

## **Regulations and Limitations of Utilitarian Function of Criminal Penalty**

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### **Abstract**

This research seeks to define and regulate the utilitarian function of criminal penalties, aiming to establish a balanced penal system aligned with the state's broader vision and public policy. Unlike traditional views, this study offers a more comprehensive perspective on the function of criminal penalties. Using analytic and critical methodologies alongside a comparative approach, the research identifies key findings that advocate for expanding the benefits of criminal penalties. These benefits should extend beyond traditional criminal protection mechanisms, promoting a broader scope of legal protection with far-reaching positive impacts across various levels of society. Achieving these outcomes requires the implementation of effective measures that enhance the utility of penalties. This can be accomplished through necessary amendments and reforms, ensuring that penalties serve their intended judicial purpose. Furthermore, substantial transformations in the criminal justice system are needed, which include reassessing the penal framework, abolishing certain penalties, restricting their application, or redefining their use. Finally, the conceptual foundations of the legal system, particularly the notion of public interest, must be reconsidered to fully realize the intended benefits.

**Keywords:** Deterrence, Criminal protection, Pain, Public vision of the state.

### **Introduction**

There is no doubt that the criminal text, in both its substantive and procedural aspects, serves to protect various values and interests deemed essential by the legislator. However, the function of the criminal text cannot be viewed solely from this perspective. Its protective role forms only one part of its broader purpose. It also acts as a critical tool for enforcing the state's public policy, which is intricately linked to its identity, plans, budgets, and overall strategy (Hessick & Hessick, 2021).

Therefore, it is crucial to deepen our understanding of the criminal text's function rather than narrowly limiting it to safeguarding rights, freedoms, and security. Adopting this broader perspective is essential to achieving the public interest, as it ensures balance within the criminal text.

The research examines the utilitarian function of criminal penalties as components of criminal texts, focusing on establishing their frameworks and limitations. The function of criminal penalties revolves around two primary axes: utility and justice. Achieving the public interest requires finding a balance between

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these two, ensuring that neither predominates. This study highlights the utility function of criminal penalties, identifying frameworks and controls necessary for their implementation. By constructing criminal sanctions within a broad and regulated framework, the research aims to position the criminal text as an effective and influential tool for balancing diverse values and considerations.

The study further explores the consequences of poorly regulated criminal penalties on the legal system, highlighting how unregulated oversight can render penalties destructive tools. Without a clear utilitarian foundation, such penalties may disrupt the system and hinder the implementation of public policy. The research raises critical questions regarding the optimal approaches to regulate the utilitarian function of criminal sanctions and the obligations required to achieve this goal.

In the present era of rapid technological advancement, technology has permeated all aspects of life, bringing numerous benefits. However, this progress also entails significant drawbacks. Among these, electronic waste stands out as a pressing issue due to its harmful effects on human health and the global environment.

### **Objectives of the study**

1. To examine the utilitarian function of criminal penalties, focusing on their regulatory frameworks, limitations, and the balance between utility and justice.
2. To assess the effectiveness of preventive measures, deterrence, and alternative sanctions in reducing recidivism and promoting societal protection.
3. To provide recommendations for improving the ethical application and efficiency of criminal penalties in modern legal systems.

### **Literature Review**

Punishment is a penalty decided by the legislator and applied by the judge on the person proven guilty of committing a crime. As noted by Garland (1990), punishment serves as a mechanism to enforce social control, uphold legal norms, and maintain order. It also reflects society's moral stance against criminal behavior, balancing retribution, deterrence, and rehabilitation. This is done by depriving the criminal of some of their rights, such as liberty, property, or participation in societal activities, depending on the nature and severity of the crime (Hudson, 2003). The deprivation of rights underscores the dual objective of punishment: penalizing the offender while signaling societal disapproval of their actions (Duff, 2001).

The penalty of public benefit work is considered a comprehensive reform tool, effectively combining the punitive aspect with rehabilitative and social goals. This form of punishment is distinct from traditional penalties like incarceration because it prioritizes rehabilitation over mere retribution (Tonry, 2019). Public benefit work involves requiring offenders to perform unpaid work that benefits the community, aligning the punishment with restorative justice principles. This approach integrates punishment with a focus on rehabilitation and social benefits, highlighting the reformative nature of public benefit work. It serves as a practical

application of modern criminological theories, such as Braithwaite's (1989) theory of reintegrative shaming, which emphasizes repairing harm and reintegrating offenders into society.

Empirical studies indicate that public benefit work can be particularly effective in reducing recidivism rates. Research by McIvor (2010) demonstrates that offenders engaged in meaningful community work are less likely to reoffend, as the experience fosters accountability and social responsibility. Moreover, it helps rehabilitate convicts and incorporate them into society as active individuals, thus improving modern criminal justice (Bshkur & Aliani, 2024). This rehabilitative potential is further supported by the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules, 1990), which advocate for alternatives to imprisonment to enhance reintegration and reduce the adverse effects of incarceration.

The use of public benefit work also aligns with the broader goals of criminal justice systems striving to adopt more humane and cost-effective measures. Studies by Aos, Miller, and Drake (2006) show that community-based sanctions, including public benefit work, are more economically viable than imprisonment while achieving comparable outcomes in terms of public safety and offender rehabilitation. By integrating punitive, rehabilitative, and social dimensions, public benefit work exemplifies a balanced approach to modern criminal justice that addresses both societal and individual needs.

Many countries have resorted to penalizing criminals in ways other than imprisonment. For instance, Scandinavian countries such as Norway and Sweden have adopted alternatives like community service and electronic monitoring to reduce incarceration rates and focus on rehabilitation (Pratt, 2008). These measures achieve the purpose of punishment by rehabilitating and reforming the criminal so that they can be properly reintegrated into society. Research by Andrews and Bonta (2010) emphasizes that community-based sanctions, coupled with cognitive-behavioral therapy, significantly improve offenders' reintegration success rates.

These measures also help reduce costs and relieve pressure on correctional institutions (Khattab, 2022). Empirical studies confirm that alternative sanctions, such as community service, can cost significantly less than incarceration while maintaining comparable levels of public safety (Aos et al., 2006). Moreover, such measures address the issue of prison overcrowding, a prevalent problem in many countries, by diverting nonviolent offenders from incarceration (UNODC, 2021).

Khan et al. (2023) analyzed laws, mechanisms, and efforts to rehabilitate criminals, focusing on conditional release and alternative punishments. Their analysis highlights the critical role of vocational training and behavioral therapy in addressing the root causes of criminal behavior, emphasizing the importance of equipping offenders with skills to secure employment upon release. They also emphasized the need to update laws to align with rehabilitation methods for criminals, ensuring they are compatible with each country's constitution (Khan et al., 2023). For example, in Malaysia, reforms have been introduced to integrate Sharia-compliant rehabilitative measures into the penal system, reflecting constitutional and cultural considerations (Mohamad & Cheong, 2020).

The Algerian legislator has explained several reasons for adopting the benefit penalty as an alternative penalty. One reason is that it gives the judge the authority to determine the appropriate penalty for the criminal. Another is that the offender participates in the type of penalty appropriate for them, ensuring a more personalized and effective approach to justice. According to Saud (2016), these measures align with Algeria's broader efforts to modernize its criminal justice system by incorporating restorative justice principles and reducing reliance on incarceration.

Additionally, the Algerian model emphasizes the active involvement of offenders in rehabilitative programs, such as public benefit work and education initiatives. Such approaches resonate with the findings of Garland (2001), who argues that modern penal systems should balance punitive measures with strategies that promote offender accountability and societal reintegration. Furthermore, the legislator works to rehabilitate and reform the convicts by providing them with opportunities to contribute positively to their communities, mirroring the goals of international frameworks like the Tokyo Rules, which advocate for non-custodial measures to enhance rehabilitation and reduce recidivism (UNODC, 1990).

### **Research Methodology**

This study adopts a combination of descriptive, analytical, critical, and comparative approaches to effectively address the research objectives. The primary methodology used is the descriptive-analytical approach, which involves a thorough analysis of legal concepts, frameworks, and principles related to criminal penalties, particularly focusing on their utilitarian function and limitations. The study examines the theoretical underpinnings of criminal sanctions, evaluating their impact on public interest and justice within modern legal systems.

In addition, a critical approach is employed to assess the application of criminal penalties, exploring their effectiveness and the ethical implications of their enforcement. This approach allows for an in-depth evaluation of the balance between the punitive and rehabilitative aspects of criminal law.

The comparative approach is used to draw insights from the glorious Islamic Sharia, providing a broader perspective on criminal penalties and their implementation in different legal systems. By comparing the Islamic legal framework with contemporary criminal justice practices, the research highlights key similarities and differences in penal philosophies, offering valuable insights for modern reforms.

Furthermore, the study examines relevant judicial rulings and legislative provisions in various jurisdictions, comparing them with both Islamic legal principles and contemporary criminal justice systems. This multi-dimensional approach allows for a comprehensive understanding of the subject matter, enriching the analysis with diverse legal perspectives. The combination of these methodologies ensures a robust and balanced approach to investigating the utilitarian function of criminal penalties and their role in achieving public interest and justice.

## **Results and Discussion**

The direct protective function of criminal penalties emphasizes that the scope and depth of benefit depend on the nature of the penalty. Preventive measures, designed to avoid pain and focus on treatment, operate within a limited framework defined by trial, experience, and outcomes (Robinson, 2021). These measures mitigate the complexity of balancing benefit and justice by targeting criminal danger through rehabilitation, monitoring, and training in social institutions, aligning with restorative justice principles. Achieving benefits requires carefully balancing the utility and justice elements, ensuring that preventive measures and punishments are implemented in a manner that aligns with societal interests and justice.

Special Deterrence aims to prevent the criminal from reoffending and future crimes, as emphasized by Cesare Beccaria, the founder of the classical school (Muhammad, 2008, p. 103). To achieve this, specific controls must be observed:

**Infliction of Pain:** Punishment, as a legitimate act, inflicts pain on offenders to achieve social benefits and combat crime (Fikry, 1971, p. 20). While this involves humiliation and a diminished societal standing, the outcomes justify the act. Al-Izz ibn Abd al-Salam highlighted that evils leading to benefits may be permissible, as described in Islamic law, which uses deterrent punishments to prevent harm (Ezz El-Din, 2000, p. 18). For instance, the Quran emphasizes the deterrence of fornication to protect societal values (Surat An-Nur, verse 3).

**Limitations of Utilitarianism:** Modern debates on utilitarianism highlight ethical challenges, such as the tension between security and privacy in mass surveillance and efficiency versus fairness in plea bargaining. For example, the UK's Investigatory Powers Act 2016, while aiming to enhance national security, raises concerns over privacy rights, and the U.S. practice of plea bargaining, exemplified by the wrongful convictions of the Central Park Five, prioritizes efficiency over justice. These cases illustrate how utilitarian goals in criminal justice can conflict with individual rights, exposing the limitations of utilitarianism in real-world contexts.

Punishment must maintain its deterrent effect to protect public interest. Systems like special pardons, balancing the execution of penalties with higher societal interests, require careful consideration (Al-Hadi, 2020, pp. 69–91). Pain inflicted should be proportional to the crime's severity, reflecting the principle that criminalization must remain an exception, governing only exceptional cases to preserve individual freedoms (Dreyer, 2016, p. 175).

## **Involvement of the Individual (Defendant) in Determining and Assessing Punishment**

In the restorative justice framework, individuals play a key role in determining and assessing punishment through criminal mediation, settlement, reconciliation, and negotiation (Ahmed, 2017, p. 283). Alternative systems, excluding the judiciary, limit criminal prosecution and offer solutions that emphasize the individual's will in shaping criminal justice. This approach, based on utilitarian considerations, argues that traditional punitive measures are unsuitable

for less serious crimes. The accused incurs a penalty in exchange for reconciliation, aligning with the public interest.

Comparative legislation supports these systems; for example, the Tunisian Code of Criminal Procedure mandates the presence of the accused at mediation activities (Law No. 93 of 2002, Article 335). This ensures the accused understands the gravity of their actions and contributes to deterrence (Wassam, 2023, p. 159). Through this process, the accused may feel guilt and remorse, creating an internal barrier to reoffending and allowing them to regain hope of returning to a pre-crime state (Jaafar, 2023, p. 63).

### **The Relationship Between Crime and Its Punishment in Specific Deterrence**

Deterrent punishments aim to prevent crime by inflicting pain, discouraging individuals from reoffending. This approach creates negative associations with criminal behavior, instilling fear that encourages voluntary avoidance of actions leading to reoffending. Deterrence, rooted in psychology, motivates individuals to be cautious and avoid potential dangers. Fear, a self-related sensation, increases internal attention, which protects individuals in the present and drives vigilance for the future (Samuel, 1989, pp. 17-18).

As von Feuerbach pointed out, deterrence must focus on the psychological aspect of the individual. He argued that the psychological motive for committing a crime is pleasure, and the function of punishment is to create counter-motivations that outweigh criminal incentives, thus diverting the individual from crime (Muhammad, 2020, pp. 154-155). Dr. Amhamed Al-Razqi further emphasizes that punishment should be linked to the nature of the crime. For example, limited penalties should be imposed on individuals who attempt to take someone else's property, as these crimes are often committed through force. He also discusses the principle of reciprocity in penal laws, arguing that custodial sentences are rarely appropriate as they can resemble revenge rather than deterrence. Extreme punishments, unlike crimes, do not remind individuals of their actions, leading to recidivism rather than effective deterrence (Amhamed, 2014, p. 71).

**The second Branch is general deterrence:** One of the functions of punishment is to prevent others or the public from imitating the behavior of the perpetrator of the crime. General deterrence also has controls and requirements that cannot be achieved without them, which are:

Judicial punishment is a constitutional principle ensuring respect for rights and freedoms, serving as a mechanism for general deterrence by negating presumed innocence. A ruling from a competent court highlights the consequences for those who violate community security, demonstrating the legitimacy of punishment and promoting safety. Public awareness of penalties is enhanced through court decisions, either by attendance or media coverage, linking deterrence with knowledge of penal laws (Ingram, 2021). While restorative justice systems cannot adjudicate all crimes, penalties not based on judicial rulings can weaken their effectiveness, as seen in Jordanian legislation, which lacks explicit provisions for ancillary penalties. However, preventive measures are considered sufficient for such penalties (Muhammad, 2000, p. 91). Meanwhile, Egypt and Libya have

adopted criminal proceedings issued by the Public Prosecution for certain misdemeanors and violations (Article 325, Egyptian Criminal Procedure Code; Article 298 bis, Libyan Criminal Procedure Code).

Public execution of punishment is a crucial mechanism for achieving deterrence, serving as a significant requirement for preventing future crimes. As emphasized in the Holy Quran, Allah, the Exalted, states: "... And let a group of the believers witness their punishment." Publicly witnessing punishment has a dual purpose: it serves as a reminder to the public of the consequences of sin, thus steering them away from such behavior, and it amplifies the deterrent effect, sometimes making the publicity more deterrent than the punishment itself. Two factors must be considered regarding publicity: the degree of publicity required varies depending on the nature of the crime, and the criminal system must be structured to allow enforcement of this requirement. However, the reliance on custodial penalties often overlooks public execution, focusing primarily on trial procedures. It is crucial for the court to ensure the execution of judgments through public execution, as it reinforces the significance of punishment in maintaining societal order (Al-Hadi, 2023, pp. 78-80). Without timely action, the collective conscience of society may forget the crime and the disturbance it caused (Ghanem, 1993, pp. 13-42).

The second Requirement is the benefits in the broad framework (Investment in Punishment): The design of punishment should consider the benefits for society as a whole rather than just direct pain infliction. This approach aligns with the idea of equivalence between crime and punishment, as crimes disrupt public security and peace. Punishment may be seen as compensation for this disruption, with the offender contributing to adding value or benefit in another context. This approach is essential to ensuring that punishment is effective and beneficial for society.

**The first branch is the economic and social dimension of punishment:** The state should balance its role in combating crime through public spending and criminal penalties to ensure the effectiveness of its efforts. The optimal approach is to use criminal penalties to support the public treasury without undermining its role in achieving and preserving justice. However, a departure from this approach may lead to increased costs on crime prevention, potentially exceeding the public treasury's collection. Utilitarian thinking should consider economic aspects and regulate punishment to avoid negative impacts on commitments at all levels. Crimes and judgments often stem from financial motives, impacting direct spending and addressing and rehabilitating victims. Penalties without financial benefits exacerbate the state's budget burden and do not deter crime. Confiscation, a significant financial penalty, can be used as a preventive measure in some penal laws, weakening the penal system and posing a significant economic power. Abolishing deprivation of liberty penalties has led to the consideration of general confiscation as an alternative to life imprisonment or the death penalty. This approach is particularly relevant in countries that have abolished or restricted such severe punishments. Some laws expand the penalty to address crimes that disrupt

economic and political order, such as illegal drug trafficking and dealing, as seen in Libyan law (Narcotics and Psychotropic Substances Law No. 7 of 1990; Libyan Penal Code, 1953). Balancing this penalty reduces the expected utility index, leading many countries to abolish it due to ineffective jurisprudence and failure to achieve deterrence (Diaa, 2024, pp. 114–120). It is also necessary to consider the social dimension of punishment and add a benefit with a social and professional character. This benefit is in the form of an effort or work that the offender provides to society for the public good. This model exists as one of the alternatives to imprisonment. That has been universally acknowledged for its drawbacks and negative effects on all levels (Abdul Rahman, 2015, pp. 35-48). The proposed penalty could be expanded to include a realistic approach to rehabilitation, allowing convicted individuals to request it as an alternative to imprisonment (Gardiner, 2017). Abolishing custodial penalties could replace fines, avoiding physical coercion in non-execution cases. The penalty's social character and material aspect are considered. A comprehensive examination before sentencing assesses the convicted person's health, social status, behavioral history, crime nature, and circumstances (Niroz, 2020, p. 24).

**The second branch is the abolition of traditional barriers between sanctions in the legal system:** The social defense movement, led by Marc Ancel, aims to broaden the interpretation of punishment by removing traditional barriers that divide sanctions within the legal system. This trend, rooted in traditional schools of thought, focuses on three main points: addressing the exaggeration of legality, addressing the offender, and giving the penal system a unique meaning (Amhamed, 2002, p. 71). Reducing the traditional role of punishment and criminal law is being explored. It emphasizes the importance of involving social and humanitarian aspects in crime prevention, creating an alternative to traditional punitive measures (Ross, 2023). The shift towards a humanitarian approach in the criminal system allows for adopting disciplinary sanctions based on public interest. Legal scholars, including jurists, argue that criminal and disciplinary sanctions can be combined into a single penalty for deterrence. They believe that the distinction between criminal and disciplinary jurisdictions is superficial, as both serve the same purpose of general and specific deterrence, making combining penalties for both types of offenses easier (Al-Hadi, 2023, p.138). The Islamic approach to compensation can be applied to criminal penalties without a civil lawsuit, focusing on the principle that liability and certainty cannot be combined. This approach involves implementing physical and financial penalties such as retaliation, flogging, and amputation to achieve deterrence and restitution of specific damages. These penalties provide stronger tangible compensation, healing the victim's wounds and restoring their dignity, such as flogging, which is considered both a punishment and a tangible compensation (Al-Hadi, 2023, pp.130-139).

## Conclusion



Based on the findings, the researchers concluded that criminal punishment plays a vital role in achieving a balanced framework of justice and benefits, including deterrence. The punishment should be proportionate to the crime, ensuring that the perpetrator experiences suffering in alignment with the crime's severity. This function not only serves as a direct consequence for the offender but also acts as a warning to potential wrongdoers. Publicly announcing and executing punishments shortly after a crime strengthens the deterrent effect, reinforcing public trust in the judicial system while instilling fear in would-be offenders. The prompt and visible actions taken by the state against those threatening societal securities promote confidence in the rule of law.

Additionally, criminal sanctions must serve an economic function by contributing to the public treasury without compromising the core objective of justice. There is a need for a redesign of the penal system, where the scope of criminal punishment extends beyond traditional criminal laws to include non-criminal functions, thereby maximizing benefits with minimal resources. This economic role is not directly linked to the sanctions themselves, but to the legislator's approach in shaping policies and strategies that balance justice with economic efficiency.

Moreover, criminal penalties can have profound social implications. They should not be limited to retribution but should be expanded to benefit society through community service or other rehabilitative measures that engage the offender in productive activities. This shift in focus moves the traditional link between the offender and their direct victim to a broader societal context, allowing for more effective reintegration of the offender and a reduction in recidivism. Sharia principles, such as expiation, which address societal issues like poverty and slavery, offer valuable insights into this broader approach to punishment.

### **Policy Implications:**

1. Policymakers should consider integrating restorative justice mechanisms, such as community service and criminal mediation, into the penal system. This would help balance the traditional punitive approach with rehabilitative measures aimed at reintegrating offenders into society.
2. Legislators should ensure that criminal punishments are proportionate, swift, and publicly visible to enhance their deterrent effect while maintaining public confidence in the justice system.
3. The economic impact of criminal sanctions should be assessed, with a focus on optimizing resources to support justice while minimizing unnecessary burdens on the public treasury. This includes exploring alternative forms of punishment that serve both justice and economic objectives.
4. A re-evaluation of the role of punishment within the broader social context is needed, where offenders are seen as contributors to societal welfare rather than solely as individuals to be punished. This can be achieved by emphasizing rehabilitation, education, and community service as integral parts of the penal process.

### **Recommendations**

In the end, the researcher set of recommendations that included:

- 1- Penal laws must be regulated and tightened to ensure the effectiveness of criminal penalties. This includes providing public enforcement and judicial rulings from competent courts to ensure the inevitability of punishment and prompt trial.
- 2- The penal system needs reconsideration, either by abolishing specific penalties and reducing others or by restructuring and redesigning them to grant different statuses to ensure their effectiveness and intended benefit.
- 3- Must be returned to the Islamic methodology because of it is one of the very important approaches for the performance of criminal penalties in fulfilling their utilitarian function.
- 4- Reformulating the concept of public interest and dissociating it from the idea of public rights associated with the state or the public prosecution representing society.
- 5- It is essential to involve the individual in establishing the foundations of criminal justice and to assign them an appropriate role in this regard.

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