Iran's legislative criminal policy in criminal bankruptcy with an emphasis on white-collar crimes

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Abstract

A criminal lawsuit against a bankrupt can be proposed if a businessman or a business company or a merchant has committed fraud or wrongdoing in his transactions and as a result, the company is considered bankrupt, in this case the bankrupt is guilty and will be prosecuted. Although some white-collar behaviors have been criminalized in Iran's legal system, despite the development of the range of responses and their diversification, as well as the alternative mechanisms that are used encountering white-collar crimes, we need for new criminalization in this field. This article aims to analyze the phenomenon of "bankruptcy epidemic" from the perspective of criminological data in the legislative criminal policy of white-collar and economic crimes in Iran, which can be observed from two perspectives of legal and criminological challenges. The legislative mechanism in this area, regardless of the modern criminological data, has changed the trustee criminal courts into pragmatism political-economic institution in dealing with criminals in the criminal field of bankruptcy which not only does not envisage any certainty on the execution of punishments, but also delays prosecution, investigation and punishment of criminals.

Keywords: bankruptcy, criminal policy, white-collar crimes

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Introduction

1-1 Legislative criminal policy

Legislative criminal policy, as the first layer of criminal policy in a legislative government [1], consists of the legislator's deliberation and solution regarding crime and the response to it, which takes different forms according to the dependence of criminal policy on the political system of each country. Legal criminal policy is the taste of different legislators and their choices in all types of crimes and punishments and in general how to deal with the criminal phenomenon and criminal proceedings.

- "Feuerbach", the German professor of criminal law, defines criminal policy in a narrow sense as "a set of repressive methods by which the government reacts to crime" [2].
- Mrs. Marie Delmas-Marty, a French professor of criminal law, in an extended definition, describes it as "a set of methods by which the social body organizes its responses to the criminal phenomenon" [2].

In the broad sense, "Criminal policy is all preventive and repressive measures and measures that are used by the government and civil society, separately or in partnership with each other, to

prevent crime, fight crime, reform or suppress criminals." And in the narrow sense of criminal policy, it is limited to repressive methods applied by the government and against crime. It should be noted that the tool of criminal policy is legislative laws, which include the constitution, criminal laws, and criminal procedure. Therefore, this type of criminal policy, in addition to having legal enforcement guarantees, is also the governing body of other types of it and expresses the general principles governing the criminal system of a society [3]. Legislative policy actually expresses the viewpoints and methods adopted by the legislator in controlling crimes and violations. The basic foundations and principles of legislative policy strategies should first be sought in the constitution of each country [4]. Therefore, criminal policy can be defined as follows: a set of active and reactive techniques and mechanisms of the criminal justice system in a single and coordinated process with its elements in order to oblige people to conform to the value system of society [5].

1-2 Bankruptcy

Going bankrupt; It means that a person has lost everything he had [6]. Bankruptcy is a process that indicates a stop in payment, regardless of whether the origin of this stop is permanent or temporary. For this reason, in Article 413 of the Trade Law, the legislator has obliged traders to announce their suspension within three days from the date of the interruption in debt payment.

Article "412" of the Trade Law of Poems; Bankruptcy of the merchant is the result of the suspension of the payment of the debts that he is responsible for. Hence, the category of bankruptcy is based on the two elements of "being a businessman" and "ceasing debt payment". Courts often deal with bankruptcy petitions, regarding the first criterion, by inquiring the legal entity from the Registration Office of Companies and Non-Commercial Institutions and applying it to Articles 1, 2 and 6 of the Commercial Law and examining commercial documents such as commercial cards and finally obtaining an opinion of expert on the integrity and legitimacy of commercial activity at a major level in the aspects of distribution and production regarding a natural person, attempt to meet the first criterion and regarding the second criterion, they satisfied with referring the matter to the expert in terms of applying the balance of positive and negative assets with the preference of recognition of upward or downward course of the merchant's business operations. Finally, by referring to the superficial documents expressed by the applicant, who is often a recent graduate, and referring to the expert's theory, they issue a bankruptcy order by including several repeated articles in terms of citing the commercial law and civil procedure. In drafting the bankruptcy petition, the judge's attention is sufficient to issue the bankruptcy judgment only on a few points.

First, the bankruptcy applicant or the defendant of the lawsuit, whose bankruptcy order is requested from the plaintiff, is a businessman. The second is to confirm that the bankrupt has "stopped" his payments. This process is also carried out according to what has been said about the referral and verification of the expert's opinion. Thirdly, following the task of Article 416 of the Historical Business Law, it declares the bankrupt under the title "stop date". This date has its effects, which will be described in detail below.

1-2-1 Types of bankruptcy

Regarding the criminal cases of bankruptcy, two types "due to fault" and "due to fraud" have been recognized by the legislator. In such a way that the material elements of criminal bankruptcy are included in the Commercial Law (Articles 541 to 558) and its legal elements are included in the Islamic Penal Code of Punishment (Articles 670 and 671).

A. Normal bankruptcy: equal to articles 412 and 413, a person is considered a normal bankrupt who is a businessman or a commercial company and stops paying the funds he is responsible for, and within 3 days from the date of the interruption in the payment of his debts or other cash obligations, he declares his suspension to the public court office of his place of residence and submit the statement of assets and all his business books to the office of the said court. The said statement must be dated and signed by the merchant, and the number and calendar of all movable and immovable assets of the suspended merchant must be detailed, the statement of all debts and claims, as well as the statement of profit and loss and the statement of personal expenses. Therefore, if the debtor merchant or commercial company announces the suspension of payment of his debt to the competent court along with the required documents, he is considered a normal bankrupt. In other words, normal bankruptcy is when a businessman goes bankrupt due to unforeseen events and without fault or fraud [7].

B. Bankruptcy due to fault: The material element in bankruptcy of the type "due to fault" is presented in two dimensions, mandatory and optional for the hearing court in Articles 541 and 542 of the Commercial Law. Examples of compulsory bankruptcy due to fault (for the hearing court) are found in four assumptions in Article 541 of the Trade Law:

- Personal expenses or the expenses of dependents of the businessman in normal days become extraordinary in proportion to his income.
- The businessman spends large sums of his capital on transactions that are illusory in commercial practice or the aforementioned profitability depends on pure chance.
- To delay his bankruptcy, the merchant buys more expensively or sells cheaper than the current price and resorts to uneconomical methods to obtain cash, such as borrowing or issuing a compromise bill, etc.
- After the merchant stops paying his debts and debts, he prefers one of his creditors over the others and pays his claim.
- And in optional cases of bankruptcy "at fault" for the court, it includes three assumptions as follows: - The merchant has made obligations to another account and without receiving change, considering his financial situation, the fulfillment of said obligations is extraordinary.
- His commercial operations have been stopped and he has not acted in accordance with Article 413 of the Commercial Law.
- The merchant does not have a business office, or his books are incomplete or disorderly, or in the case of assets, he does not clearly state his true status, including debts and claims, provided that he has not committed fraud in the latter case.

C. Bankruptcy due to fraud: Bankruptcy due to fraud is one of the punishments predicted in the commercial law, but its punishment has been transferred to the penal law. Regarding bankruptcy "due to fraud"; Article 549 of the Trade Law; Missing business books, concealing property and assets through fake transactions and transactions, and imputing debts through forged documents (with bad faith) are among the material elements of bankruptcy as fraud.
Bankruptcy due to fraud has a stronger guarantee of execution than bankruptcy due to fault, and contrary to that, the judgment is issued only compulsorily by the investigating judge, and the judge issuing the decision has no authority in this field, and by confirming each bankruptcy case. In case of fraud, he will be obliged to issue a bankruptcy order in case of fraud [8]. Articles 670

and 671 of the Islamic Penal Code (Book of Punishments) respectively; The punishment for the bankrupt due to fraud is from one to five years of imprisonment and the punishment of the bankrupt due to fault is from six months to two years of imprisonment. The legal element of the criminal cases of bankruptcy should be considered the same articles 542, 541 and 549 of the Commercial Law. Because the legislator considered the words bankruptcy due to fault and fraud in those articles to be worthy of punishment and has left the amount and type of punishment to the criminal law. The difference between bankruptcy due to fault and fraud in terms of the spiritual element is that the bankrupt does not have bad intentions due to fault, therefore, in establishing this crime, one should consider Article 145 of the Islamic Penal Code and its comments regarding "criminal wrongdoing", but in bankruptcy due to fraud which is considered a type of intentional crime, it is necessary to pay attention to Article 144 of the Islamic Penal Code regarding the determination of the perpetrator's bad intentions in public and private places.

1-3 White-collar crimes

Edwin Sutherland; the creator of the term "white collar crimes" provided three criteria for identifying white-collar criminals; 1- Social position. 2- The ability to respect. 3- Committing a crime in the course of a job and professional activity [9]. From the point of view of white-collar criminology, the greater the power of a person, the higher the position in terms of employment and social status, the wider the effects of the crime and the wider the range of victims. Therefore, "nowadays, by using the zero-tolerance and three- strikes policy of dismissal regarding white-collar and economic crimes, the criminal law is security-oriented, and the presumption of innocence has become the presumption of guilt" [10].

In white-collar crimes, "the victim of the crime is not real, but it is imaginary and invisible. The victim of this crime is the economy, health and social security because it happens on a macro level with indeterminate-invisible victims and with low visibility and by people with high occupational and social status. The material element of this crime is immaterial and intangible; in other words, it is more a criminal thought than a criminal act and more in the form of omission [11]. The crime has not left any objective and tangible effect on a person or object, but in the credit and general atmosphere of the society in terms of economy, security and moral, it has heavy and irreparable damages far more than normal and tangible crimes.

White-collar crimes are among the crimes whose destructive effects have overshadowed the functioning of the criminal system and the legislative and executive institutions. The increase in the commission of white-collar crimes in the country in terms of its characteristics and the amount of cost imposed on the members of the society has made the implementation of an efficient and effective criminal policy against such crimes a definite matter [12]. White-collar crimes are among the most important social anomalies due to the widespread negative consequences. According to the theory of criminologists, white-collar criminals lack moral conscience. These criminals use their effective power and influence to commit crimes such as fraud, embezzlement, extortion, forgery, and large financial crimes [13].

1. Challenges and assumptions of discussion

In a simple description of the subject, people often through rent and lobbying and abusing the weakness of the monetary and banking system in allocating credit and validation and not considering the necessity of granting it attempt to obtain large currency and riyal facilities from

banks and financial and credit institutions and then by resorting to bankruptcy, they are practically exempted from the repayment of the facility according to the bankruptcy guidelines and the facility is used in unrelated fields or in the open market at the daily supply rate and finally, they cause severe disturbances in the monetary and banking system. By analyzing the effects of the bankruptcy order on the bankrupt assets, the conclusion is that due to the extreme fluctuations in the price of currency and goods in the market, obtaining a suspension order is not only considered a commercial scandal and loss of trust from the bankrupt business enterprise, but also considering the benefits, businessmen prefers to be considered bankrupt, and by accepting its negative effects and with an attitude of "balance of profit and loss", they seek to enjoy the benefits and legal exemptions of bankruptcy. Now, according to a descriptive description of the research topic, the challenges and hypotheses of the discussion are explained.

Undoubtedly, white-collar people are the first to commit such crimes. White-collar crime mainly occurs as a result of some people's abuse of special opportunities and situations. This crime is the crime of the privileged class of the society and usually the legal personality of the perpetrator is preferable to his real personality. In fact, they have beautiful faces and inhuman features and they don't think about anything except their financial and emotional desires. The entry of white-collar people into economic crimes and considering themselves bankrupt and taking advantage of the benefits of bankruptcy is one of the factors of the decline of criminal policy.

Some companies that have taken large loans declare bankruptcy by abusing the bankruptcy law with a bounced check of even one hundred thousand tomans, so as not to be subject to fines for late payment of loan installments, and if the bankruptcy court approves the company's bankruptcy, the banks will not be able to block the individual's assets or the company, and if the property has been blocked before, it will be released according to the bankruptcy law, and after the property is handed over, those who have a mortgage have the priority to receive their claims.

Considering that some debtors, especially large bank debtors, by abusing the legal loophole and in order to benefit from the benefits of the legal establishment of bankruptcy, in the petition for the declaration of major bankruptcy of the creditors, including the banks that pay the facilities, the Social Security Organization, the General Department of Tax Affairs as defendants don't make parties to the lawsuit, and according to the publication of the public announcement of the bankruptcy decision, in most cases, the offices are not informed about the issuance of the decision, and if they are informed, they face certain legal obstacles [14]. Therefore, it is necessary to adopt an arrangement that, considering the special nature of the bankruptcy order, the contents of the order at least reach the notice of major creditors, especially banks and tax and social security organizations [15].

Regarding the crime of bankruptcy due to fault or fraud, according to the guarantee of non-criminal executions provided in the commercial law, one of the effects imposed on the commercial company is the liquidation of the commercial company. This guarantee of execution makes the criminal responses expected to impose on a legal person in the assumption of committing a crime become useless. Because, for example, one of the punishments prescribed in the Islamic Penal Code is the punishment of liquidation of a legal entity, which does not remain as a criminal enforcement guarantee in the case of applying guarantee of non-criminal execution of liquidation of a local commercial company for liquidation. On the other hand, the examination of articles 670 and 671 of the Islamic Penal Code indicates another challenge, and the legislator has used the rule of reference in determining the criminal characteristics of

bankruptcy due to fraud and fault, which means that the definition, elements and criminal characteristics of these crimes have been implicitly referred to another law, and in this articles are only in the position of expressing the amount of punishment for these crimes. So the judge must refer to Articles 541 and 542 of the Trade Law to define the elements of this crime.

2-1 Legal challenges around bankruptcy regulations (practical and scientific)

In this topic, the challenges facing the phenomenon of criminal bankruptcy can be discussed and investigated from two legal (practical) and criminological (scientific) perspectives.

2-1-1 Legal challenges

A. Origin of reviewing prosecution time: According to clauses "C" and "D" of Article 105 of the Islamic Civil Code, the duration of the prosecution of the crime of bankruptcy by fraud of degree five is seven years, and the crime of bankruptcy by fault of the degree six is five years from the date of its occurrence. Therefore, according to the first part of Article 105 of the Criminal Code, the date of the crime is the basis for calculating the origin of reviewing the prosecution time. However, it is still difficult to determine the exact date of the crime in some crimes, including the crimes of bankruptcy due to fault or fraud, because it is stated in Article 412 of the Commercial Law: "Bankruptcy of a merchant or a commercial company is occurred as a result of the suspension of the payment of the funds that he is responsible" [16]. In criminal bankruptcy crimes and in any of its clauses, whether the date of suspension is the basis for calculating the passage of time or the date of issuance of the bankruptcy order is also one of the ambiguities that can be considered [17].

B. How to initiate the prosecution: According to articles 103 and 104 of the Criminal Code, the crimes of bankruptcy due to fault and fraud are unforgivable crimes. Based on this, according to Article 11 and also using the opposite meaning of Article 12 and Clause "B" of Article 13 of the Criminal Code approved in 2013 with subsequent amendments and additions, prosecuting the accused and filing a lawsuit regarding the crimes of bankruptcy due to fault and fraud due to its public status, it is the responsibility of the prosecutor and will not be subject to the complaint of the private plaintiff, although the legislator in the commercial law has considered the right to request prosecution and investigation against the defendants for three categories of people (liquidation manager, prosecutor and creditors) as private plaintiffs according to the same legal documents, this does not mean that these crimes are forgivable and it is not necessary to declare a complaint by a private plaintiff [18].

One of the challenges and ambiguities in the proceedings of bankruptcy crimes due to fraud or fault is whether it is possible to prosecute a businessman as a bankrupt due to fraud or fault before declaring bankruptcy. There is a difference of opinion among the legal doctrines and jurisprudence regarding the necessity or non-necessity of issuing the Anateh order when dealing with the criminal aspect of bankruptcy crimes due to fraud or fault.

To prosecute the defendant as a bankrupt due to fraud or fault of the prosecutor's office; Does it require the issuance of a bankruptcy order in the legal court or not? In other words, does the criminal prosecution institution have the possibility of impossibility prosecuting the accused under the title of criminal bankruptcy without issuing a ruling in this regard, in principle, a stay lawsuit from the court of law, or is this issue one of the examples of Article 21 of the Criminal Procedure Law regarding the issuance of Anateh order?

In one case, the Legal Department of the Judiciary, in theory No. 3030/93/7 dated 2013, responded to this question: According to Article 415 of the Commercial Law, the bankruptcy of a businessman is declared by a court order, which is currently the General Court of Law has replaced it, therefore issuing a bankruptcy order is within the jurisdiction of the General Court of Law, and after issuing a bankruptcy order, the prosecutor or the liquidator can prosecute the bankrupt businessman for committing bankruptcy and fraud in the criminal court, and if before issuing the bankruptcy order by the legal court, the charge of bankruptcy due to fraud or fault is raised in the prosecutor's office, the case is one of the cases of issuing the order of Anatah.
Also, in the judicial meeting dated 2004, in response to the question: Does the criminal prosecution of a bankrupt for fraud or fault require the determination of its type by the legal court in the bankruptcy order? The majority of judges believed that handling the aforementioned crimes in the criminal authorities requires the issuance of a bankruptcy order in the legal court, and the legal court should also specify its type while declaring the bankruptcy so that the criminal authority has the right to handle it [19].
Additionally, the General (Legal) Board of the Supreme Court of the country, in its insistence decision No. 205 dated 1970, considers the investigation of criminal (criminal) courts about bankruptcy to fraud even if the bankruptcy order has not been issued by a civil (general legal) court unimpeded and the criminal courts can deal directly with fraud in the case of bankruptcy. According to this decision, it is even possible to declare bankruptcy for fraud on the managers of commercial companies. The details of the issue are as follows: in 1963, the Tehran Criminal Prosecutor's Office through diplomacy requested the extradition of two people accused of fraud and bankruptcy by fraud from the Swiss Federal Court, and the Swiss court, while agreeing to extradite the accused of fraud, regarding the accused of bankruptcy to fraud, with the argument that because Iran's criminal law is inspired by French law and in France, prosecuting the accused (according to his extradition) as bankruptcy for fraud must be preceded by establishing the principle of his bankruptcy in the court of law, and this is not verified from the legal authority in Iran, referring to the Iranian law itself, it refused to extradite the accused of bankruptcy and fraud [20].
Some jurists believe that "the handling of the crime of bankruptcy due to fault depends on the establishment of the principle of suspension in the legal court, but in the case of bankruptcy due to fraud, considering that the subject of the proceedings is the verification of fraud in bankruptcy, this condition is not necessary" [21].
But this opinion is just a play with words. The discussion of fraud in bankruptcy is thought provoking depending on which of the criminal titles it fits. So, it should be noted: Insistent decision number 205-26/02/1349 confirms the opinion that what is recognized in the jurisdiction of the legal court is to deal with the issue of interruption in the payment of the merchant's debt due to the deprivation of the power to pay at the head of the debt receipt, which is definitely related to dealing with the elements of the specific crime of bankruptcy and it is the determination of the intention of abusing the rights of creditors by resorting to fraudulent means, which is basically within the jurisdiction of the criminal authority.
C. Ambiguity in the origin and cause of the stop: in an example from the text of the law; Article 539 of the Criminal Procedure Law has stated: Petition for payment of fine from a businessman is not accepted. ; A businessman who is an applicant for installments must file a bankruptcy petition according to the provisions of the commercial law...". The basis of the above

article, which is one of the effects of the rule stipulated in Article 21 of the Criminal Procedure Law regarding the issuance of Anateh order, implicitly excludes the jurisdiction of the main bankruptcy case from the jurisdiction of the criminal court and the determination of the duty regarding the payment or non-payment of the convicted person against the fine that the businessman is subject to the determination of the legal court according to the decree of Article 512 of the Civil Procedure Law, which is based on special formalities regarding the determination of the ability or lack of ability of the merchants in the payment stage [22]. Now from this point of view; It should be asked whether the origin of the suspension can be due to a criminal conviction, not from the rejection of property to the private plaintiff, but a pure punishment (fine). Apparently, Article 539 of the Criminal Procedure Law has given a positive answer to these questions.

Qadr matiqan; when in a criminal case due to the requirement of the legislator, the judicial authority is obliged to determine the duty regarding the property of the crime and must also return it to the plaintiff, the impossibility of the return due to the fault of the accused or the convicted cannot be considered as the source of suspension. This opinion is deduced from the provisions of articles 214 and 215 of the Islamic Penal Code, 122 and 128 of the Civil Procedure Law and articles 528, 529 and 531 of the Trade Law [23].

Therefore, based on the concept of Article 412 of the Trade Law and the interpretation and explanation of the application of this article in Articles 413 and 414 of the Mar al-Zekr Law, in terms of the nature of "interruption" as an element of bankruptcy, the inability to pay a fine by a convicted businessman that various solutions in terms of implementing this type of punishment is provided in Article 529 of the Criminal Procedure Law related to Article 27 of the Islamic Penal Code, the inability to pay the "object of judgment " which is considered a punishment in its nature and in terms of effects and rulings, it is included in the category of Ta'ziri punishments. , it cannot cause a lawsuit or declaration of bankruptcy, in the role of "debt payment suspension".

D. Ambiguity in the competent authority to prosecute and issue judgments: The fourth challenge, which rejects the second challenge, is whether my opinion on identifying criminal cases of bankruptcy and determining punishment is within the jurisdiction of the legal or criminal court? In other words, recognizing the criminal cases of bankruptcy and determining the punishment, considering that commenting on the principle of bankruptcy, which is considered one of the categories of the inherent jurisdiction of the legal court, should be considered in the jurisdiction of the legal court following the jurisprudential rule, "permission is in the object, permission is in its accessories". Or, considering it as an inherent category of jurisdiction between the legal and criminal courts, should we consider the criminal court competent? with an interpretation caused by separation in the legislative style, as the principle of bankruptcy and its examples are presented in the commercial law and its punishment in the penal law, we are aware of the opinion that the principle of stopping and determining the criminal cases is the responsibility of the legal court and only the type and level of punishment is determined by the criminal courts.

Considering that in Article 4 of the Law on Establishment of Public Courts and the Revolution approved in 1994 with amendments up to 2002, the legislator explicitly stated that "every jurisdiction that has more than one branch of the general court, those branches are divided into legal and criminal." Legal courts will deal only with legal matters and criminal courts only with

criminal matters" and from this statement, assigning is derived, not allocation, therefore it should be believed that the legal court has the authority to comment on the principle of the suspension lawsuit and distinguish the type of bankruptcy from criminal status and determination of punishment is the responsibility of the criminal court.

E. Ambiguity in how to punish a legal person: Although with the approval of the new Islamic Penal Code in 2013 and the presentation of the principles of criminal law and new approaches to criminal policy in it, doubts were removed regarding the recognition of the criminal responsibility of legal persons and the legislator in Article (20) of this law has ended to any doubts in this regard by providing seven types of punishments that can be imposed in case of a crime being assigned to a legal entity, and also in Article 143 of the aforementioned law; If the legal representative of a legal entity commits a crime in the name or in line with its interests, the criminal liability of the legal entity is proven, but the fact is that according to the correct opinion of some jurists; the current bankruptcy regulations are not applicable to legal entities, because if a criminal sentence includes a monetary penalty, the legal entity will eventually suffer it, which is consistent with the principle of allocating the bankrupt's property to the creditors and the principle of their equality [24]. In line with this opinion; some also believe that the word "persons" in Article 670 of the Islamic Penal Code only refers to natural persons [25]. Although some others have a specific opinion; if it is a commercial company that is bankrupt, the application of Articles 541 and 542 of the Commercial Law is attributed to the company's managers [26].

But according to the authors; According to Article 143 of the Islamic Penal Code; in criminal responsibility, the principle is on the responsibility of the natural person. This means that assuming the mixing of two legal and real responsibilities in one crime and the specific nature of punishing only a natural person, there is no doubt about the criminal punishment being imposed on a natural person. At the same time, the legal person's responsibility is also stated conditionally in this article (committing a crime in the name of or in line with the interests of a legal person by a representative), which also seems to remove the introduction and context of committing a crime (liquidation of a legal person). In the end, he emphasized; assuming that the legal person is responsible, this is not enough to punish the natural person. It means that the specific punishments determined for a crime that, in terms of its nature, can only be applied to a real person, should be applied.

2-1-2 Scientific challenges (criminology)

Paying attention to the fact that the criminal cases of bankruptcy, despite the provision in the subject law, have a new form in terms of the offense, and the legal texts have many ambiguities in terms of applying them, therefore; It can be said for sure that the main reason is the lack of attention to criminological data in the field of economic and white-collar crimes.

a. Anomie in the field of criminal policy and subject law: the criminal justice system and related supervisory and executive institutions are involved in a kind of anomie in connection with a series of criminal actions and reactions that do not find explicit examples in the subject law to deal with them. Criminal acts that are completely prevalent in the society and the legislature deals with it with an incoherent and ineffective war system. A system that is confused in legal and criminal concepts in terms of vagueness in inherent and local jurisdiction, criminalization, example and belonging to the sentence, and in the meantime, people seeking profit by exploiting the legal vacuum and abusing the vagueness and ineffectiveness of the

coercive reaction blade, they both benefit from the leniency of the bankruptcy category and benefit from the wide legal ways to escape from the clutches of justice. Therefore, the question is, in dealing with the emerging phenomena of criminal cases of bankruptcy or related to bankruptcy, should the type and extent of punishment and its examples remain fix as the same as the crimes and Shari'a punishments after more than eight decades of the passage of the relevant law? Crimes that act in the form of several compound and organized crimes as a criminal network and cause disturbances in the monetary and banking system of the country. Or should we basically believe to invent and criminalize all criminal procedures in the form of a compound crime?

In a hypothetical case, if we want to invent a new criminal title that is a so-called "French wrench that works for every bone", we are facing the principle of legality of crimes and punishments and, accordingly, the rule of "narrow interpretation of criminal laws". Whether, the criminal title of "acquiring wealth through illegal means" actually has such a situation [27].

b. Legislative policy in the jurisdiction: Article 415 of the Commercial Law considers it possible to issue a bankruptcy judgment following the statement of the businessman, the request of one or more creditors and the request of the prosecutor. In the current process of court proceedings, a businessman can obtain a bankruptcy order by appointing one or more creditors as he wishes. Therefore, it is clear that it is not necessary to inform the public prosecutor or some creditors who are aware of the financial resources and expenses of the facilities obtained by the businessman. The objective result is that some creditors, mostly major ones, are faced with bankruptcy and their fall in the complicated process of liquidation and bankruptcy. The fact is that the category of bankruptcy is a combination of legal and criminal grounds and therefore, the legislator of the time, while explaining the concept and elements of bankruptcy, has compiled its criminal examples in a collection (commercial law) in terms of form and substance. A correct procedure that later with the changes in the judicial organization and structure in the intrinsic dimensions and the separation of powers and competencies and the formation of courts in two criminal and legal (civil) formats of the type of inherent difference, became the source of abuse by the big debtors of the monetary and banking system of the country. Each of the hearing authorities with different inherent competence also have their own formal and substantive rules in their jurisdiction and refer to them.

Ambiguity in whether bankruptcy should be on the side of all creditors or there is no need for this issue? Or whether the big creditors should be present in the bankruptcy case, or whether this is also optional according to Article 415? Also, there is ambiguity in whether the public prosecutor should necessarily be a party to the bankruptcy case or this is optional? Ambiguity in whether the right to appeal and third party objection is reserved for them in the assumption of non-presence and position of the prosecutor and the bankrupt's major creditors in the primary lawsuit or not? Ambiguity on the assumption of the entry of the criminal prosecution body in the issue of bankruptcy and the issuance of a judgment on bankruptcy due to fault or fraud, what are the effects of the criminal judgment on the bankrupt himself, the creditors and the process of liquidation and finally the principle of the bankruptcy judgment in the court of law? [28].

2. Analysis of the basics of the challenge

In the analysis of the causes of the wandering of the judicial prosecution body in the pursuit of such criminals, if we want to scrutinize, we has been approached the border of ethics and law,

which is both outside the subject of the research and takes it away from its objective mission. Although it is an undeniable fact that ethics in law and professional and business ethics have practically been deposited to the history museum, regardless of the validity of this opinion, as it happened, the study of criminal bankruptcy, whether we like it or not, leads us towards the study of legal challenges, therefore; in general, two categories of active and reactive causes can be mentioned in this field:

In the explanation of active or antecedent causes, two objective and subjective dimensions of the case can be considered. Weakness and defects in the banking system in granting facilities and validating documents and lack of supervision in monitoring the places of use of the granted facilities and more importantly, the impossibility of monitoring the cost of credits such as the opening of letters of credit and the inadequacy of official institutions of supervision in the aspects of crime prevention is worth mentioning.

In the previous mental factors; It can be called ambiguity and inconsistency in the laws in terms of jurisdiction, precedent, and jurisdiction, as well as a legal vacuum because on the other hand, the criminal prosecution body, in dealing with such criminals, who have evidence of legal rulings indicating bankruptcy and the need to bear the legal effects of this category on such acts, prosecuted them as bankruptcy for fraud or fault and accordingly, citing and inferring from the law citing bankruptcy as an example of fraud and culpability, both on the part of the prosecuting institution and on the part of the criminal court investigating is inevitable.

On the other hand, the reactive or posterior factors are divided into two objective and subjective types according to the first assumption. In the row of objective reactive factors that are mainly legal and formal in nature; It is possible to refer to the confrontation with judicial courts from the perspective of jurisdiction and neutralization of the effects of countermeasures due to the lack of clarity of authority and competence, severe bureaucracy in the arrangement of secondary proceedings and, as a result, the delay of proceedings, the complicity of countervailing supervisory institutions in the position of action and lack of separation of duties and powers of each in the affected matter. After the issuance of the bankruptcy order and considering that there was no clear limitation in terms of competence and action dates for the interested parties regarding the claim, competent authority and objection deadline, or in this field, there was no sufficient knowledge for the individuals and even the executive, supervisory and judicial officials from the concept of bankruptcy and its process, practically the process of liquidation and continuation of the bankruptcy process turns into a chaotic wasteland, which ultimately leads to the indecision of the bankrupt himself and the creditors. Considering the nature of business operations that involve small and large real and legal persons, and among them, public and government legal persons are also visible, in the position of obtaining their rights from the bankrupt, in addition to going to the liquidator, they also use their supervisory and executive arms and sometimes attempt individually in the position of adjudication.

In the posterior subjective factors, it is possible to point out the conflict of laws and internal directives within the organization of general legal creditors and even the laws approved by the parliament with the mandatory rules in the field of bankruptcy. The owners of privileged rights filed a lawsuit to the property and assets of the bankrupt in the capacity of the receiver through the enforcement departments of the registration, and then the operation was implemented through the courts, and the conflict of a judicial and quasi-judicial authority caused the position of liquidating the bankrupt's debts, either filed lawsuits with the criminal judicial authorities

regarding the criminal suspicion of the bankrupts in obtaining the bankruptcy order and caused the liquidator to not have access to the managers to complete the process of discovering and providing property and the list of indemnities, or repeatedly regarding the original of the bankruptcy order in any case, including objection to the executive operation, appeal, third objection, and retrial, and by obtaining an order to stop the liquidation operation from the authority that issued the suspension order, the liquidation operation is stopped. It has been seen many times that a branch issuing a bankruptcy order for each creditor regarding a third-party objection to the bankruptcy order of a person or a company, separate cases as soon as the third-party objection petitions are submitted, and without any introduction for each unique case, it has entered the natural investigation. The most interesting thing is that this process has been repeated continuously after the issuance of a judgment regarding the status of a creditor's third objection against the bankrupt while the nature of liquidation of bankrupts requires that the bankruptcy judgment after the expiration of the deadlines stipulated in articles 537 to 539 of the law has general and absolute credit towards every beneficiary. Therefore, the lack of clear understanding of the laws related to the field of bankruptcy, regardless of the inference of it by the creditors, in the eyes of the judicial and executive officials, has harmed the process of the liquidation far more than before and caused the liquidation process to become unfocused and backward.

The fact is that the legislative system in the field of white-collar crimes has not been able to adopt a targeted criminal policy, an effective and specific approach towards economic and so-called "white-collar" criminals in the areas of procedure, substantive law and special security facilities in the position of confrontation. Using objective (judicial structure) and mental (substantive and formal laws) worn out, abandoned and obsolete and irrelevant mechanisms, white-collar defendants and economic criminals are prosecuted and investigated in the same courtroom as a person who commits a normal and public crime is summoned and pursued. Still, investigators and judges with the same facilities and accesses resort to protective and preventive measures regarding white-collar defendants who have general crimes for other defendants. Although a branch of the local prosecutor's offices in the cities and two prosecutor's offices (District 36 and 22) in Tehran have been concentrated to deal with economic and monetary banking crimes, but this instance is actually an allocation, not an assigning.

Therefore, regarding the factors of posterior mental conflict, it is possible to mention the clash of laws in terms of subject and example. For example, in the description of the implementation of the act that a person seeks to evade financial obligations by resorting to bankruptcy, in addition to the crime under Article 670 of the Islamic Penal Code in the punishment section under the title of bankruptcy fraud referred to in Article 549 of the Trade Law, with the specific crime under Article 16 of the Law of the method of execution of financial convictions (concealment and non-presentation of property and assets to escape from religion), fraud and the crime of Article 2 of the law on aggravated bribery, embezzlement and fraud, approved in 1988, which prohibits the abuse of special privileges and the acquisition of property through illegal means and the crimes under clauses (e) and (g) of the Law on Punishment of Violators have been applied in the economic system of the country and finally, in a process of referral to Article 286 of the Islamic Penal Code, with the general and comprehensive title of "corrupter on earth", it was dealt with and punishment is determined, and in the meantime, the delicate style of procedure and the principles of general criminal law are never considered in terms of the nature of the act

committed and related to the sentence. The inevitable outcome of this is the increase in the frequency of committing crimes without considering its technical and criminological causes and ultimately the impossibility of technical and situational prevention, issuing conflicting and contradictory rulings on similar issues and in a word just "erasing the problem". According to some; Although the criminal procedure code of 2013 are associated with many knowledge-based readings including, criminology but there are always several deviations from the criminal justice system, which not only does not reduce the burden of the judicial system, but also sometimes leads to judicial outsourcing [29].

The opinion of the authors is that the provisions of the note of Article 36 of the Islamic Penal Code follow the jurisprudential rule of "Tashhir" in terms of the requirement to announce the verdict of conviction of those convicted of financial crimes against the government in public newspapers, due to a kind of haste and panic caused by the negative and severe attack of public conscience regarding the commission of such crimes and most importantly, it indicates the absence of a specific and targeted legislative criminal policy in dealing with such crimes and criminals. Undoubtedly, the outcome of this uniformity is the matching of economic and white-collar criminal acts with general criminal cases, which have extensive destructive effects in the economic and social dimensions, but by referring to normal laws (including the type of crime and criminal), the same leniency that are used for ordinary crimes are also used in the phase of determining the punishment and executing the sentence. Regardless of the aforementioned objective effects, subjective negative effects including high costs of criminalization and criminal inflation are also in the portfolio of the legislator.

3. Necessity of differentiating criminal policy in criminal bankruptcy

In the field of criminology, right-wing criminology or criminology of criminal acts claims that traditional criminology or correction and treatment is doomed to isolation with a complete failure in its ideas. The reasons for the growth and maturity of the above ideas, despite the pressures caused by the observance of human rights, have such a strong support that they have been able to challenge the soft policies of the past, the upward trend of some crimes, the requirements of time and place that require an appropriate response to these crimes, the extent of the victims of some crimes, as well as the special characteristics of the perpetrators of some crimes, has the strength of such a justification, such a justification that isolates the policy of correction and treatment and marginal policies such as de-incarceration. It seems that in the case of bankruptcy and in the area of bankruptcy, fraud and even in cases of bankruptcy due to the fault of the above characteristic, the necessity of resorting to new teachings is vital and necessary. Therefore, the lack of equipping with such doctrines of criminal policy in that area puts the region in danger of stagnation, which causes such a feature of criminal policy to suffer a crisis. The cost of such a crisis is an increase in the rise of such crimes, which, according to the authors, has implications for the economic and even political security of the society.

Therefore, an overview of the criminal provisions of the new trade bill in the field of bankruptcy due to fault and fraud indicates that the legislator has not fully benefited from the modern teachings of criminology in devising such a policy, and this is the reason why the author answered the question of this category regarding to the fact that the penal policy in the trade bill regarding bankruptcy can be called a dynamic policy, he admits that despite the fact that this penal provision in the bill has particular importance and as a special law, it can be used as a special law in the Islamic Penal Code regarding punishment for bankruptcy, it has the

characteristics of stagnation, because the definition of dynamism requires equipping and adapting scientific foundations and new teachings to adapt to the needs of society [30].
Criminal bankruptcy, especially the current examples, which are prosecuted in a so-called "one bowl" of criminal bankruptcy, are examples of white-collar economic crimes. Why so, these crimes are actualized with a combination of cooperation and deputyship of the private and public economic sector and are carried out by people with high economic power and through bribery of the public sector to obtain facilities and benefits. Finally, in the repayment stage, by implementing the bankruptcy scenario in the courts, in terms of encroachment and seizure in the commercial offices and documents, they obtain a bankruptcy order in order to exempt the payments.
According to what was mentioned, it is necessary to change the criminal policy of the legislator in connection with the category of criminal bankruptcy in terms of substance and form. In shape dimensions, we need to focus the proceedings in terms of identifying the type of criminal bankruptcy and determining the punishment in each of the criminal or legal courts. More importantly, the possibility of impromptu prosecution or lack of it in the prosecutor's office and criminal court should be determined. Above all, the existence of a legal text regarding the obligation is felt in the "point of prosecution". The prosecution point indicates a situation in which the prosecuting body, upon ascertaining the appropriate and specific circumstances, regardless of any doubt regarding the competence to comment and the obligation to prosecute, conducts the necessary investigations in collecting reasons and documents for prosecution and prosecution under the title of bankruptcy for fraud and blaming. In the substantive dimension, we need laws that specify the type of crime and the amount of punishment according to the newly emerging actions and reactions of bankruptcy and related to it. Determining that, should cases close to and related to bankruptcy, as in the third chapter of the twelfth chapter of the commercial law, still be determined by referring the punishment to the crime of origin, or should each of them have a specific criminal title. More importantly, the example of the actions of people who, with the intention of delaying and discounting their financial obligations in front of third parties and banks attempt to file for bankruptcy, should be determined precisely. In this case, if it is considered as criminal bankruptcy, the special effects of bankruptcy will be carried on it, whether you like it or not. The stagnant and worn-out legal criminal policy of the legislator regarding criminal bankruptcy, which dates back to 1925, does not respond to emerging phenomena in the updated form of criminal bankruptcy and its related forms. In this level, the legislator should use criminological data and in the form of new criminal policy respond to these emerging criminal acts and reactions in terms of legal example.

4. Conclusion and solutions

- In terms of analyzing the "bankruptcy epidemic" phenomenon, we can pointed out the anomie of legislative criminal policy in terms of substance and form, ambiguity in the jurisdiction of judicial courts in terms of nature, ambiguity in the origin of suspension, exclusionary criminal policy in the form of inventing heterogeneous specific jurisdictions, and the lack of separation of criminal responsibility between legal entities and natural persons in the assumption of mixing.
- Because the mechanism of the mold in the functioning of the economic system in Iran is governmental and privatization has not yet taken place in the real sense, the form of economic

crimes also occurs in the government body, which in practice, we face with temporary limitations on the prosecution and trial of such criminals in terms of the jurisdiction of the local prosecutor's office in prosecuting the subject of Articles 307 and 308 of the criminal proceedings and a severe attack in the society in terms of the professional and political position of the perpetrator of the crime and its effect on the prosecution process. Even though the legislator in the Criminal Procedure Law of 2013 and in Article 25 of this law has created specialized courts, including the economic prosecutor's office but the challenge of interfering with the functions and powers of the general specialized economic prosecutor's office with the specialized para-judicial supervisory institutions and the interference with the legal courts due to the necessity of Anateh order and jurisdiction is still to be expected in the field of criminal bankruptcy.

- The dominant method of legislation in Iran in relation to the so-called "white collar" criminals is referral. That is, the legislator borrows the title and punishments of a new crime from a traditional crime. The same method used in the law on punishing those who disturb the economic system. In criminalization, the legislator got confused in terms of the nature of the crime and its effects and results in the criminal title and did not make a proper distinction in this regard. Once a crime that is economic in nature is considered a crime against security due to its effects and results in the society, and the specific legal restrictions of security crimes are imposed on the perpetrator of that crime in every way. That is why the category of prevention, correction and deterrence regarding these crimes is not effective in Iran, because the criminal title and punishment and procedure of proceedings and criminalization have been wrongly founded from the beginning.
- Due to the inflation of criminal laws, especially in the field of economic crimes and the expanded interpretation of the scope of the Sharia criminal title "corruption on earth" in relation to emerging crimes, mostly economic and white-collar, the components of the perpetrator's personality, the place of commission, the property of the crime and the interests of the judge in the places of cited law, the type of court, the determination of the criminal title and the amount and type of punishment give the extended authority, which is completely in conflict with the principle of legality of crime and punishment and criminal proceedings. Among its negative effects, we can point out the practice of the perpetrators, the disappearance of the ugliness of the criminal act in the society, and the ineffectiveness of the goals of the punishments. Also, instead of the speeding up, certainty of the punishment, this causes a type of anomie in the society in the field of white collar and economic crimes.
- The disproportion between the rate of economic growth and the index of bank interest and penalty and as a result, the lack of potential of the private sector in repaying financial obligations to the public sector and the monetary and banking system of the country has led to the emergence of a kind of legal trick in evading financial obligations in front of banks through bankruptcy. Decisively, no production, distribution and financial and non-financial service company exists that has the ability to repay bank facilities with 18% and higher interest rates, considering the current situation of the turbulent exchange rate market and cruel foreign sanctions. The imposition of any profit, delay and damage on the main debt should be imposed based on the economic growth index of the society.
- Due to the infiltration of white-collar criminals into the inner layers of governments, any action and announcement of a crime against them will be met with a serious reaction from the authorities. Such persons, who are the debtors of such defendants, try to stop the actions of the

judicial or police authorities in the first step with advice and sometimes practical measures. After the announcement of the crime, the first attempt is made to suppress the first movement in the bud by intimidating the judge or the prosecuting agents or threatening the plaintiff, which, of course, despite all these bottlenecks, supporting the legal performance of the judges and also the strength of the evidence and documents of the accusation can be pave the difficult way of prosecution. Therefore, the criminal system in any country is not only a symbol of the fundamental values of that society, but it is placed in a fence of an impenetrable form of human rights concepts, and this fence requires that the legislator in criminal policy summarizes conflicts and contradictions in such a way that this desire joins the goal that according to Emile Durkheim, people should believe that the values of society are still alive and supported.

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23. In one case; The 15th Branch of the Court of Appeal of Tehran province in the document number 9209970221500050 -2013 had the following words: "Request an appeal. On behalf of Mr. T.T. Regarding the decree No. 725 dated 2012 issued by branch 19 of Tehran General Court, according to which the appellant's claim to declare bankruptcy due to the inability to pay debts is the subject of rejection of the property of criminal judgment No. 75 dated 2007, branch 1193 of the court which was confirmed by the decree No. 31 dated 2008, Branch 70 of the Tehran Court of Appeals, was answered, and the decision is not worthy of approval because the issue of bankruptcy refers to commercial practice and a businessman may suffer bankruptcy, but the debt that is created as a result of fraud is caused by an act that has no legal legitimacy and the person intends to take someone else's property, and the resulting debt, which is the rejection of property, is due to a court order and is actually a punishment, so it cannot be convicted of a criminal offense. Also, the intentional crime of fraud in terms of the inability to reject the property in the ranks of the bankrupt businessman, which he fell into in line with his job.

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