liability of persons shall be accepted with further delay and further reflection. The reason for the long delay, person-oriented features of criminal laws and rule of thinking was based on reasons such as the impossibility of implementing some punishment, Loyalty to penalty goals, commitment to the personal principle of punishment and, above all, lack of the will and intention of the legal individuals, they are considered incapable of criminal responsibility.

Michael Moore English in response to why legal persons, equal to animals and adult humans and crazy have lack of capacity and capability in reprimanding t writes: Documents of convict s fault involves two

principles of rationality and autonomy of the individual. Based on wisdoms, imagination and desires of man in his body is shaped and in the external worlds is occurred. And he can resort to the logic for the rise and outbreak of his idea and determines its instruments. On the other hand, human on the individual autonomy will able to guide his body and supervise it. Thus, the rule of one's own is the most important attribute in Him. So that his own actions can guide and realize his ambitions. The result of that speech, to subjugate a behavior and rule over the soul and psyche is possible only by natural creature called man and nothing else. Nonetheless, Remoteness of the difficulty and complexity of the non-recognition of the true culprit, especially in companies and big decentralized legal persons that the individual error in occurring of adverse events is colorless. In comparison with system failure, Managerial and organizational culture And also encouraging legal persons to adopt preventive measures and the use of required equipment in order to minimizing the potential public harms and guaranteeing the recovery of damages incurred by victimization. Legal systems, one after another to the criminal responsibility of legal persons are encouraged. Views about what evidence can attribute responsibilities to the person is (different)[s1]. Representative or vicarious liability theory is

originally from England, it indirectly attributes the responsibility to the legal person, a secondary character theory of identification that is rooted in the system, believes the direct attribution of liability for legal persons by their navigator agents. Based system approach to legal persons and attributing crime to them on reliance to organizational culture is another approach that of 2007, derived from the Australian penal system has been welcomed by English laws. Iran's penal system, also Legislators welcomed criminal liability of legal persons as a principle attribute to all crimes that the penal system was received in 1392/2/1.

### Statement of Problem

With the increasing development of human societies, in many aspects, especially economic and financial issues, everyday, scales of fraudulent offenses such as betraying, forgery and fraud is heavier. Most perpetrators of these crimes may be among the social upper classes called white collar. White-collar crime isn't currently limited to natural persons, Rather, companies and financial institutions and legal persons generally have a degree of delinquency and alongside the traditional delinquency, by legal persons there is new delinquency based organization and interests However, there is always uncertainty in the application of this policy, because imposing the penalty shall be subject to criminal liability. The drawbacks of such persons to criminal responsibility, such as the impossibility to imposing some penalties. And the failure to achieve the purposes of punishment and a violation of the principle of personalizing crime, causes the uncertainty in accepting criminal responsibility of legal persons. Criminal responsibility, loops and bridges are two important institutions of criminal laws that it means punishment and the crime. And hence it is one of the most important issues of criminal law that guarantees historical, philosophical, sociological and legal issues. civil liability of legal persons is accepted such as civil liability of natural persons, But the criminal liability of legal persons is a controversial issue, A group of lawyers, for reasons such as lack of criminal intent or lack of understanding and wisdom, Impossibility of imposing sanctions for legal persons, deviating from the principle of personalizing penalties and no Suring goals of penalties for legal persons, criminal liability are not recognized. And because of these comments, some countries haven't accepted responsibility for his own rules. In contrast, another group rejected former views of relying on the requirements of justice and fairness, they gave criminal liability for legal persons. And it has been accepted in the laws of some countries. With an overview of the laws in our country, we find that for

accepting of criminal liability for legal persons has always been resisted. And the issue is not explicitly criminalized; Iranian criminal law has person-oriented nature and criminal liability of legal persons, except in rare cases hasn't been recognized. For this reason, in the Penal Code Act 1304 and the Penal Code 1370, there aren't cases that relates to the criminal liability of legal persons, But in certain crimes, legislator Case and miscellaneous view seems to have responsibility, And criminal liability for legal persons deemed to be footprint of acceptance. In this context penalties such as fines, closure of the institution and revoking licenses have been predicted. in this regard can mention to rules such as a single article related to seizing property of parties that to be dissolved, Article 4 of the regulation of medical, pharmaceutical and food and beverage Act of 1344 Article 15 of the Law on Security Act of 1339, Article 220 of the Commercial Code and Article 17 of The suspended state Act Of 1367. On the contrary, in other cases of Iranian legislators, the existence of an implicit admission of criminal liability for legal persons has been identified as responsible for the subjects of crimes. And enforcing penalties isn't on legal persons but rather about the natural persons that is considered responsible for the legal persons as their administrators. In this regard can also mention to Article 568 of the Penal Code of the 1370, Note 2 of the Ac t, a law of the personal penalty that does unauthorized activities in the audiovisual activities. Article 199 of Direct Taxes Code,, Clause 2 of Article 2 of the Penal Code of disruptors in Iran s economic system, Articles 27 and 28 of the Press Law 1362 Amendment Act of 1379, Article 70 and 76 of the Trade Act of 1382, Article 109 of the Social Security Act of 1354, Article 19 of the Law on the Check and translated publications, audio books Act 1352. Legislator, in the new Islamic Penal Code, adopted Act 01/02/1392 in Articles 20 to 22 of this law, the criminal liability of legal persons explicitly paid attention to criminalization. Because legal persons, particularly because of the collective will, distinct and independent of their own free will, it is also for certain activities that possible to provide their responsibilities. Article 20 of the Penal Code applies common interpretation of the legal person, which includes legal persons of public law as well. This article requires: "If a legal person under Article 143 of this Act is liable, with regard to the severity of the crime and its adverse consequences to one or both of the following cases would be condemned, This does not prevent the punishment of individuals.

- A) dissolution of the legal person
- B) confiscation of all property

C) The prohibition of the public invitation to raise capital permanently or for a maximum period of five years.

E) Prohibition of Issuing of some commercial documents for a maximum period of five years.

D) Fines

G) Release of conviction by the media

Article 20 of the new law is a remarkable innovation in the criminal liability of legal persons, According to this provision, legal persons of public laws in enforcement of non-governmental activities that have incumbency are eligible for criminal responsibility and punishment of their managers about Offenses by those aren't prevented from the determination of the punishment for a legal person. That is why it is necessary to notice to the correct selection of the members of the legal persons of private law in general and on how managers should carefully monitor their activities so that they prevent the occurrence causes of condemnation; Also, it should consider the selection of the directors of legal persons of public law that have incumbency activities.

### Importance and necessity of research

In Iran's legal system, in the past most aspects of civil liability of legal persons has been proposed and paid less for their criminal responsibility. Indeed, the criminal responsibility of legal persons in particular since 1388 with Computer Crimes Act was a landmark in the field that the legislature assumed with the admission of the criminal responsibility of legal persons in general in the criminal law system of the Penal Code in 1392 ended the legal vacuum, Because of legal persons as well as individuals are entitled to the right and duty And an interpretation are born daily, Analysis and evaluation of the status of their legal investigation and Laws and regulations governing them subjected always in the row Yastkhm of academic research. The author also with regard to the adoption of the new Penal Code in 1392, pays attention to the criminal liability of legal persons. It is hoped that the results of research to serve a small step in the country's legal community.

### Objectives

1. The ideal goal: to serve the economy of a country's legal community
2. The overall goal: to explain the results of the research about removing vague questions
3. Special purpose: a review and analysis of dimensions and principles of criminal liability of legal persons in relevant laws before and after the victory of the Islamic Revolution
4. Practical purpose: to present the results of the relevant references

### Research Questions

What are principles of admission of criminal responsibility in Iran law?

How analyzed Criminal liability of legal persons in a comparative study between general and specific rules of law?

How assigned criminal responsibility to individuals based carpel principles?

What is differences in individual criminal responsibility and legal persons applicable to both legal point of view?

### Research hypotheses

1. The admission of criminal responsibility of legal persons in new Islamic penal law has a general aspect.

2. The adoption of new Islamic Penal Code of Iran's penal policy despite limited predictive cases doesn't show approach clearly visible about the criminal responsibility of legal persons themselves. The general approach of the criminal legislation and policy isn't based on accepting the responsibility.

3. The law of the Penal Code is the important law in the courts for investigating offenses, And judicial authorities in dealing with criminals are forced to be according to law, Thus, The admission of the criminal responsibility of legal persons in the law isn't one of the competent legislative initiatives of the country's legal system in time of its establishment.

### Review of literature

With Searching in title and content of legal books and theses, Nothing that has been independently examined the issue of criminal responsibility of legal persons isn't generally found, It should be noted that as mentioned the new Penal Code ratified it about a year ago, a general discussion of the criminal liability of legal persons is discussed, It is valuable that professors, researchers and students notice the different dimensions and specially innovations of the law. The results of searches in articles with subjects of criminal liability of legal persons explained in the following:

1. Mohsan, Sharif Bod Digaran, attribution of criminal liability to legal persons in the British and Iran penal system, Journal of Criminal Law Handbook, Third Year, No. 6, Autumn and Winter 1392, In this article, the writer pays attention to a comparative study of the criminal liability of legal persons in two legal system of England and Iran of a necessity of assigning responsibilities, and finally we reach to the conclusion that it is appropriate that Criterion of the assignment of a crime to a legal person, is based on a system failure.

2 Dr, Iraj Goldozi Ana Ebrahimi Gorbani, criminal liability of legal persons in Iran and the

reaction of society against their criminal, the journal Proceedings, No. 94, October-Persian date Aban 1391.

The authors in this study, with regard to the increasing role of legal persons in all aspects of human life and the impose of rights and assignments by them in different countries, bill of the Penal Code that in date of Printing this article was not yet changed into binding law, One of legislative innovations is enumerated, and a review of the course of a civil liability of legal persons, and also Case References to punishment of legal persons in scattered laws of our country have reached the logical conclusion that legislative action has been very pleasant.

### Conclusion

Penal system of our country never anticipated clearly criminal liability of legal persons. In the words of Dr, Ardebili "person-oriented nature of criminal law prevented from the determined duties in law that spreads to a single group or collectivity" also anywhere spoken about someone in the criminal provisions who is known as a natural human. But with the approval of the new Penal Code in 1392, many innovations created in of the criminal policy of Iran that one of the highlights of the innovations is the Penal Code of legal persons, because the law with explicit admission of criminal liability of legal persons ended one of the most controversial issues of the criminal law. The status of Articles 20 to 22 and 143, passed in 1392, according to the legislative history seems to be useful and legislator Despite oppositions that are for the reception of criminal liability of legal persons, recognized it. But to mention only an article of criminal responsibility of legal persons is not enough. Because the principles and methods of procedure, especially investigating to crimes of the persons required that the legislator pays more attention to this matter. Also mentioned in Article 20 and Article 21 and 22 of the materials in a form of punishment and Article 143 of the Criminal Responsibility, Elsewhere, apparently written in the style of the French Penal Code, does not seem to have appropriate conclusion. In the provisions of Article 20 of the legislature before exposition of criminal responsibility, the amount of the punishment is determined. In Article 143 is limited to briefly mention a few bets. But it is essential that in the last article the three subjects to be separated.

1. Recognition of the legal person (Author)
2. The source of liability
3. The relationship between the two subjects.

When the responsibility imposed for a legal person, the actions of the real responsible individuals have acted outside the scope of regulation, But the law does not resolve the ambiguity. There should be the rational relationship between the responsible person

and responsible fathering behavior. If the director of the legal person of his own authority used for personal gains or used in favor of another person, the legal person isn't responsible. The word "interest" in Article 143 The IPC is a collection of benefits of both material and spiritual, probable or definite, if manager of a company with his unhealthy advertising harms his own rival company, Legal person is responsible for it, even without even without it has to been the certain benefit for him. The Computer Crime Act, legislator the open and wider case predicted and described the criminal liability of legal persons, and he has said many more conditions for holding legal person. As noted above, the Computer Crime Act 1388 has specific legal, But M.a law that enacted in 1392 accepted criminal responsibility of legal persons generally. Therefore, the computer committed crimes by legal persons, Computer Crime Act has remained with its own strengths. Because late general of abrogating is not as certain front. In discussion of legal persons should say that in general the punishment of the people is more based on utilitarianism rather extreme utilitarianism based on considerations such as intimidation, prevention, correction, rehabilitation, disability and compensation for the victim's physical and spiritual. Financial penalties mostly limit professional careers. The IPC provisions of Article 20 (c), (d) and (e) of prohibitions creates professional restrictions, And Sections B and C deemed the confiscation of all properties, fine and financial criminal, and the dissolution of the legal person is considered to be negative punishment. Penalties with security measures that commensurate with the crime of legal persons prevent from occurring dangerous situations. If the activity of legal person is deviated from the legitimated target, it ends to his life. Imposed penalties of The IPC typically prescribed in of Article 20 are the severest penalties and that ranked among the mildest degree of chastising. according to Article 19, the dissolution of the legal person and confiscating the assets (Level 1), Permanent ban from one or more social or occupational activities and a permanent ban from public calls for increasing investment grade (5) Prohibition of one or more social or occupational activities for up to five years, prohibition of the public calls for increasing the capital up to five years, Ban of Issuing some business documents up to five years, Legal sentence and publishing in the media (grade 6). Legislator in cash penalty in the Penal Code Act 1392 considered serious approach to legal persons established them in Article 21."The amount of applicable fines to legal persons are at least twice as much as four times the maximum amount that the law has determined for committing the same offense, But the objection is sustained by the material, that Legislator for a basic crime means the behavior of

legal person did not predict the cash penalties. According to Article 22 If proved for the court that a legal person has been established for committing a crime, It means that the intention of his apparent cover has used for collective criminal activities, Or for the purpose of establishing was started, but changed his own activity and enacted criminal activity, The court has no discretion in the choice of penalty, And it has to sentence the legal person to both the punishment of dissolution and the confiscation of property. Because with the dissolution, other prohibitions that imposed in this article also occur spontaneously. However, when the legislator anticipates the verdict of the confiscation of all properties, and the court ordered the confiscation of all properties, and sentenced to confiscation of all properties, the verdict to cash penalty has no license. Because the dissolution of the legal person is as death. In addition to limiting the discretion of the court to impose two penalties on the basis of Article 20, it has not a clear basis. In particular, the range of sanctions in this article don't deal with legal person scorrptions. Imposition of criminal liability of legal persons is contrary to the principle of personal penalties. Because with punishment of these people in reality the function of the state and public power to are punished. And if we can sentence the government of criminal prosecution undermines the principle of separation of powers and the government cannot apply the rule. But if the legal persons of public rights act in public and private positions, they shouldn't be exempted from punishment. Note: with regard to the course of this article, exemption of the Public, non-governmental persons from penalties specified in this Article is possible, no waiver of any other penalties. With this interpretation, legal persons aren't exempt from responsibility, but they are different in their punishments. Finally, in accordance with Article 14 of

the Penal Code, the conviction of a legal person would be possible to pay blood money.

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