

# The Crime of Commercial Concealment from the Perspective of Islamic Jurisprudence and Its Impact on Sustainable Development and the Economy

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**Abstract:** *The research aims to examine the reality of crimes resulting from commercial concealment from the perspective of Islamic jurisprudence, its significance, the elements of such crimes, their punishments, Causes for Exemption, and their impact on sustainable development. The study adopts a descriptive approach, supported by an analytical methodology, and has led to several key findings, the most significant of which are:*

*The crime of commercial concealment is defined as assisting and enabling a non-Saudi national to engage in investment and trade within the Kingdom of Saudi Arabia under the unannounced protection and supervision of a Saudi national. Commercial concealment is classified as a discretionary offence (ta'zir), as it carries no fixed (hadd) penalty or expiatory punishment (kaffarah). The penalties for commercial concealment under the Anti-Concealment Law include: Imprisonment for up to five (5) years; A financial fine of up to five million (5,000,000) Saudi Riyals; and the freezing and confiscation of illegal funds upon the issuance of final judicial rulings against the offenders. A person convicted of commercial concealment may be exempt from the legal penalties and any other associated sanctions if they meet the legal conditions for exemption. Finally, commercial concealment is a crime that adversely affects sustainable development.*

**Key Recommendations:** *Respecting the regulatory frameworks of states and governments; and considering the rights of future generations when enacting legislation.*

**Keywords:** *Crime – Concealment – Trade – Islamic Jurisprudence*

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## INTRODUCTION

All praise is due to Allah, who guides whomever He wills to seek knowledge in religion and leads whomever He pleases to His straight path. I bear witness that there is no deity worthy of worship except Allah alone, without partner, and I bear witness that Muhammad is His servant, His messenger, His chosen one among His creation, and His beloved. May Allah be pleased with his companions, his wives, his family, and all those who righteously follow them until the Day of Judgment.

The Kingdom of Saudi Arabia has demonstrated exceptional transparency in dealing with commercial activities. The laws and penalties enacted by the Ministry of Commerce concerning commercial violations have played a significant role in regulating business operations. However, commercial concealment fundamentally undermines this transparency, necessitating the establishment of legal rulings to regulate this issue.

This research examines various Islamic jurisprudential rulings concerning crimes resulting from commercial concealment.

## RESEARCH PROBLEM

The research problem can be formulated in the following primary question: What is the reality of crimes resulting from commercial concealment from the perspective of Islamic jurisprudence? What are

their elements, punishments, and Causes for Exemption?

## RESEARCH OBJECTIVES

Based on the aforementioned questions, the objectives of the study can be outlined as follows:

- To define commercial concealment.
- To clarify the jurisprudential foundation of commercial concealment.
- To examine the penalties related to commercial concealment crimes under Islamic jurisprudence and Saudi law.
- To outline the Causes for Exemption from punishment related to commercial concealment crimes.

## RESEARCH METHODOLOGY

The study adopts an inductive approach, wherein the subject matter is examined through specialised literature that has addressed the issue with analysis and discussion.

**Research Plan:** The study consists of an introduction, two topics, a conclusion, and a bibliography:

**Introduction:** This section addresses the research problem, objectives, significance, methodology, and structure. It includes two topics, a conclusion, and a list of references.

**Topic One:** Definition of the Crime of Commercial Concealment, Its Elements, and Means of Proof.

**Topic Two:** Punishment for the Crime of Commercial Concealment and Causes for Exemption.

## TOPIC ONE: DEFINITION OF THE CRIME OF COMMERCIAL CONCEALMENT, ITS ELEMENTS, AND MEANS OF PROOF

### First: Definition of Crime

In linguistic terms, "crime" is derived from the Arabic term *jurm*, meaning transgression, and *jurm* also signifies sin, with its plural forms being *ajrām* and *jurūm*. In the Hadith it is stated: *"The worst of the Muslims in terms of crime is the one who asks about something that was not forbidden, so that it becomes forbidden because of his inquiry."*

The phrase "tajarrama alayya fulan" means: "Someone falsely accused me of a crime I did not commit". The criminal is the offender. [15]

Crime is defined in Islamic law as a prohibited act for which Allah has prescribed either a fixed penalty (*ḥadd*) or a discretionary penalty (*ta'zīr*). [18] In legal terminology, a crime is defined as a voluntary act prohibited by law for which the perpetrator is subject to criminal penalty. [9]

From the foregoing, it is evident that both the Islamic and legal definitions of crime conform to the linguistic definition in that a crime is considered a prohibited act; however, the concept of crime in the language is broader than in Sharia and statutory law. [6]

### Definition of Commercial Concealment

Concealment (*at-tasattur*) in linguistic terms: It refers to covering and hiding. [2]

It is defined as the failure to report individuals wanted by security authorities for violating regulations. [3]

Commercial (*al-tijari*) in linguistic terms: It is derived from 'Commerce' which is the circulation of wealth with the purpose of generating profit. [6]

Commercial concealment terminologically is defined as the act of assisting and enabling a non-Saudi national to engage in investment, trade, and business operations within the Kingdom of Saudi Arabia under the unannounced protection and supervision of a Saudi national. [4] [14]

## Elements of the Crime of Commercial Concealment

**The Concealer (Al-Mutasattir):** The person who engages in the act of concealment covertly.

**The Concealed Individual (Al-Mutasattar Alayhi):** The non-Saudi individual who engages in business operations with the Saudi national covertly.

**The Concealed Business Activity:** The trade and commercial activities conducted through the act of concealment. [7]

## MEANS OF PROVING THE CRIME OF COMMERCIAL CONCEALMENT

**Proving the crime of commercial concealment,** like other crimes, involves establishing the crime's legitimate elements and then attributing it to the accused as the perpetrator through what is known as evidence of attribution, i.e., those evidences that establish his connection to the crime as either a principal actor or a partner, or denying such a connection. The field of criminal proof is addressed [5].

Furthermore, the proof involves displaying evidence of attribution that clarifies the extent of the suspect's connection to the crime, whether positively or negatively, whether as a principal actor or a partner through incitement, agreement, or assistance. These are the evidences upon which the judiciary bases either the conviction of the accused or his acquittal [9].

The most important methods recognized by the criminal legislator as means of proving crimes include: testimony, confession, inspection, expertise, documentary evidence, circumstantial evidence, oaths, among others [8].

Specific methods for proving the crime of commercial concealment include investigative and search operations by reviewing and auditing commercial contracts that may bear the signature of a business owner not authorized to trade, verifying account statements and invoice audits, and monitoring the establishment by the relevant authorities [14].

## PENALTIES FOR THE CRIME OF COMMERCIAL CONCEALMENT IN ISLAMIC JURISPRUDENCE AND STATUTORY LAW

The crime of commercial concealment is among the offenses combated by the Kingdom of Saudi Arabia. It is considered one of the violations against the obedience to the ruler and governmental regulations. The evidence for this includes references from the Quran, Hadith, and rational reasoning:

As for the Quran, it states: "O you who have believed, obey Allah and obey the Messenger and those in authority among you" [An-Nisa: 59].

From the Hadith: Ubada bin As-Samit reported, "We pledged allegiance to the Messenger of Allah, peace be upon him, to listen and obey in times of difficulty and comfort, and that we would not dispute the orders of those in charge, unless we see overt disbelief for which we have proof from Allah" [17].

The evidence demonstrates that obedience to the ruler is obligatory under all circumstances, including adherence to legislations and laws that ensure the preservation of the state's economy, such as the commercial concealment law.

### Regarding rational reasoning:

1. The crime of commercial concealment is considered a discretionary punishment offense; it does not involve a fixed penalty or expiation. Imam Al-Suyuti stated, "Whoever commits an offense that has no prescribed limit or expiation, should be disciplined" [10].
2. Undoubtedly, all divine laws and human regulations aim to secure people's interests and ward off harm. These interests are represented by the five necessities. A person concealing another in committing an offense is considered an accomplice in that crime, hence the term commercial concealment [11].

3. The Senior Scholars' Council in Saudi Arabia has issued a fatwa regarding partners who receive profit solely for lending their names to a business. The fatwa invalidates such practices whether a lump sum or a percentage of the profits is involved without the citizen contributing any capital or effort. It considered such arrangements deceptive, a violation of the ruler's instructions and his good intentions, and an attempt to earn money without a legitimate basis. This fatwa applies to all forms of commercial concealment due to the fraud and violation of legal and Sharia rules it entails [12].

#### **PENALTIES FOR THE CRIME OF CONCEALMENT IN SAUDI LAW**

The penalties for concealing under the anti-concealment law as stipulated by the law include: imprisonment for up to five years, a financial penalty of up to five million riyals, and the seizure and confiscation of illicit funds following final judicial decisions against those involved.

Additional consequential penalties prescribed by law include: closure of the establishment, liquidation of business activities, cancellation of the commercial register, prohibition from engaging in commercial activities, collection of zakat, fees, and taxes, deportation of the concealed individual from the Kingdom and banning their return for employment [13]. The situation differs with Egyptian law, which allows foreigners to engage in trade [14].

It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

#### **EXPIRATION OF THE CRIME OF COMMERCIAL CONCEALMENT IN ISLAMIC JURISPRUDENCE AND SAUDI LAW**

The Causes for Exempting the crime of commercial concealment in Islamic jurisprudence are: death, repentance, pardon, and statute of limitations [15]. The National Anti-Concealment Programme clarifies that the court may exempt an offender of concealment from the penalties specified in the anti-concealment law.

The Programme further states that, based on Article (Second) of the exemption rules in the anti-concealment law, the court may grant an exemption from the penalties of the law and any other resulting penalties related to the crime and its proceeds, provided the following conditions are met:

1. The offender must cease committing the crime upon reporting it.
2. The offender must initiate reporting the crime or the identities of any other perpetrators or participants before it is discovered by the competent authorities.
3. No one else involved in the crime must have reported it before them.
4. The offender must cooperate with the ministry and the competent authorities from the date of reporting until the conclusion of the proceedings with the parties under investigation.
5. The offender must provide evidence or information that can be relied upon to prove the crime.
6. The offender must not destroy, falsify, or conceal any relevant information or evidence.
7. The report must lead to the recovery of proceeds from other perpetrators or prevent them from controlling it [1].

#### **IMPACT OF COMMERCIAL CONCEALMENT ON THE ECONOMY AND SUSTAINABLE DEVELOPMENT:**

It is known that sustainable development concerns preserving the state's resources and wealth for both current residents and future generations, by adopting the best methods to achieve investment.

Among the crimes affecting the aforementioned is commercial concealment; this assists and enables

non-Saudi nationals to invest and trade within the borders of the Kingdom of Saudi Arabia under the undisclosed protection and oversight of a complicit Saudi citizen, which also involves subcontracting [16].

## CONCLUSION

### The study has yielded several key findings:

- Commercial concealment, by definition, is the act of aiding and enabling a non-Saudi national to invest and trade within the Kingdom of Saudi Arabia under undisclosed protection and supervision by a citizen.
- Commercial concealment is among the crimes combated by the Kingdom of Saudi Arabia and is considered a disobedience to the ruler and the government laws.
- Commercial concealment is classified as a discretionary crime; it is not subject to fixed penalties or expiation.
- The penalties imposed by the anti-concealment law include imprisonment for up to five years, a financial penalty of up to five million riyals, and the seizure and confiscation of illicit funds following final judicial rulings against those involved.
- Exemptions from penalties prescribed by the law and other associated penalties may be granted if certain conditions are met.
- Sustainable development is impacted by the crime of commercial concealment because it affects future generations.

## RECOMMENDATIONS

- Respect for the specific regulations of states and governments.
- Consideration of the rights of future generations when enacting the laws.

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