

The role of official documents in the financial security of citizens in the Iranian legal system with a look at Islamic jurisprudence

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Article History: Received: 14 July 2020; Accepted: 2 January 2021; Published online: 5 February 2021

Abstract: Development of official registration of documents and property and intellectual property and official registration of people's ownership of the country's property and lands in the cadastral system and development of new technologies in providing registration services are among the most important government mechanisms to protect citizens' financial rights. The most important source of inference of Islamic rulings is explicitly raising the issue of documents in transactions and many narrations emphasize the use of documents in order to consolidate and prove transactions. Therefore, in this descriptive-analytical article, we study the role of official documents in the financial security of citizens with emphasis on Islamic jurisprudence. Although registration laws emphasize the official document, in practice the ownership of many real estates is based on ordinary documents and lacks registration records. On the other hand, the possibility of revoking an official document causes insecurity of citizens' financial rights, while with a new look based on Islamic jurisprudence that emphasizes writing and documents, it is possible to use official documents to guarantee citizens' financial rights. Benefited.

Keywords: Quran, security, official document, property, transactions, jurisprudence.

Introduction

Throughout history, human endeavors to prevent the wavering of their property rights and to obtain the necessary support in transactions, have led to the creation of a registration body and the use of official documents, and the needs of society, the need to expand and develop it, which eventually led to the establishment of registration. Documents and properties have been issued in the countries and official documents have been issued to prove the ownership of individuals. The official document was of great importance in the accreditation, consolidation and protection of the legitimate property rights of natural and legal persons of the society and played an effective role in regulating the economic and social relations of the country. The Holy Qur'an also emphasizes writing and document, and in verse 282 of Surah Al-Baqarah, it says: "O you who believe! O you who believe, because you deal in debt for a certain period of time, it is necessary to write it down. This regulates transactions and prevents many disputes and insecurities. Unfortunately, due to the lack of attention to the mandatory registration in the field of real estate and objective rights regarding them in Iran and the issuance of an official document, as well as negligence on the part of the Guardian Council and judicial procedure has caused the real estate system to become an official document. It should be considered as a branch of civil law and should be viewed with a view based on the rules and principles of civil law, which has turned it into a kind of formalism devoid of content and purpose. On the other hand, if its existential philosophy is understood as a necessity of current life, many of the current problems of society will certainly be solved.

Failure to pay attention to the need to register real estate documents and transactions related to them, as well as accepting the lawsuit of revoking the official document in contrast to ordinary documents or testimony of witnesses, has led to many abuses in society and on the one hand many people are victims of crime. Other people's property has been aggressively seized and they have lost their capital, and on the other hand, the society has been the victim of land grabbing and has lost its public wealth. Also, many

problems of banks are due to this issue now, so that people officially mortgage their property to the bank and borrow large sums of money, and then sell the property to someone else with an ordinary document dated before, and so on. However, if the registration of the document becomes mandatory and plays an essential role in the transfer, firstly, no one will trade with a normal document, and secondly, assuming a transaction with an ordinary document, it will not be possible to rely on the official document holder. Unfortunately, this situation can lead to a very large volume of lawsuits in the judiciary and face a very serious challenge for the judiciary, so that even the holder of an official document in proving his claim, may be in conflict with other evidence of the document. These problems will not occur if the position of the official document is well explained. Therefore, we seek to explain the role of official documents in the financial security of citizens in the Iranian legal system with a look at Islamic jurisprudence. In response to this issue, in the first part, we explain the concept of financial security of citizens and the security role of registration and official document, and in the second part, the position of official document in the legal system and judicial procedure, as well as the issue of the Guardian Council and judicial procedure. We explain the threat to the financial rights of citizens from the perspective of Islamic jurisprudence.

The concept of security

He defined security in a comprehensive and general way, the continuity of things such as peace of mind and body, family solidarity, the flow of physical and human investment, as well as the future continuity of these matters towards improvement, so that the current trend and its improvement protect from attack and bite by various destructive factors. Therefore, security is a concept that includes various economic, judicial, political, cultural, social, and personal aspects (Sharifi and Mostafa Lou, 2016, 106). Security as an essential element for human beings in the use and enjoyment of the gifts and benefits of life and provides the basis for human development and promotion, so security should be considered as one of the most important principles of social life (Haji Ghorbani, 2009, 17). When security prevails in society and in the relationships of individuals, they feel reassured that nothing is threatening them. Society and citizens must move in a safe and secure environment and their rights must be protected. For example, the financial rights and property of individuals, including their rights in society, should be protected from any threat and respected. How to create security and reassurance for them is achieved by law. A law that, with its proper form and content, pays attention to various aspects of this right and stands up to threats. A law that should be formally transparent, accurate, up-to-date and efficient, and at the same time, based on the principles, rules, customs and culture that govern society. Security has two dimensions, objective and subjective. From the objective dimension, it means the absence of threat or minimization of the threat, and in the mental dimension, it means the creation and emergence of the feeling of this objective factor in society (Rezaei and Balai, 2016, 101). Appropriate legal mechanisms should create security and the law should govern the relations of individuals and be well implemented.

Financial security and its legal components

Among the necessities of social life, ensuring security and respect for the financial rights of citizens, which must be within the legal framework and order. The absence of this law and order causes disorder and chaos. The Constitution, as the supreme law, contains general rules in support of this right, which protects the financial rights of citizens in various principles such as the twenty-first, and forty-six and forty-seven, as well as in the relevant laws. The protection of these rights is emphasized. Also in December 2016, the Charter of Citizenship Rights was issued with the aim of upholding and promoting citizenship rights, the subject of Article 134 of the Constitution, in a communiqué.

The concept of financial security

Clear regulation of the relationship between government and citizens and protection of their rights in the national laws of the country is one of the axioms and necessities of modern and new governments. In Islamic jurisprudence, there are many rules regarding the protection of property and financial rights of individuals, which is known as the "principle of respect for the right to property" based on verses, hadiths and customs. Therefore, in the jurisprudential rules, the financial rights of individuals have an important and valuable position and status, so that the property of individuals is equal to their lives. The rule of "sanctity of property is void" is a general legal principle that is the background of many legal articles and the basis of many more detailed legal rules. According to this rule, the prohibition of misuse of the results of another action is obtained. In this way, the consequences and results of economic activity of each person is only for himself and individuals cannot benefit from the positive external effects of another activity without direction and without payment (Kasnavi, 1396, 116). Also, according to the rule of sanctity of the wrongful possession of property, no one should benefit from his wrongdoing, because to benefit from wrongdoing is to eat property illegally. Therefore, if someone gains benefits illegally, while reimbursing those benefits, he can sometimes be sentenced to compensation. Also, according to this rule, a person who saves from economic loss according to the rule of benevolence, or manages his property in the absence of the owner, can be considered deserving of a reward because the action of the person is respectable and even considered property or even in the field of contracts that a person has unreasonably. In this case, according to the rule of invalidity, the owner must be protected and his rights must be guaranteed.

Therefore, financial security means that the financial rights of citizens, assets, and the results of their work and initiatives are protected and guaranteed (Samati et al., 2014, 155). Citizens' financial rights are protected if they are based on principles, legal rules and laws. The law recognizes this right, and if it is violated, there should be rules to protect and compensate for that right.

Legal components of financial security

Financial security is achieved in the light of legislation, its implementation and monitoring, and dealing with violators of this right. However, these factors alone will not guarantee security, and the influence of political factors and other components should be added to it, and legal components should not be considered a sufficient condition. In order to achieve financial security, the legislature must recognize the laws that guarantee this right. At the same time, the executive branch must implement these laws properly and base its activities and actions on the observance of these laws. Also, the independent judiciary, as a necessary element, must confront this right if it is violated and deal with the violator of the citizens' financial right.

As a legislative body, the parliament must enact laws that guarantee the financial rights of citizens and prevent them from being violated. The legislature, as an independent legislature, must pass legislation that meets the required standards. In many cases, either there is no law to protect financial rights, or the law is incomplete, it is conflicting, or it is not comprehensive, or even laws can be deprived of the features of a law. Therefore, an independent and specialized legislature in the field of legislation and at the same time, transparent and efficient laws are needed to achieve the first step in ensuring the financial security of citizens. The parliament should put the general rules of legislation at the forefront of its work and seek to ensure that these laws can be administered in the society by ensuring the financial security of the citizens.

In addition, the government is obliged to implement the laws of the parliament and to provide financial security to the citizens through supervision and control, especially in the economic sectors. The wider the government's involvement, the more restrictions are placed on citizens' rights, and the more restrictions, that is, uncertainty about individuals' personal rights. Therefore, the government should base its activities on the observance of citizenship rights in its policies and avoid decisions that endanger the rights of citizens. However, in the performance of its duties, it lays down rules, so they must be in line with higher laws and comply with them.

Also, the judiciary, as an independent branch, guarantees the accurate and correct implementation of laws (Mohebbi, 1389, 220) and with its prominent role in reviewing and issuing correct and fair votes, can provide comprehensive financial security.

The role of the official document in the security of the trading system

By law, transactions in immovable property and its benefits, and even some movable property, must be in accordance with an official document, and because of its high importance, apart from its positive role, it can also be defined as a proof and registration procedures as a pillar of The pillars of the transaction, because it has an important place in the transparency of legal relations of individuals, support in the implementation of transparent and clear rights and duties of individuals, de-judicialization and creating a fair legal order around natural and legal persons in the country (Khoeini et al., 1397, 17). Thus, the realm of notarial deeds goes far beyond the realm of the courts, because the disputes and legal relations of individuals and their handling are exceptional, and it becomes apparent to what extent the reduction of the concept of notarial deed as one of the proofs of litigation to role and the position of official documents is damaged. However, due to the complexity and rigor of the official document issuance process, these documents can be given high credibility among the evidence of the lawsuit. The role that has caused legal and economic problems due to the lack of rules governing the security of the document in Iranian law. Economically, the compulsory registration of immovable property, as well as transactions related to it that are necessary and obligatory for each other, and the lack of support for informal transactions, make it possible to convert assets into capital and create impersonal trade (trade based on property and assets). Its direct effects are the prosperity of transactions, increase of investment, increase of facilities and development of production, increase of public income through increase of taxes and finally the possibility of monitoring, access to correct statistics and planning by the government (Saber and Tabatabai, 1390, 123). Therefore, in the official registration of transactions, due to the security that follows, one should not hesitate and try to provide the process of recognition of registration through legal tools and executive and judicial supervision. Lack of security in the registration system means that the official registration system is not recognized and the transfer of financial rights, especially in real estate, is not done using an official document. Therefore, the property rights of citizens are endangered. But on the other hand, if we have a codified registration system, it will ensure the financial rights of citizens.

Official registration of real estate

The use of official documents has many functions, the official document regulates the legal relations of individuals and citizens. On the other hand, it causes security and confidence of individuals in their financial rights and thus they can use their capital in the correct economic cycle and cause economic growth (Karbalaie, 1393, 49). Existence of codified legal rules and regulations with adequate guarantee of implementation and finally, the existence of an accurate and regular system of document registration, causes the codification of legal and property relations of individuals and when by preparing an official document, the property rights of individuals are sufficiently protected And to create the

necessary security, the necessary ground will be provided for investment and increase in the transfer of property, and finally, the economic growth of a country. Therefore, when in a society, the law obliges the preparation of such documents, not only the transfer of property rights becomes legal, but also it becomes easier to access and safer.

Therefore, when in a society, the law obliges the preparation of such documents, not only the transfer of property rights becomes legal, but also it becomes easier to access and safer. Therefore, with the use of the official document, there will be an increase in investment, and with the increase in investment, trade exchanges and economic transfer will also increase, and finally, the society will face economic prosperity.

The legal and economic importance of real estate and the fact that real estate is the subject of large and long lawsuits of the judiciary, has led various legal systems to seek solutions to ensure the security of legal transactions regarding real estate and the establishment of legal order of this property (Tabatabai and Sadeghi Moghaddam, 1394, 678). For this purpose, the institution of real estate registration and registration of transactions has been created. One hundred years old (since 1299), the registration organization, as one of the wise organizations, has the mission and mission of accrediting, establishing and protecting the legitimate property rights of the people and by participating in the regulation of economic and social relations. Citizens have played a role in establishing and strengthening justice, economic security, social and legal relations of the country. Since the establishment of the registration organization, one of its most important tasks has been to delimit the lands and properties, which has played a very important role in establishing and securing the ownership of individuals (Alavi, 1390, p. 1). In the past, the protection of personal property was done with very limited tools and traditionally, but with the development of urbanization and changes in social life, it is necessary to pay attention to new sciences and the use of modern technology.

In fact, one of the goals of the registration system is to ensure the security of transactions by reducing asymmetric information between contractors and providing accurate information about the legal status of real estate. To achieve this goal, the registration system is an information system that focuses on three elements and informs individuals about them. These three elements are: the subject of the right (complete characteristics of the property), the nature of the right (right of ownership, right of usufruct, right of easement, etc.) and the holder of the right (Tabatabai and Sadeghi Moghadam, 2015, 679). But in terms of transaction security, the recorded information should reduce the risks that the owner or third parties, such as the buyer or lender, may face. Therefore, the information that is effective in managing and reducing the risk of transactions must be available in the registration system, and as a result, the existence of this information prevents the occurrence of many legal claims.

The use of an efficient and modern registration system in order to protect property and guarantee his property rights, and at the same time the need to reassure third parties is one of the necessary and important issues that should be considered by the legislator. Organizing the registration system, adopting a registration system in which the right of ownership of the lands is clearly defined, and creating this system, which requires spending time and money, causes a reliable institution regarding real estate, and in the shadow of this trust and confidence, Planning and investments take place.

By neglecting the optionality of registering and regulating transactions in the form of ordinary documents, Lack of a system containing geometric information of the land that shows its coordinates and four boundaries, as well as the lack of a comprehensive system for "identification" of real estate, including Public, private and public assets, and in some cases the lack of a system for recognizing private property, which has led to the spread of information rents, playgrounds, large-scale abuses of legal and registration bottlenecks, have overshadowed the security of land rights. Lack of title deed, conflict in

principles, their contingent limits and rights, impossibility of access to previous and subsequent land information, conflict in the literature of relevant organizations and their parallel work have made the traditional registration system inefficient and The need for a new registration system is doubly felt.

Regarding property, it should be noted that identifying them by drawing its boundaries by creating a property registration system and using new plans and tools that play a key role in securing property rights. Lack of transparency of rules, documents and property plans that allow for errors, property disputes and sometimes fraud and abuse, so the conversion of traditional and old maps that position the land in the main license plate relative to an auxiliary point on nature. They show that it is necessary to use maps with global geographical coordinates that show the position of lands with a global figure derived from the satellite system accurately and irreversibly (Salari, 1391, 193).

Registration history of issuance of property ownership document

The Property and Deeds Registration Office is the reference for proving the ownership of both natural and legal persons, ie if the lands have registered records, the registries are the authority to declare the owner's details and the scope of his ownership. Property and lands in Iran can be divided into three categories ***in terms of registration:***

a category of property that has no registration history, another category is in the process of registration and the third category has led to the issuance of an official document.

A group of lands do not have any registration records and only have ordinary positive documents and documents of ownership such as the certificate of the local association or Islamic council and evidence of ownership such as the title of possession. Undoubtedly, the ownership of individuals in these lands can be challenged and damaged. Because if they are not exceptions (non-national and non-mortal), their ordinary documents have no validity (Salari, 1391, 199).

This category includes property (land) that has been partially registered but has not been completed and has not led to the issuance of an official document. According to the registration law, after the public announcement of the property registration that must be done in one of the newspapers, three stages of publishing an advertisement are necessary to register a property, and during these stages, the registration offices are obliged to take some measures in this regard. The first step is to publish a preliminary announcement. According to Article 10 of the Registration Law, the first preliminary advertisement, the first day of the solar month, the second advertisement of the fifteenth of the same month and the third advertisement of the thirtieth of that month are published in one of the newspapers and from the date of publication of the first preliminary advertisement, property registration applicants must submit a property registration declaration. Complete within 60 days and submit to the registry office. This declaration, which is uniform, is prepared by the registration organization and provided to the applicants. From the time of publication of the preliminary announcement, the installation of real estate license plates and their numbering, as well as the deposit of the declaration, will begin. The declaration number is the same as the property number.

The second step in registering a property is to post an ad. According to Article 11 of the Registration Law, up to 90 days after the publication of the (preliminary) notice, the forms of all persons who have submitted the declaration must be submitted by the Registration Office. The ad is published twice in 30 days. That is, the first advertisement will be published no later than 30 days after the submission of the declaration and the second advertisement will be published 30 days after the first advertisement. During the turn announcement, it is announced that the protesting persons will notify the registration office within

90 days from the first turn announcement. The objection must also be submitted to the court during the petition. In case of objection at this time, the task is to determine the relevant disputes with the judicial authorities. At this stage of property registration, the objection is accepted by all persons, including owners of adjacent properties, etc., and even the objection at this stage can go beyond the objection to the boundaries of the land and be in line with the original claim of ownership of the applicant.

The third stage of property registration is the publication of a demarcation notice. This notice is affixed at the location of the property and the adjacent village and this issue is certified by (Kadkhoda or) law enforcement. Unlike the ads of the previous cases, the restriction ad is published about once. At this stage, according to the provisions of the advertisement, the applicant and the owners of the adjacent properties are invited to be present at the location of the property on a certain day and time to determine the boundaries. In case of absence of neighbors, the ad will be renewed, but in case of absence again, the boundaries will be limited in the presence of the applicant. In the stage of delimitation, the boundaries of the four properties are determined by the accurate registration and registration of the adjacent properties and the minutes. The minutes of the delimitation assembly will be signed by those present and the deadline for objecting to it is one month after the regulation. After the expiration of the one-month period, if no objection is received, the Registry will issue a title deed to the property.

By the way, at this stage, only the objections of the neighbors are accepted.

The third category of lands in terms of registration records are those whose registration steps have been completed and led to the issuance of a registration document. A registered ownership document is the most valid proof of ownership.

The most important legal task of the State Property and Deeds Registration Organization since its establishment is to consolidate the ownership of individuals through the issuance of title deeds. The laws on the issuance of title deeds have changed due to political and social changes over time. Considering that after the Islamic Revolution of Iran, the scope of many cities, especially the suburbs of provincial capitals, has expanded and due to legal restrictions, individuals normally acquire property from the owners and build nobility in it without legal permission. They settled and settled and also with the development of urbanization, the mentioned lands and properties were located inside the city and the existing laws and regulations did not respond to the issues and problems caused by the expansion of these nobles, so the legislator in 1351 Articles 147 and 148 passed an amendment to the registration law, which was extended several times so that individuals could register their property (Najafi Dehkordi, 2014, 2). On 9/23/2004, the time for applying for registration of persons was completed according to the amendment law of Articles 147 and 148 of the Registration Law, More than eight years passed and although the legislator provided a suitable deadline to the owners of property without ownership document Due to negligence or legal obstacles, many people could not register the application, or those who applied due to legal obstacles or lack of follow-up of registration operations by registration applicants eventually led to the issuance of an archive order or the closure of the file. (Nikdoost, 1392, 1) until the Islamic Consultative Assembly on 20/7/2011 approved the law on determining the status of registration of lands and buildings without an official document in 18 articles and 19 notes and its executive regulations in 21 articles and 15 notes were drafted, which is a permanent law and is a suitable solution for lands and buildings without an official document.

The benefits of official registration and the existence of official documents regarding lands and real estate

One of the purposes of registering a property from a legal point of view is to establish and strengthen the ownership of real estate and thus create judicial security for the owner of the property. This

goal is in line with our religious beliefs, especially with regard to ownership and legitimacy. With the explanation that the holy religion of Islam has respected property according to human nature, because man believes in property according to nature (Ahmadi Mianji, 2003, p. 23). Ownership is a permanent right, therefore, with such a special nature, it should be included in the registration circle in order to get rid of any bites, and property registration can play its protective role in this feature well (Moghaddasian, 2006, 5).

Legally, the registration of lands and properties and transactions related to them, with the aim of consolidating people's ownership of property and validating people's transactions (Shahri, 1379, p. 4). Registration of property in the name of anyone who does so expropriates the property of another and no lawsuit will be accepted from any person regarding that property (except for the cases mentioned in Article 24 of the Registration Law and the exception mentioned in Article 22 of the Penal Code. Regarding the opposing ownership documents) Also, after the issuance of the ownership document and the registration of the property in the real estate office, the non-possession of the ownership document in that property is no longer considered the reason for ownership and no one can invoke his ownership to the detriment of the owner. .

We will also face a reduction in ownership disputes and related lawsuits by forcing the registration of transactions on land and property and not accepting the reason for the opposition, such as an ordinary deed or the testimony of witnesses. In fact, the crimes of usurpation, aggressive possession and fraud are limited through the transfer of other people's property, ease of forgery and other corruptions caused by ordinary and unofficial documents. Compulsory registration of land and property transactions promotes legal order and the protection of property and property rights, and prevents the production of economic and social corruption resulting from transactions outside the registration network. As a result, it can be said that forced registration prevents the production of disputes and disputes and property claims (Asgharzadeh Bonab, 1393, 26).

In addition, drawing up an official document and encouraging people to use it will not only help the government in macro-planning and law enforcement, but will also be very effective in combating land grabbing, encroachment on government lands, and economic and financial corruption. , But will also provide the basis for maintaining territorial security and protection of national resources and will cut off the hands of profiteers (Karbalaee Amini, 1393, 43).

Threatening the financial rights of citizens due to lack of official registration

The main purpose of the Property and Deeds Registration Law is the mandatory registration of all transactions and contracts. Unfortunately, society has strayed from this important and effective goal of registration laws, and the high cost of registration and the cumbersome formalities of registration regulations and administrative bureaucracies have made people reluctant to register an official document. In particular, the jurisprudence, by different interpretations of the articles of the registration law and by preferring ordinary documents before or testimony over official documents, caused the content of the registration regulations to become empty. These factors cause legal problems such as the huge volume of lawsuits in the judiciary, the existence of conflicting transactions, land grabbing and aggressive occupation, as well as economic problems such as reduced ability to obtain bank credit, reduced transaction prosperity, reduced domestic and foreign investment and reduced production. And the decline in public revenue has been through taxes. Such problems severely threaten the financial rights of citizens.

Legal problems:

Many lawsuits stem from a lack of attention to the status of official documents, which can jeopardize citizens' financial security. Here are the most important of these problems.

Huge volume of lawsuits in the judiciary

Today, one of the concerns of the judiciary is the increasing and disproportionate volume of cases and lawsuits in the judiciary, which is of particular importance to identify the causes and roots and prevent the production of lawsuits and crimes. Many lawsuits are filed in court regarding the obligation to prepare an official document, annulment of the document, claim for non-preparation of an official document and lawsuits related to disputes over ownership, as well as objections to national and mortal lands, which themselves result from the growth of real estate transactions. And there is not enough attention to the official registration in the laws (Saber and Tabatabai, 1390, 121). On the other hand, the possibility of committing crimes such as transfer of other property or conflicting transaction in most cases is due to the possibility of trading with an ordinary document, while if the sale was subject to formal document, the possibility of selling property to several people or selling non-ordinary property was very unlikely. . As mentioned, the primary source of disputes is the possibility of concluding ordinary contracts and transactions with informal documents. The wisdom of forcing the registration of contracts and transactions in the first place is the registration of property rights of the society and in the second stage is to prevent the production of disputes, reduce legal and criminal property lawsuits, unnecessary employment of courts, judiciary and finally prevent the production and commission of crime.

Opposing transactions

One of the most common property crimes is the crime of bargaining. The definition of a conflicting transaction states that "If the property being traded with someone is traded again with a third party, so that the union of the rights of the two parties is not possible, the most recent transaction is a conflicting transaction. (Jafari Langroudi, 1378, 4068). In other words, an opposing transaction is one in which a person, after transferring his property to another, re-establishes himself as the owner and transfers it to a second or third person or ... In this crime, two opposing transactions are made by the original owner. It is clear that if the registration of real estate transactions is mandatory, the possibility of conflicting transactions is greatly reduced; Otherwise, anyone can transfer their property to as many people as they want with an ordinary document; This will shake the stability of transactions and will also destroy public trust and lead to more lawsuits.

The opposing transaction includes all transactions concluded with either an ordinary document or an official document; It should be noted, however, that what is criminalized in the registration law as an adversarial transaction is that "a person under an official or ordinary document in relation to the same or a financial benefit (whether movable or immovable) ", To give a right to a person or persons and then to the same object or benefit according to the official document of the transaction or obligation that opposes the said right." Therefore, the condition for the realization of the opposing transaction is to perform the first transaction with an ordinary or official document and the second transaction only with an official document. Therefore, if the first transaction is with an official document and the second transaction is with an ordinary document, or both transactions are with an ordinary document, the crime of the transaction contrary to the registration law will not be committed. In other cases, using the law passed in 1308 on the punishment of transferring property, oppositional transactions have been criminalized. In

recent years, attempts have been made to prevent abuses by organizing real estate and selling and renting with a tracking code. Although these measures are useful in reducing adversarial transactions, they do not seem to be sufficient because when an ordinary document or testimony can be revoked, the official document of the property may be presented at any time by presenting an ordinary document or testifying. To be annulled; in these circumstances, there is no strict monitoring to prevent conflicting transactions.

Land grabbing

There is no specific definition of land grabbing in our laws, but in a general definition, land grabbing can mean desecration of property and non-land or occupation of pastures and mortal lands, environment, national lands and other lands and properties owned by the government or affiliated companies. To the government or public organizations (Moghimi and Bayari, 1389, 114). Land grabbing is a very lucrative illegitimate act and usually requires rent-seeking and financial-administrative corruption.

There are many ways to commit this crime, including direct encroachment on national lands, rivers and riverbeds and their destruction, forgery of ownership documents, use of forged charters and power of attorney and invalid documents, and subsequent sale of national and state lands or other property through it. Identification and purchase of national lands, mortgages and litigation in the relevant authorities and restitution of lands or acquisition of land based on criteria and assignment and the like.

The causes of land grabbing are numerous; among these reasons, we can mention the problems of the economic system, legal and information rents, abuse of power, low-yield agriculture and huge profits due to land use change (Moghimi and Bayari, 1389, 114). Among these, one of the most important reasons is the lack of a comprehensive registration system. To fill this gap, a plan called the cadastre has been approved and is being implemented, but has not yet been fully implemented. This plan, if fully implemented, can greatly prevent land grabbing, because when the exact ownership of land, especially national and public land, is not certain and on the other hand a comprehensive relationship between individuals and their property is not conceivable, the crime of land grabbing using From this vacuum caused by ambiguity and lack of information of institutions, capability occurs. But even the full implementation of this plan cannot block the way of land grabbing, because as long as the transfer of real estate through ordinary deed is possible, people continue to use fictitious ordinary power of attorneys and power of attorney claiming ownership of public and public lands. They will take possession of lands by making false claims or other means. Continuation of this situation and increase of this process causes that these lands will be given to certain people and other needy people will be forced to buy these lands at astronomical and expensive prices from them (Asgharzadeh Bonab, 2014, 429).

Aggressive occupation

Aggressive seizure is one of the most common crimes against property and ownership, so that the high rate of its commission in most parts of the country, sometimes surpasses the statistics of other important crimes against property. Aggressive seizure is when the property is taken out of the possession of its owner, without legal permission or consent of the owner (Habibzadeh and Koochi Esfahani, 2012, 99). Irrespective of aggressive possession, which is the subject of Article 158 of the Code of Civil Procedure (which is to protect the former occupier and is not the subject of our discussion), the legislature has provided protection of the owner against the aggressive occupier in Articles 308 of the Civil Code and 690 of the Islamic Penal Code. Pursuant to these articles, the possessor of the confiscated property and the possessor will be sentenced to relinquish possession and punishment. Therefore, the owner must file a lawsuit in court to remove the aggressive possession. One of the main pillars of these lawsuits is the claimant's property. In most cases, the aggressor or aggressive occupier claims ownership and cites the testimony of witnesses or the existence of an ordinary document to prove it. Regardless of the fact

that in these cases, the need to investigate the claim of the possessed property will lead to numerous lawsuits in the judiciary and create costs, this will also disrupt the ownership of the official document, while if the owner is just someone If he has an official document, no one will allow himself to seize another property based on ordinary papers or other reasons, and disputes in this area will be reduced abundantly, and the proceedings will be much shorter based on the official document.

Economic problems:

Ignoring the official document leads to many economic problems, the most important of which we mention.

Decreased ability to obtain bank credit:

Lack of recognition of formal property rights, especially in the case of real estate, which is the most important asset after manpower, is the main drawback of informal ownership systems that severely limit the process of economic development in developing countries (Tabatabai Hessari, 2008). (23). In developing countries, including Iran, the poor and the poor, despite their poverty, have significant assets in the form of sheds and illegal businesses, which on the one hand, due to lack of documents and official recognition of "property rights". They are considered idle and dead capital by the government, and on the other hand, the high costs and formalities of joining the formal economy lead them to the informal sector and prevent individuals from enjoying the benefits of their assets. Because if they do not have an official document, they will not be allowed to enter assets into the official market cycle.

One of the main detrimental effects of this is the inability to obtain bank credit, because people in poor and developing countries keep their assets outside the legal and formal system, so it leaves without a document. Be formal and valid as collateral for obtaining credit and credit (Feder & Akihiko, 1999, 27). This is because most registered properties are pledged, and often banks and other financial institutions are reluctant to repay loans and credits until they are sure of the applicant's ownership of the pledge. On the other hand, due to the lack of guarantees for valid performances and the existence of asymmetric information, banks in many cases face non-repayment of loans and incur significant costs to the banking system and the country's economy, while the existence of valid documents documents benefits. The property owner follows financial systems such as the bank, and the owners have access to more long-term and cheaper credit, and the financial systems are protected from the risk of asymmetric information, which is why linking registration with financial development and economic growth. Becomes. In addition, by not accepting the ordinary document against the official document, those who have borrowed with the official document can no longer encroach on the bank's ownership of the mortgaged property by making ordinary ordinary documents and escape from the burden of paying their debts.

Reduction of investment (both domestic and foreign) and reduction of production:

The relationship between investment and the guarantee of property rights resulting from the registration of property is a fundamental one, and the existence of protected and protected property attracts domestic and foreign investment (Feder & Akihiko, 1999, 27). Failure to enforce registration does not make this important because the nature and content of the rights contained in the property remain unclear and lack the necessary legal protections and guarantees. As a result, the landowner is deprived of ownership certainty, ease of transfer, and necessary economic security, which is an important factor in reducing investment in land. Because land is an important capital factor in the economy that can accommodate a large part of domestic and foreign capital and consequently increase the level of domestic

production, but in the absence of necessary and sufficient capital (including Domestic and foreign) The producers' desire to produce products decreases and the level of domestic production decreases, which inactivates the market and deprives the country of one of the most important indicators of reaching the level of development (Hanstad, 1998, 658).

Reduction of trading boom :

From an economic point of view, it is obvious that people who make their transactions in the society by preparing an official document have a special confidence and engage in economic exchanges away from worries, and with the assurance that there are no special legal consequences and social problems. , Records transactions and economic exchanges, and as a result, the society's economy also prospers (Karbalaie Amini, 2014, 49).

The real estate market is booming in areas where property has not been registered and enforcement is not mandatory. Because the land plot that has not been registered as a property right has a lower sale potential than the registered land (land registration increases the possibility of cashing the land and converting it into money by securing it, enabling the parties to the transaction To obtain the required information about the land being traded).

For a real estate transaction to take place, the seller's right must be certain to him, that is, there must be a definite reason and valid legal information to show that the seller owns what he is trading. Providing this reason for ownership is one of the main functions of property registration systems. In fact, the registration system assures the buyer of the seller's claimed credit for the ownership of the property being traded, and this leads to more prosperity of transactions and if not enough attention is paid to Registration, the country will be deprived of this registration advantage.

Decrease in general income :

One of the main purposes of property registration has always been financial and tax purposes, because every government needs revenue and income to achieve the development and maintenance of its social life. Governments may earn revenue from the exploitation of some resources, such as mining or commercial enterprise, but these amounts alone are not enough for the expenses of a society, so the government has to resort to other ways to earn revenue (Karbalaie Amini, 2014, 49).

The registration of real estate and transactions related to them has a great role in the regular collection of taxes and the creation of public revenues, so that now in our country, the Registry of Deeds and Real Estate is one of the public institutions that is a significant source of income for the public treasury. Obviously, in these cases, the initial registration of the property alone can not meet the purpose of the legislature in collecting taxes (Tabatabai Hessari, 1387, 35), but this purpose is provided when transfers about such property to the Office Property registration reaches. Which, unfortunately, is not taken into account in our country due to the prevalence of ordinary documents. In fact, due to high costs and formalities, individuals conduct transactions with ordinary documents, and causes the government and the tax administration to be deprived of a significant part of income due to lack of knowledge about land transactions. Therefore, in addition to the mandatory registration of property, the legislature and law enforcers should also make the registration of transaction documents related to them mandatory (but with low cost and easy formalities) in order to control the transfer of land ownership and the desired taxes and duties. To be received.

Causes financial threats, the position of the Guardian Council and judicial procedure

Although the jurists disagree on the positive value of the document and the writing, and even some of them do not consider the document as a reason alone, and for the authenticity of the document, they consider some conditions and attributes necessary for the scribe, nevertheless, there are jurists who They realized the necessity of the existence of a document and considered it necessary to establish a special office for registration and documents due to the obligatory preparations (Mousavi Ardebili, 1408, 137).

Verse 282 of Surah Al-Baqarah is one of the most important jurisprudential principles regarding the citation of writings and documents in transactions. This verse emphasizes the preparation of the document in order to protect the rights of individuals. In the past, science was not as advanced as it is today, and due to the possibility of falsification in its documents and contents, the jurists doubted its validity and did not authorize it alone (Mousavi Khomeini, 1981, 303). But today, the use of the document, even officially, has a high place in the legal system of countries. The use of modern methods of official document registration has eliminated the possibility of any doubt about its validity and has made the financial rights of citizens, especially in relation to their immovable property, protected and guaranteed.

However, the main reason for the invalidity of official documents and the existing practical problems is the view of the Guardian Council and, consequently, the position of judicial procedure regarding the validity of the official document as a reason against the testimony of witnesses and ordinary documents that we examine.

The position of the Guardian Council and the judicial procedure regarding the validity of the official document

Despite the fact that the legislature has provided for the special probative power of the official document (such as Articles 47 and 48 of the Registration Law) and the Civil Code has not given the judge the right to evaluate the document, assuming authenticity, and even in the opinion of lawyers, the judge It does not have the ordinary documents that are in its sentence and it is a so-called legal or devotional reason (Katozian, 1384, 57, Shams, 1392, 79, Golduzian, 1389, p. 43, Amrvani, 1390, 82), but because of the council The Guardian, and consequently the position of the judiciary, opposes this view, and so we see the aforementioned problems, which can be even more serious threats to the rights of other citizens. If the legislator, law enforcement and the judiciary must move to guarantee the rights of citizens. On the one hand, we see that the legislature, in an action contrary to the registration laws, has also validated ordinary documents, and on the other hand, the action of the judiciary is contrary to the guaranteed rights of individuals.

Regarding the conflict between the official document and the testimony, it should be said: before the amendment of the Civil Code in 1982, claims of limited value could be proved by the testimony, and in the same limited area, it could not oppose the official document. Article 1308 of the said law stated that: "A lawsuit for the fall of a right such as payment of debt, expropriation, termination, acquittal and the like against an official document or a document whose validity has been proved in court, even if the subject of the document is less than five hundred rials "It cannot be proved by testimony." In addition, Article 1309 of the Civil Code provided: "Against an official document or a document whose validity has been established in court, a lawsuit that is contrary to its provisions or contents shall not be proved by testimony." In fact, the legislature had given special credence to the official document and sought to prevent the increasing number of false witnesses being found by limiting the power of proof. Unfortunately, in 1982, the parliament removed Articles 1306 to 1308, 1310 and 1311 of the Civil Code, which limited the scope of validity of testimony, regardless of the circumstances of the place and time,

but Article 1309 of the Civil Code remained so that testimony could not invalidate official documents. . However, the Guardian Council, in its Opinion No. 2655, dated 8/8/1367, declared: » However, in 1991, during the amendment of the Civil Code, the Islamic Consultative Assembly did not comment on Article 1309 and did not delete this article. This created controversy and some believed that the parliament had implicitly revived the article by not deleting it, and some professors argued with legal arguments that the Guardian Council could not repeal existing laws under the constitution. And even if it is against the Sharia, the matter must be done through the Islamic Consultative Assembly and approved by the Guardian Council. This caused confusion among lawyers and judges of justice in this important and painful issue (Katozian, 2006, p. 283). However, according to the records of the Guardian Council's opinion on declaring some legal materials illegal, the courts practically consider such materials obsolete (Katozian, 2006, 391). However, now, in case of conflict between the testimony of witnesses and an official document, the courts annul the official document, which, unfortunately, has been abused in this way. While even from the jurisprudential point of view, according to some great contemporary jurists, the official document indicates the fact that it is more than martyrdom and is preceded in case of conflict (Arista, 2009, 222).

Regarding the conflict between the official document and the ordinary document, it should be said that unfortunately, the Guardian Council and the judicial procedure, if it proves the precedence of the ordinary document over the official document, prioritize the ordinary document and invalidate the official document. Credit is an official document. However, an ordinary document, because it has been prepared in violation of the registration law approved by the Islamic Republic of Iran, should not be able to be cited in front of an official document, and at most it should be valid only between the parties. Unfortunately, the Guardian Council, in its objections to the bill of permanent provisions of the country's development plans (Article 52) dated 20/6/1695, has re-emphasized the validity of ordinary documents over official documents. Regardless of the fact that this view is in conflict with the rules of jurisprudence, especially the no-harm rule (which requires a detailed scientific discussion), it should be said that the only way to save the country from this great problem is to approve the superiority of the official document over the ordinary document.

Result

Ensuring security of citizens' financial rights is one of the most important tasks of the government, which must act with efficient and transparent laws. One of these tools is the use of an official document in real estate transactions. Official documents are the basis of economic development, have legal effects and security, and as one of the strongest reasons for proving lawsuits in judicial proceedings, the Holy Quran, as the most important source of jurisprudence, also emphasizes this issue. Paying attention to the status and value of the official document and giving credit to the registration institution has many benefits for individuals as well as the government and society, and causes psychological, legal and economic security as tools for development and progress. Relying on official documents will not only systematize the legal relations of individuals, but will also create and provide security and reassurance for individuals in investing, creating the right economic cycle, regulating turnover and establishing economic prosperity. In the Iranian legal system, despite the great jurisprudential emphasis on respecting and securing financial rights in line with the principle of respect for property, the Guardian Council and the judiciary have not been able to properly explain the status and value of the official document. Many legal and economic problems have threatened the financial rights of citizens. To this end, it is necessary to assign the registration of transfers of property and related rights and build trust in the registration data and gain ownership based on them and use other human and legal facilities to promote the status of the official

document based on the principles. Jurisprudence and verse 282 of Surah Al-Baqarah are in line with the use of writing and document. The legislator is obliged to provide financial security to the citizens by formulating an efficient law and ending the current undesirable procedure and validating the official documents using new tools.

References

- 1 -The Holy Quran.
- 2 -Emami, Seyed Hassan, (1351), Civil Law, Volume 6, Islamic Bookstore Publications.
- 3 -Ahmadi Mianji, Ali, (2003), Private Property in Islam, Dadgostar Publishing, Tehran, First Edition.
- 4 -Arista, Mohammad Javad, (2009), Jurisprudence-Legal Research Series, No. 8, Judiciary Education and Research Deputy, Jangal Publications.
- 5 -Asgharzadeh Bonab, Mostafa, (2014), lawsuits and registration objections related to real estate and the procedure for dealing with them, Majd Publications, Volume One, Third Edition.
- 6 -Bahrami, Dariush, (2012), Property Registration Law in Iran, Mizan Publishing, First Spring Edition.
- 7 -Jafari Langroudi, Mohammad Jafar, (1999), Extensive in Legal Terminology, Treasure of Knowledge, First Edition.
- 8 -Shahri, Gholamreza, (2015), Law on Registration of Deeds and Property, Jihad Daneshgahi Publications, 24th Edition.
- 9 -Abdullah, Shams, (2008), Advanced Civil Procedure, Drak Publications, Tehran, Volume 3, Fourteenth Edition.
- 10 -Amravani, Rahman, (2011), Conflict of Evidence of Proof of Lawsuit (in Legal Affairs), Fekrsazan, Tehran.
- 11 -Katozian, Nasser, (2005), Proof and Reason for Proof, Volume 1, Mizan, Tehran.
- 12 -Katozian, Nasser, (2006), Proof and Reason for Proof, Volume 2, Second Edition, Mizan, Tehran.
- 13 -Golduzian, Iraj, (2010), Evidence of litigation, Mizan, Tehran.
- 14 -Mousavi Ardebili, Abdul Karim, (1408), Fiqh al-Qada, first volume, first edition, Maktab al-A'lam al-Islamiyya, Qom.
- 15 -Mousavi Khomeini, Ruhollah, (1408), Tahrir al-Waseela, third edition, Publications of the Islamic Scientific School.
- 16 -Haji Ghorbani, Ensieh, Jurisprudential legal principles of civil rights based on the right to security in Islamic religions, Master Thesis, University of Islamic Religions, 2009.
- 17 -Hassanzadeh, Mehdi and Bafham, Mohammad, (2016), "Explaining the position of judge knowledge and documents in civil proceedings based on Article 1335 of the Civil Code", Quarterly Journal of Private Law Studies, Volume 46, Number 3, pp. 399-416.
- 18 -Habibzadeh, Mohammad Jafar and Koochi Esfahani, Kazem, (2012), "Study and analysis of the elements of the crime of aggressive occupation in Iranian law", Law Quarterly, Volume 42, Number 4, Winter 2012, pp. 97-116.
- 19 -Khoeini, Ghafoor and Shafiee, Hossein and Saeedi, Mohammad, (1397), "The role of preparing the official document of transactions in the moral and social health of society", Quarterly Journal of Ethics in Science and Technology, Volume 13, Number 3, pp. 16-21.
- 20 -Rezaei, Mehdi and Balaei, Hamid, (2016), Security and Citizenship Rights: Priority or Delay, Afaghe-Security Quarterly, Year 9, No. 30.
- 21 -Samati, Morteza, Sameti, Majid, Dehshiri, Hassan, (2014), Analysis of the role of legal structure and security of property rights in attracting foreign direct investment with the approach (P-VAR), Journal of Economic Policy, Year 6 , No. 12, pp. 155-177.

- 22 -Sharifi, Hossein and Mostafa Lou, Javad, (2016), Normative Principles of Human Security Doctrine, Afagh Aminat Quarterly, No. 33, pp. 105-142.
- 23 -Saber, Mahmoud and Tabatabai, Nasrin, (2011), "Legal and Economic Effects of the Property Registration System", Law Quarterly, Journal of the Faculty of Law and Political Science, Volume 41, Number 2, Pages 115-129.
- 24 -Tabatabai Hessari, Nasrin, (2008), "Legal and Economic Objectives and Effects of Registering Real Estate and Related Transactions", Legal Information Quarterly, New Year Six, Volumes 15 and 16, Pages 8-39.
- 25 -Tabatabai, Nasrin and Sadeghi Moghadam, Mohammad Hassan, (2015), The effects of property registration on the validity of legal acts with emphasis on the characteristics and functions of the registration system, Volume 6, Number 2, pp. 677-698.
- 26 -Karbalaei Amini, Mena, (2014), "Characteristics of an official document as a superior document", Kanoon Monthly, Nos. 136 and 137, pages 39-53.
- 27 -Kasnavi, Shadi, (2017), A Study of the Jurisprudential Rule of "Sanctity of Wrong Property" from the Perspective of Law and Economics, Jurisprudence and Principles, Volume 49, Number 4, Serial Number 111, pp.
- 28 -Moghaddasian, Mohammad Javad, (2006), "Registration and Registration of Property Rights", presented at the first modern registration conference, available at the Education Department of Tehran, Tehran.
- 29 -Moghimi, Mohammad Reza and Bayari, Abdolreza, (2010), "Land grabbing beds and methods to deal with it", Detective, second period, third year, number 11, pp. 109-128.
- 30 -Mohebbi, Abolfazl, (2010), A Study of Legal and Judicial Components of Economic Security, Quarterly Journal of Legal Perspectives.
- 31 -Najafi Dehkordi, Mohammad, (2014), Analysis of property registration regime without official document, Master's thesis, Aras International Campus.
- 32 -Naji, Shahin, (2013), Limits of the Court's Powers in Discovering the Truth, Master Thesis, Allameh Mohaddes Nouri Higher Education Institute.
- 33 -Nikdoost, Mehdi, (2013), Procedures and principles governing the issuance of property ownership documents according to the latest legal changes, Master Thesis, Azad University, Central Tehran Branch.
- 34 -Feder, Gershon and Nishio Akihiko, (1999), The benefits of land registration and titling: economic and social perspectives, land use policy, Vol.15, No. 1, pp. 25-43.
- 35 - Hanstad, Tim, (1998), Designing Land Registration System for Developing Countries, American University International Law Review, Vol 13, Issue 3, pp 647-703.