

# The Foundations of Criminalization and the Scope of Discretionary Punishments

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## 1. Round 1

### 1.1. Reviewer 1

Reviewer:

The sentence "Criminalization, or the prohibition of conduct with criminal sanctions, constitutes the most severe form of state intervention in restricting citizens' freedoms and stands in opposition to the principle of liberty." needs further clarification. It would be helpful to specify how this principle is balanced within Islamic jurisprudence, particularly in the context of discretionary punishments (Ta'zir).

The citation "(Najafi Ebrahimi, 1994, pp. 72–73, p. 119)" appears inconsistent in formatting. If multiple page numbers are cited, ensure clarity by explicitly stating which argument comes from which page.

The argument "not all criminal policy models worldwide justify the criminalization of behaviors and the punishment of offenders in the same manner" is an important observation. However, a direct comparison with Islamic criminal policy models would enhance the discussion. Consider adding a comparative perspective with Western legal systems.

The quote from John Stuart Mill should be framed with more context. The application of Mill's harm principle in Islamic legal traditions is debated, and it would be beneficial to include a scholarly perspective on how Islamic law interprets harm.

The sentence "According to this principle, conduct should only be prohibited by law if it results in harm..." requires further clarification on whether "harm" is defined exclusively in secular terms or if it includes religious and moral harm, as understood in Islamic jurisprudence.

The phrase "Legal paternalism allows for the criminalization of behaviors that, under the harm principle, would otherwise remain beyond the reach of state intervention..." would benefit from an Islamic perspective. Islamic legal paternalism often relies on religious obligations rather than state-driven moral considerations.

The argument that "Islamic governance does not recognize the private domain or the right to privacy in the broad sense..." is a strong claim. Consider citing additional sources to support this assertion, as Islamic jurisprudence does provide for certain aspects of privacy, particularly in the context of personal religious obligations.

The statement "From the perspective of legal moralism, the state is not only responsible for defending the interests of individuals but also for protecting certain values..." could be further strengthened by referencing specific Islamic legal cases or jurisprudential rulings where legal moralism has been applied.

The claim that "the foundation of Sharia, which includes criminal punishment, is to secure benefits for human beings and to prevent corruption and harm" could be clarified by explaining whether these benefits are determined solely by religious scholars or if they are subject to contemporary reinterpretation.

Authors revised the manuscript and uploaded the document.

### 1.2. Reviewer 2

Reviewer:

The phrase "the three principles of harm, paternalism, and legal moralism are the foundational justifications..." assumes that these principles are universally accepted. However, in Islamic jurisprudence, the justification for criminalization is largely based on religious texts. Consider integrating an explanation of how these principles interact with Islamic legal thought.

The statement "The Islamic Consultative Assembly (Majles) is also obligated to observe Islamic legal standards in this regard." could be expanded by specifying the exact mechanisms through which the Majles ensures compliance with Islamic law, such as the role of the Guardian Council.

The phrase "Criminalization is the opposite of decriminalization and serves as the primary tool of criminal policy in combating delinquency." should be nuanced. Criminalization is not always aimed at combating delinquency; it may also serve broader purposes, such as moral regulation and social control. Consider elaborating on these additional functions.

The concept of "five essential interests" is well-established, but it would be useful to include a discussion of whether modern legal scholars have redefined or expanded this concept in response to contemporary legal challenges.

The phrase "The principle of discretionary punishment (Ta'zir) has been legislated in Islam..." is somewhat vague. Consider specifying whether this legislation applies broadly across different Islamic legal schools or if there are variations.

Authors revised the manuscript and uploaded the document.

## 2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.