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Foundations and Elements of Civil Liability of Regulatory and Policymaking Institutions in the Capital Market: A Comparative Study of Iranian, French, and English Law

Zahra. Dariushy[1], Esmaeil. Abbasi[1*], Mohammad. Bahmani[1]

[1] Department of Law, CT.C., Islamic Azad University, Tehran, Iran

*** Corresponding author email address**: es.ab.1350@iau.ac.ir

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The capital market, as a vital pillar of the modern economy, serves as a mechanism for mobilizing financial resources, ensuring the efficient allocation of capital, and protecting investors. Within this market, regulatory and policymaking institutions regulate the conduct of market participants and promote transparency and financial stability through the enactment of laws, regulations, directives, and binding policies. Nevertheless, hasty, inadequately informed, or investor-rights-incompatible decisions may result in extensive pecuniary and non-pecuniary losses. The principal issue concerns the legal foundations and constituent elements of the civil liability of these institutions and the circumstances under which they may be held liable for resulting losses. This issue is particularly complex because factors such as fault, causation, foreseeability of harm, the principle of legality, governmental immunities, and the difficulty of quantifying damages complicate the establishment of liability. Using a descriptive-analytical and comparative method and relying on library-based examination of legislation, judicial practice, and authoritative legal documents, this article investigates the issue within the legal systems of Iran, France, and England. The findings indicate that all three systems recognize the necessity of compensating losses caused by harmful decisions of public institutions; however, they differ significantly with respect to the foundations, constituent elements, and barriers to liability. In Iran, fault-based liability, risk theory, the Islamic legal maxim of la darar (no harm), and principles of investor protection provide the principal theoretical framework; however, the multiplicity of institutions, ambiguity regarding the legal status of the Securities and Exchange Organization, and the broad scope of sovereign acts make the establishment of liability difficult. In France, administrative fault, no-fault liability, and risk theory operate alongside the active role of the Conseil d'État; nevertheless, acts of state and the requirement of gross fault in certain contexts remain important obstacles. In England, liability is principally grounded in negligence, breach of statutory duty, and misfeasance in public office; however, statutory immunity, restrictions on recovery for pure economic loss, and a cautious judicial approach limit institutional accountability. It is concluded that the liability of such institutions should be proportionate to the relevant risks, transparent in its operation, and complementary to ex ante regulatory supervision.

Keywords: *civil liability, regulatory institutions, policymaking institutions, capital market, investor protection.*

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1. Introduction

The capital market, as one of the vital pillars of the modern economy, plays an indispensable role in mobilizing financial resources, efficiently allocating capital, enhancing transparency, and promoting sustainable economic development. Within this market, regulatory and policymaking institutions seek to regulate the conduct of market participants, protect investors, enhance transparency, and preserve financial stability through the enactment of laws, regulations, directives, and binding policies. Nevertheless, the binding nature of such decisions and the increasing complexity of capital markets mean that certain regulations and policies, particularly when adopted or implemented without rigorous expert analysis, hastily, or under political pressure, may result in violations of investors' rights and extensive pecuniary and non-pecuniary losses. Under such circumstances, the fundamental question is what the foundations and constituent elements of the civil liability of regulatory and policymaking institutions are and under what conditions they may be held liable for losses sustained by investors. Civil liability, as a legal mechanism for compensation and deterrence, encounters numerous theoretical and practical challenges in this field, including the necessity of establishing fault or negligence in decision-making, proving causation between the regulatory decision and the resulting harm, foreseeability of damage, the principle of legality, immunities arising from the exercise of sovereign authority, and the difficulty of accurately quantifying losses in financial markets. Accordingly, analysis of the foundations and constituent elements of this form of liability is indispensable from both theoretical and practical perspectives and may contribute to the development of a clearer legal framework for ensuring the accountability of regulatory institutions and providing more effective protection for investors.

Accordingly, the present article adopts a comparative approach to examine and compare the foundations and constituent elements of the civil liability of regulatory and policymaking institutions in the capital markets of Iran, France, and England. These three legal systems were selected because each represents a distinct legal tradition: Iran, with a legal system based on Islamic jurisprudence as well as specific civil and commercial legislation; France, with a civil-law system and a highly developed body of administrative jurisprudence concerning state liability; and England, with a common-law system and principles of liability based on negligence, breach of statutory duty, and misfeasance in public office. The principal research question is: What are the foundations and constituent elements of the civil liability of regulatory and policymaking institutions in the capital market in these three legal systems, and what similarities and differences exist among them? The hypothesis of the article is that all three systems recognize the necessity of compensating losses caused by harmful decisions of public institutions, but meaningful differences exist with respect to the foundations, constituent elements, and barriers to the establishment of liability, arising from differences in legal structure, judicial practice, and conceptions of sovereignty and the market. The research method is descriptive-analytical and comparative, and the data were collected through library research and examination of legislation, judicial decisions, documents, and authoritative legal sources.

2. Concepts and General Principles

2.1. The Concept of Regulation and Binding Policymaking in the Capital Market

Regulation, in its broad sense, refers to the establishment of binding rules by competent institutions for the purpose of governing the conduct of persons and organizations within a particular field. In public and economic law scholarship, regulation is recognized as one of the principal instruments of modern governance, the purpose of which is to direct the conduct of economic actors toward objectives determined by the legislature (Baldwin et al., 2012). In the context of capital markets, regulation refers to the body of rules defining the framework within which issuers, brokers, financial institutions, investors, and other market participants operate. Such rules may take the form of statutes, regulations, directives, circulars, and resolutions adopted by supervisory authorities (Moloney, 2023). The Securities Market Act of the Islamic Republic of Iran, enacted in 2005, as the principal statute governing this field, defines the regulatory structure of the capital market and identifies the High Council of Securities and Exchange and the Securities and Exchange Organization as the two principal pillars of regulation and supervision (Piri, 2021).

Alongside regulation is the concept of "binding policymaking," which differs from regulation in certain respects. Policymaking refers to the process of determining broad orientations, priorities, and long-term strategies within a particular field, whereas regulation focuses more specifically on the formulation of detailed and operational rules (Black, 2001). In practice, however, the boundary between these two concepts is not always clear, because broad policies are frequently embodied in binding regulations, while regulations themselves reflect particular policy choices. The element linking the two concepts is their "binding character," meaning that both regulate the conduct of their addressees in a mandatory manner and that non-compliance may result in legal, administrative, or criminal sanctions (Ogus, 2004). In capital markets, binding policies may include interest-rate determinations, trading restrictions, disclosure requirements, prohibitions on manipulative transactions, and similar measures, all of which directly affect investors' rights (Saremizadeh, 2022). From an economic perspective, regulation and binding policymaking in capital markets are justified by the need to correct market failures. Such failures include information asymmetry, insider dealing, anticompetitive conduct, systemic risk, and financial crises (Coffee, 1984). Under these circumstances, intervention by public authorities through binding regulations and policies can enhance transparency, reduce risk, and protect retail investors. However, the same interventions, when poorly designed or improperly implemented, may themselves become a new source of harm to investors, a phenomenon described in the economic-law literature as "regulatory failure" or "regulatory risk" (Stigler, 1971). Therefore, a precise understanding of regulation and binding policymaking is a prerequisite for understanding the civil liability arising from them.

2.2. The Concept of Regulatory and Policymaking Institutions

Regulatory and policymaking institutions in capital markets are public or private legal persons responsible for establishing, implementing, and supervising the rules and policies governing such markets. These institutions may be classified according to criteria such as their legal nature, level of authority, type of functions, and source of their powers. In a general classification, they may be divided into two principal categories: "policymaking institutions" and "regulatory institutions" (Katouzian, 2007). Policymaking institutions are primarily responsible for determining the broad and strategic orientations of the capital market, whereas regulatory institutions are responsible for drafting and adopting technical and operational rules. In many cases, however, a single institution may simultaneously perform both functions. The High Council of Securities and Exchange, for example, engages in both macro-level policymaking and regulation (Alijannejad, 2022). In the Iranian legal system, capital-market regulatory and policymaking institutions include the High Council of Securities and Exchange, the Securities and Exchange Organization, the Central Bank, the Money and Credit Council, the Economic Council, the Ministry of Economic Affairs and Finance, the Plan and Budget Organization, the Competition Council, and other institutions that adopt regulations or policies within their respective jurisdictions (Mousapour et al., 2016). This multiplicity and fragmentation of institutions is itself one of the fundamental challenges of the Iranian legal system in relation to civil liability, because it makes identification of the institution legally responsible for losses sustained by investors more difficult. By contrast, although multiple institutions participate in capital-market regulation in France and England, their supervisory structures are comparatively more integrated, with the Autorité des marchés financiers (AMF) serving as the principal financial-market supervisory authority in France and the Financial Conduct Authority (FCA) performing the corresponding role in England (Moloney, 2011).

From a legal perspective, one of the fundamental questions is whether regulatory and policymaking institutions should be regarded as public legal persons and consequently be subject to the special rules governing state civil liability, or whether they operate as independent or self-regulatory institutions whose liability is governed by the general principles of civil liability. The answer directly affects the basis of liability, the conditions required for its establishment, and the jurisdiction of the competent courts. In Iran, Article 5 of the Securities Market Act characterizes the Securities and Exchange Organization as a "non-governmental public institution," thereby complicating its legal status and making its civil liability subject to careful analysis (Piri, 2021). In France, financial-market regulators are generally regarded as "independent administrative authorities," and their liability is governed by the principles of administrative liability (Baldwin et al., 2012). In England, supervisory institutions such as the FCA are examined under the general principles of civil liability, including negligence and breach of public duties (Davies, 2003).

2.3. The Concept of Civil Liability and Its Distinction from Criminal and Disciplinary Liability

Civil liability, in its general sense, refers to the legal obligation of a person or institution to compensate for harm caused to another. This form of liability is based on principles such as corrective justice, equity, and restoration of the injured party, insofar as possible, to the position occupied before the harm occurred (Katouzian, 2016). In Iranian law, civil liability, pursuant to Article 1 of the Civil Liability Act of 1960 and Articles 328 to 337 of the Civil Code, is principally based on the theory of fault, although instances of no-fault or strict liability are also recognized (Katouzian, 2016). In the context of capital markets, the civil liability of regulatory and policymaking institutions means that where such institutions cause loss to investors through defective regulation, inadequate implementation of legislation, or harmful policymaking, they may be required to compensate for the resulting damage (Alijannejad, 2022).

The distinction between civil and criminal liability is one of the fundamental issues of legal theory. Criminal liability focuses on punishment of the offender and pursues objectives such as deterrence, rehabilitation, and retribution, whereas civil liability focuses on compensation of the injured party and seeks restoration of the status quo ante (Jafari Langroudi, 2021). In criminal liability, the relationship between the state and the accused is vertical and based on sovereign authority, whereas in civil liability the relationship between the injured party and the person causing the harm is, in principle, horizontal and based on legal equality. This distinction is particularly significant in capital markets because regulatory and policymaking institutions may, in some circumstances, simultaneously incur criminal liability, where the constituent elements of a criminal offense are present, and civil liability for resulting losses. Nevertheless, establishing criminal liability against such institutions is generally more difficult because of the public and sovereign nature of their functions, whereas civil liability may provide a more effective mechanism for compensating investors.

Disciplinary liability constitutes a third form of liability and operates within professional or organizational structures. It is ordinarily imposed by self-regulatory organizations or professional bodies upon their members and is intended to preserve professional order and integrity. In capital markets, disciplinary liability may involve suspension of activities, revocation of licenses, disciplinary fines, and similar sanctions. The principal distinction between disciplinary and civil liability is that the former focuses on violation of professional and organizational rules and seeks to preserve professional order, whereas the latter focuses on compensation for losses suffered by third parties (Black, 2001). In certain circumstances, however, a single act may simultaneously result in disciplinary, civil, and criminal liability, such as where a regulatory measure violates professional standards, causes financial loss to investors, and also constitutes a criminal offense (Moloney, 2023).

2.4. The Position of the Capital Market and the Necessity of Investor Protection

The capital market, as one of the principal pillars of the modern economy, plays a vital role in mobilizing savings, directing resources toward productive investment, enhancing liquidity, and facilitating the financing of business enterprises (Soltani, 2024). In Iran, the capital market has attracted extensive public participation in recent years, with approximately 60 million natural and legal persons reportedly obtaining securities trading codes (Alijannejad, 2022). This extensive public participation further increases the importance of investor protection because any loss resulting from erroneous decisions by regulatory and policymaking institutions may have far-reaching social and economic consequences. The necessity of investor protection in capital markets may be justified from economic, legal, and social perspectives. Economically, investor protection promotes public confidence in the market, facilitates the attraction of domestic and foreign capital, reduces the cost of capital, and ultimately contributes to economic growth. Conversely, inadequate investor protection may lead to capital flight, reduced liquidity, greater volatility, and market instability (Coffee, 1984). Legally, investor protection constitutes one of the principal responsibilities of modern legal systems because investors generally possess less bargaining power and less access to information than issuers and financial institutions and therefore require special legal protection (Katouzian, 2007). Socially, capital markets involve broad participation by different segments of society, and losses sustained by retail investors may lead to declining public confidence, social dissatisfaction, and erosion of social capital (Daryoushi, 2014).

One of the most important mechanisms for investor protection is the existence of a clear and precise legal framework governing the civil liability of regulatory and policymaking institutions. If investors are confident that losses caused by erroneous decisions of these institutions can be compensated, their confidence in the market is strengthened and their willingness to participate increases (Baldwin et al., 2012). Conversely, the absence of such a framework leaves investors vulnerable to harmful decisions by public authorities and may gradually erode public confidence and encourage capital to leave the market. Accordingly, analysis of the foundations and constituent elements of the civil liability of regulatory and policymaking institutions is not merely a legal necessity but also an economic and social imperative (Ogus, 2004).

3. Foundations of the Civil Liability of Regulatory and Policymaking Institutions

3.1. Foundations in Iranian Law

In the Iranian legal system, the civil liability of regulatory and policymaking institutions in capital markets rests upon a combination of theoretical and jurisprudential foundations, each of which provides a distinct justification for requiring such institutions to compensate investors for losses. These foundations may be classified into four principal categories: fault theory, risk theory, the Islamic legal maxim of *la darar* and related jurisprudential principles, and specific principles of investor protection in the capital market. Each illuminates a different dimension of liability, and together they provide a comprehensive theoretical framework for analyzing the civil liability of regulatory institutions.

Fault theory, which has roots in the Romano-Germanic legal tradition and is also regarded as the principal basis of civil liability in Iranian law, is founded on the proposition that civil liability arises only where the fault of the person or institution causing the damage is established (Katouzian, 2016). In the context of capital-market regulation and policymaking, this means that regulatory and policymaking institutions are required to compensate for losses only where their fault in adopting an improper regulation, inadequately implementing legislation, or adopting a harmful policy can be established (Alijannejad, 2022). Article 1 of the Civil Liability Act of 1960 provides, in substance, that any person who, without legal authorization, intentionally or negligently causes injury to another person's life, property, health, freedom, dignity, or commercial reputation is liable to compensate for that injury (Katouzian, 2016). This provision recognizes both intentional conduct and negligence as forms of fault, and in the context of capital markets, negligence, imprudence, failure to comply with professional standards, or hasty decision-making by regulatory institutions may constitute fault (Daryoushi, 2014). Establishing fault on the part of public institutions is, however, difficult in practice because such institutions frequently enjoy statutory and political protections, and proving that a particular decision resulted from fault requires careful examination of the decision-making process and the expert assessments underlying it (Piri, 2021).

Alongside fault theory, risk theory, as a foundation of no-fault liability, assumes particular significance in relation to the civil liability of regulatory and policymaking institutions. According to this theory, persons or institutions engaging in hazardous or potentially harmful activities should bear responsibility for resulting losses even in the absence of specific fault (Amiri & Dashti, 2024). The theory, which developed in legal thought during the nineteenth and early twentieth centuries, is founded on the proposition that those who obtain the benefits of an activity should also bear its associated losses (Jafari Langroudi, 2021). In capital markets, regulatory and policymaking institutions shape a risk-laden environment for investors through the adoption of binding rules and policies. Accordingly, even where no specific fault can be attributed to them, their creation or allocation of risk and their direct influence on investors' rights may provide a basis for requiring them to compensate resulting losses. Risk theory may be particularly relevant where regulatory decisions cause severe market volatility, sharp declines in share values, or loss of investment opportunities.

The Islamic legal maxim of *la darar* is also one of the most important jurisprudential rules and foundations of civil liability in Iranian law and plays a central role in justifying the liability of regulatory and policymaking institutions. Derived from the Prophetic maxim "there shall be neither harm nor reciprocating harm," it emphasizes that harmful legal consequences should not be permitted to remain without an appropriate legal response (Bojnourdi, 1992). On this basis, regulatory decisions causing losses to investors may generate an obligation to compensate even where the relevant decision does not formally conflict with statutory rules (Mousavi al-Khomeini, 1995). The *la darar* principle, together with other jurisprudential rules such as causation (*tasbib*), benefit or appropriation (*istifa'*), and possession or control (*yad*), provides a broad framework for the civil liability of public institutions (Katouzian, 2007). As a principle governing legal relationships generally, *la darar* can also extend to relations between regulatory institutions and investors and thereby provide an independent and indigenous foundation for the civil liability of such institutions.

Specific principles of investor protection in the capital market constitute the fourth basis of liability and emphasize the need to afford special protection to investors because of their comparatively vulnerable position vis-à-vis regulatory institutions. Due to information asymmetry, technical and financial complexity, and significant dependence on macroeconomic policies, capital markets constitute inherently risky environments for investors (Coffee, 1984). Under such circumstances, regulatory and policymaking institutions are required to protect investors' rights through transparent, precise, and professionally grounded regulation. Breach of this responsibility, particularly where it causes investor losses, may constitute a basis for civil liability (Alijannejad, 2022). The Securities Market Act of 2005 emphasizes investor protection in various provisions and requires regulatory authorities to establish a transparent and fair market environment (Piri, 2021). The same statutory framework also recognizes liability in specified circumstances for losses sustained by investors as a result of negligence, fault, violation of legal duties, or incomplete or misleading information in connection with securities offerings (Piri, 2021). Consequently, specific principles of investor protection, together with fault theory, risk theory, and the *la darar* principle, provide a comprehensive theoretical framework for the civil liability of regulatory and policymaking institutions in the Iranian capital market.

3.2. Foundations in French Law

In the French legal system, the civil liability of regulatory and policymaking institutions in capital markets rests upon a set of distinctive foundations rooted primarily in administrative law and the jurisprudence of the Conseil d'État. These foundations may be examined under four principal headings: administrative fault, no-fault liability, risk theory and state liability, and the role of financial-market supervisory authorities. Owing to the institutional separation between administrative and ordinary jurisdictions and the existence of a developed administrative court system, French law adopts a distinctive approach to the liability of public authorities that differs from that of common-law systems.

Administrative fault constitutes the principal basis of liability of public authorities in French law and is founded on the proposition that the state and public bodies may be required to compensate for damage where fault in the performance of administrative functions is established (Chapus, 2001). French law distinguishes, in particular, between "personal fault" (*faute personnelle*) and "service-related or administrative fault" (*faute de service*). A *faute de service* is a fault occurring in the performance of an administrative function and attributable to the public service or institution itself rather than exclusively to the individual official (Weil & Pouyaud, 2024). In the capital-market context, regulators such as the Autorité des marchés financiers (AMF) and the Banque de France may incur liability where administrative fault occurs in rulemaking, market supervision, or implementation of monetary and financial policy (Delaunay, 2023). French administrative jurisprudence requires supervisory bodies to comply with appropriate standards of diligence and care in the exercise of their functions, and negligence or failure to exercise adequate supervision may provide a basis for liability (Chapus, 2001).

No-fault liability is another important foundation of public liability in French law. Under this doctrine, where activities of public authorities create special or abnormal risks or cause legally compensable burdens, liability may arise even without proof of fault (Chapus, 2001). This form of liability, sometimes described as objective liability, has particular relevance to capital markets because decisions adopted by regulatory and policymaking institutions may generate broad and sometimes unpredictable effects on markets and investors. Where, for example, monetary or regulatory policy produces exceptional and legally compensable losses, liability may, subject to the requirements of French administrative law, arise without proof of individualized fault (Delaunay, 2023). French administrative courts have developed no-fault liability particularly in relation to dangerous activities and exceptional burdens resulting from public action (Chapus, 2001).

Risk theory and state liability also occupy an important position in French law, particularly in relation to public-sector activities that expose individuals to special risks. According to this approach, public authorities engaging in activities generating exceptional risks may be required to compensate resulting losses even in the absence of fault (Weil & Pouyaud, 2024). This doctrine emerged through the jurisprudence of the Conseil d'État in the late nineteenth and early twentieth centuries and reflects the broader proposition that the burdens generated by public activity should, in appropriate circumstances, be borne collectively rather than imposed disproportionately on particular individuals (Morand-Deviller, 2017). In the capital-market context, binding regulations and public policies may create risks for investors, and risk-based approaches may therefore provide a basis for compensation where the applicable requirements of administrative liability are satisfied. French administrative jurisprudence has, in appropriate circumstances, relied on risk and equality before public burdens in addressing losses arising from governmental economic activity (Chapus, 2001).

The role of financial-market supervisory authorities in France is also significant as a specific context in which civil or administrative liability may arise. The AMF, as the principal authority supervising French capital markets, is responsible for promoting transparency, fairness, and orderly market functioning and for protecting investors (Moloney, 2011). Failure to perform supervisory responsibilities appropriately may, where the conditions of administrative liability are satisfied, expose the authority to an obligation to compensate investors (Delaunay, 2023). French administrative law requires supervisory authorities to exercise their statutory powers with appropriate diligence and care, and serious failures in supervision may therefore give rise to liability (Chapus, 2001). In addition, the Banque de France and other economic authorities may, within the limits of their respective competences and applicable immunity rules, incur liability for unlawful or fault-based decisions (Morand-Deviller, 2017). Accordingly, the foundations of liability of regulatory and policymaking institutions in French capital markets combine administrative fault, no-fault liability, risk-based doctrines, and the specific responsibilities of supervisory authorities.

3.3. Foundations in English Law

In English law, the civil liability of regulatory and policymaking institutions in the capital market is founded upon several distinctive doctrines rooted in the common law and judicial precedent. These foundations may be examined under four principal headings: negligence, breach of statutory duty, misfeasance in public office, and the liability of financial-market supervisory authorities. Owing to parliamentary sovereignty and the distinctive institutional structure of English public law, the approach to the liability of public authorities differs in important respects from that found in continental civil-law systems.

Negligence constitutes one of the principal foundations of civil liability in English law and rests on the proposition that a person or institution may be liable where it fails to exercise the legally required standard of care and that failure causes legally recoverable damage (Winfield & Jolowicz, 2014). Negligence generally requires the existence of a duty of care, breach of that duty, and damage caused by the breach. In the capital-market context, supervisory institutions such as the Financial Conduct Authority and the Prudential Regulation Authority may, subject to statutory immunities and the requirements governing duties of care owed by public bodies, potentially incur liability where negligent performance of supervisory functions causes legally recoverable investor losses (Davies, 2003). English courts have nevertheless traditionally adopted a cautious approach toward negligence claims against regulatory authorities because of concerns that excessively broad liability could impair effective regulation and encourage unduly defensive decision-making.

Breach of statutory duty constitutes another potential foundation of civil liability in English law. Under this doctrine, where legislation imposes a specific obligation upon a public authority and breach of that obligation causes harm, a private claim may arise where the statute, properly interpreted, is intended to confer an enforceable private right (Winfield & Jolowicz, 2014). In the capital-market context, legislation such as the Financial Services and Markets Act 2000 establishes specific duties and regulatory objectives for bodies including the FCA and prudential regulators, including market supervision, investor protection, and promotion of market integrity. Breach of statutory obligations may potentially generate liability where the conditions for a private cause of action are satisfied (Davies, 2003). English jurisprudence has, however, emphasized that breach of a statutory obligation does not automatically create civil liability; the legislative scheme must indicate that Parliament intended persons within the protected class to possess a private right of action. Establishing regulatory liability on this basis therefore requires careful statutory interpretation and determination of legislative intent.

Misfeasance in public office is another important basis for liability of public authorities in English law. The tort applies where a public officer exercises public power unlawfully with the requisite state of mind, including deliberate misuse of power or knowledge of, or reckless indifference to, the unlawfulness of the act and the likelihood of harm. It serves as an accountability mechanism for serious abuse of public authority (Wade & Forsyth, 2014). In the capital-market context, officials of the FCA or prudential authorities may potentially incur liability for misfeasance where they intentionally or knowingly act outside their lawful powers in a manner causing investor loss (Davies, 2003). The litigation in *Three Rivers District Council v Bank of England* (2003) played an important role in clarifying the demanding requirements governing misfeasance in public office, including the necessary mental element and legally relevant harm. Accordingly, this tort provides a specific accountability mechanism in cases involving bad faith or knowing abuse of regulatory power (Stanton et al., 2018).

The liability of financial-market supervisory authorities in England is also of particular significance. The Financial Conduct Authority, as a central regulator of financial markets and financial services, is responsible for advancing statutory objectives related to market integrity, consumer protection, and effective competition (Moloney, 2011). Where its supervisory functions are performed improperly, potential liability must be assessed under the applicable statutory framework, the law of negligence, and public-law torts such as misfeasance in public office (Davies, 2003). Nevertheless, English law adopts a cautious approach toward imposing broad civil liability on financial regulators because of concerns that extensive liability may impair effective supervision and generate overly defensive regulatory behavior. The Prudential Regulation Authority and the Bank of England are similarly subject to specialized statutory rules governing liability and immunity. Thus, the English framework combines negligence, breach of statutory duty, misfeasance in public office, and specialized rules governing financial regulators.

Compared with Iranian and French law, English law adopts a comparatively cautious approach to the civil liability of regulatory and policymaking institutions. Iranian law primarily relies upon fault theory, risk theory, and the *la darar* principle, while judicial practice in this area remains comparatively underdeveloped. French law relies on administrative fault, no-fault liability, and risk-based doctrines, with the jurisprudence of the Conseil d'État playing an active role in their development. English law relies predominantly on negligence, breach of statutory duty, and misfeasance in public office, while the courts have generally exercised caution in imposing liability upon supervisory authorities. These differences reflect variations in institutional structure, judicial practice, and conceptions of sovereignty and the market across the three legal systems.

4. Constituent Elements of the Civil Liability of Regulatory and Policymaking Institutions

4.1. Harmful Act or Omission

A harmful act or omission constitutes the first element of civil liability and, in the context of regulatory and policymaking institutions in the capital market, refers to any act or failure to act by such institutions that results in harm to investors. It may take the form of either a positive act or an omission. A positive act consists of conduct violating a legal or contractual obligation, whereas an omission consists of failure to perform a duty imposed on the regulatory or policymaking institution by law or accepted standards (Katouzian, 2016). In Iranian law, Article 1 of the Civil Liability Act of 1960 recognizes harmful conduct arising intentionally or through negligence and provides that a person who, without legal authorization, intentionally or negligently causes harm to another's life, property, health, freedom, dignity, or commercial reputation is liable to compensate for that harm (Katouzian, 2016). The provision therefore recognizes both intentional and negligent conduct as potentially harmful acts. In capital markets, negligence, imprudence, failure to comply with expert standards, hasty decision-making, discriminatory measures, or decisions lacking adequate professional justification may constitute harmful conduct (Alijannejad, 2022).

Article 11 of the Iranian Civil Liability Act also specifically addresses the liability of state officials and employees of public institutions. It distinguishes between damage personally attributable to the intentional or negligent conduct of an official and damage arising from defects attributable to the administrative organization itself (Katouzian, 2007). The provision therefore differentiates between, first, circumstances in which the loss is attributable to the personally harmful conduct of the employee, giving rise to personal liability, and, second, circumstances in which the loss results from deficiencies in the administrative institution, in which case liability may be borne by the relevant public body (Katouzian, 2007). In capital markets, regulatory and policymaking decisions are ordinarily made collectively and institutionally. It may therefore be difficult to attribute the harmful act to a particular individual, with liability more appropriately directed toward the institution as a legal person.

In French law, harmful conduct in administrative liability is generally analyzed through the concept of *faute de service*. This refers to fault occurring in the performance of administrative functions and attributable to the public service or authority itself (Chapus, 2001). Administrative fault may include failure to comply with professional standards, unjustified delay in performing supervisory duties, inadequate market supervision, or adoption of erroneous and insufficiently substantiated decisions (Morand-Deviller, 2017). In the capital-market context, institutions such as the AMF and the Banque de France may potentially incur liability where administrative fault occurs in rulemaking, market supervision, or implementation of monetary and financial policies (Delaunay, 2023). French administrative jurisprudence requires supervisory institutions to exercise appropriate diligence in performing their duties, and failures of care may, where the applicable legal requirements are satisfied, constitute a basis of liability (Chapus, 2001). For example, if the AMF fails adequately to supervise disclosure by listed companies and that omission causes investor losses, the relevant harmful conduct may arise through an omission.

In English law, harmful conduct is analyzed through causes of action such as negligence, breach of statutory duty, and misfeasance in public office. In negligence, the harmful act consists of breach of a duty of care resulting in damage (Winfield & Jolowicz, 2014). In the capital-market context, regulators such as the FCA and the Prudential Regulation Authority may potentially incur liability, subject to the applicable statutory framework, where negligent supervision causes legally recoverable investor losses (Davies, 2003). In breach of statutory duty, the harmful conduct consists of failure to comply with an obligation imposed by legislation, including obligations under the Financial Services and Markets Act 2000 relating to supervision, investor protection, and market integrity (Davies, 2003). In misfeasance in public office, the harmful conduct consists of unlawful exercise of public power accompanied by the requisite bad faith, knowledge, or recklessness. The litigation in *Three Rivers District Council v Bank of England* (2003) clarified important aspects of this tort. Thus, under English law, harmful conduct by regulatory and policymaking institutions may be analyzed through negligence, breach of statutory duty, or misfeasance in public office.

Comparatively, in all three legal systems, harmful conduct by regulatory and policymaking institutions may arise through either a positive act or an omission. In Iranian law, emphasis is placed on Articles 1 and 11 of the Civil Liability Act, while judicial doctrine concerning capital-market regulators remains developing. In French law, the central concept is *faute de service*, supported by a developed body of Conseil d'État jurisprudence and standards of administrative diligence. In English law, emphasis is placed on specific causes of action such as negligence, breach of statutory duty, and misfeasance in public office, while courts have generally adopted a cautious approach toward imposing liability upon supervisory bodies. These differences reflect the distinct legal structures, judicial traditions, and conceptions of sovereignty and market regulation in the three systems.

4.2. Damage

Damage constitutes the second essential element of civil liability, and without legally cognizable damage, civil liability does not arise. In its general sense, damage refers to a diminution in the property, rights, or legally protected interests of the injured party resulting from the harmful conduct of another (Katouzian, 2016). Iranian law recognizes both pecuniary and non-pecuniary damage. Pecuniary damage consists of financial loss affecting a person's assets, whereas non-pecuniary damage may include injury to dignity, reputation, and psychological well-being (Katouzian, 2016). In the capital-market context, pecuniary damage may include a decline in share value, depreciation of financial assets, inability to sell securities at an appropriate time, reduced profitability, and loss of investment opportunities (Daryoushi, 2014). Non-pecuniary damage may include impairment of commercial reputation, diminished confidence in financial institutions, and harm to the professional standing of investors or financial entities.

Under Iranian law, recoverable damage generally must be actual, certain, direct, and capable of proof. Accordingly, investors seeking compensation must demonstrate the existence and amount of the claimed loss through appropriate financial and accounting evidence (Katouzian, 2016). In capital markets, proving damage resulting from regulatory and policymaking decisions is particularly difficult because such decisions frequently produce gradual and indirect effects and may interact with numerous other market factors (Soltani, 2024). One important issue concerns recovery for loss of expected profits or loss of opportunity. Iranian law has traditionally adopted a restrictive approach toward purely hypothetical future profits, and investors cannot ordinarily claim damages merely because anticipated profits were not realized or share prices did not rise as expected (Daryoushi, 2014). Where, however, the lost economic benefit is sufficiently certain, directly attributable to the harmful regulatory act, and legally recognized, compensation may potentially be considered under the general principles of civil liability.

In French administrative law, compensable damage generally must be direct, certain, and legitimate (Chapus, 2001). Directness requires a sufficiently close causal relationship between the harmful administrative conduct and the claimed loss, rather than a loss attributable primarily to intervening causes or unforeseeable events (Morand-Deviller, 2017). Certainty requires the damage to be real and demonstrable rather than merely hypothetical (Morand-Deviller, 2017). Legitimacy requires that the interest for which compensation is sought be legally protected (Delaunay, 2023). In capital markets, losses resulting from regulatory or policymaking decisions may include declines in securities values, reduced liquidity, lost investment opportunities, and increased transaction costs. French law recognizes *perte de chance*, or loss of a chance, as a compensable head of damage where the lost opportunity was real and sufficiently serious. Thus, where an investor loses a genuine opportunity to obtain an economic advantage because of unlawful or fault-based regulatory conduct, compensation may be available for the value of the lost chance.

In English law, recoverable damage may include pecuniary and non-pecuniary loss. Pecuniary loss may encompass lost income, additional expenditure, and lost profits, whereas non-pecuniary loss may include legally recognized forms of distress and reputational harm (Winfield & Jolowicz, 2014). English law, however, adopts a restrictive approach toward recovery for pure economic loss in negligence and generally permits such recovery only where the applicable requirements, including an appropriate relationship or assumption of responsibility, are satisfied. In the capital-market context, loss resulting from supervisory decisions may include depreciation of investments, loss of investment opportunities, and increased transaction costs (Davies, 2003). Establishing recoverable loss resulting from regulatory decisions remains difficult because market losses frequently have multiple causes and may be only indirectly related to regulatory conduct (Stanton et al., 2018). English law also recognizes loss-of-chance concepts in certain contexts, provided that the lost opportunity is legally cognizable and capable of rational evaluation.

Comparatively, all three legal systems require legally cognizable damage to be sufficiently real and causally connected to the harmful conduct, although the treatment of particular forms of economic loss differs. Iranian law has traditionally been cautious in relation to speculative lost profits and lost opportunities. French law more expressly recognizes the doctrine of *perte de chance* and may compensate the loss of a real and serious opportunity. English law imposes important restrictions on pure economic loss and adopts a cautious approach toward liability of regulatory authorities. These differences arise from the distinct theoretical foundations, jurisprudence, and approaches to public-authority liability in the three legal systems.

4.3. Causation

Causation constitutes the third essential element of civil liability and is indispensable to the establishment of liability. It refers to the causal connection between harmful conduct and the resulting damage; in other words, the claimed loss must be legally attributable to the harmful act or omission, and where the requisite causal relationship is absent, civil liability does not arise (Katouzian, 2016). In Iranian law, determination of causation requires consideration of factors such as directness, foreseeability, and the existence of an ordinary and legally meaningful connection between the conduct and the harm (Soltani, 2024). Directness requires the damage to result sufficiently directly from the harmful act or omission, without intervening factors severing the causal chain (Katouzian, 2007). Foreseeability requires the harm to be of a kind that could reasonably have been anticipated, whereas wholly extraordinary or unforeseeable events may break the chain of causation (Alijannejad, 2022). The requirement of an ordinary and natural connection means that, according to legal and customary judgment, the harmful conduct must be regarded as a legally relevant cause of the damage (Katouzian, 2016).

In capital markets, proving causation between decisions of regulatory or policymaking institutions and investor losses presents particular difficulties because such decisions operate within a complex economic and financial environment in which multiple factors, including market volatility, political developments, economic sanctions, macroeconomic conditions, and the conduct of other market participants, may simultaneously contribute to the loss. For example, if the Central Bank adopts a monetary policy that increases interest rates and share prices subsequently decline, proving that the decline resulted specifically from the Central Bank's decision rather than from other market factors may be difficult (Daryoushi, 2014). Iranian judicial practice has not yet developed a fully settled approach to proving causation in claims arising from capital-market regulation and policymaking, and this remains one of the principal challenges in the field.

In French law, causation in administrative liability is assessed through doctrines requiring a sufficiently direct and legally relevant causal connection between administrative conduct and the damage. The concept of *causalité adéquate*, or adequate causation, reflects the proposition that the conduct must ordinarily and logically be capable of producing the kind of loss that occurred (Chapus, 2001). French administrative courts may consider factors such as the normality, effectiveness, and proximity of the alleged cause in determining attribution (Morand-Deviller, 2017). In the capital-market context, establishing causation between regulatory decisions and investor losses is difficult because the effects of regulation may be gradual, diffuse, and intertwined with other market developments (Delaunay, 2023). French administrative jurisprudence therefore examines whether the connection between supervisory failure and the claimed loss is sufficiently direct and certain to justify attribution (Chapus, 2001). For example, if the AMF fails to supervise disclosure by listed companies and this failure directly contributes to investor losses, causation may potentially be established.

In English law, causation in tort commonly involves both factual causation and legal causation. Factual causation is ordinarily examined through the "but for" test: whether the damage would have occurred but for the defendant's wrongful conduct (Winfield & Jolowicz, 2014). Legal causation concerns whether the damage is sufficiently attributable to the wrongful conduct as a matter of law (Davies, 2003). In determining legal causation and remoteness, English courts consider matters such as reasonable foreseeability and intervening acts (Stanton et al., 2018). In the capital-market context, proving causation between supervisory decisions and investor losses is difficult because such decisions often produce broad and indirect consequences and interact with numerous independent market factors (Davies, 2003). Where regulatory negligence is alleged, the claimant must establish that the legally relevant harm falls within the causal scope of the regulator's breach (Winfield & Jolowicz, 2014). For example, if the FCA fails to address manipulative trading and that failure can be shown to have caused investor losses within the applicable legal framework, the causal requirement may potentially be satisfied.

Comparatively, causation is an indispensable element of civil liability in all three legal systems. Iranian law emphasizes directness, foreseeability, and an ordinary causal relationship, although judicial doctrine in relation to regulatory liability remains developing. French law employs principles of adequate and direct causation within a developed system of administrative jurisprudence. English law distinguishes factual from legal causation and places particular emphasis on the "but for" test, remoteness, foreseeability, and intervening causes. These differences reflect the theoretical and jurisprudential characteristics of public-authority liability in the three legal systems.

4.4. Conditions and Barriers to the Establishment of Liability

The civil liability of regulatory and policymaking institutions in capital markets requires not only the existence of harmful conduct, damage, and causation but also satisfaction of additional legal conditions and the absence of applicable barriers or immunities. Conditions relevant to liability include legality, fault or failure in decision-making where fault is required, and foreseeability of damage. Barriers may include sovereign acts and statutory immunities, lack of access to information and evidence, and institutional resistance to acknowledgment of liability. In Iranian law, the principle of legality plays an important role in defining the scope of liability of regulatory institutions and requires that the lawfulness or unlawfulness of the relevant regulatory conduct be assessed within the applicable statutory framework (Alijannejad, 2022). Accordingly, investors seeking compensation may be required to demonstrate that the regulatory decision breached an applicable legal obligation or otherwise satisfied the requirements of civil liability (Katouzian, 2016).

In Iranian law, Article 11 of the Civil Liability Act also contains an important limitation relating to "acts of sovereignty." Under this provision, where governmental measures are lawfully undertaken as necessary for the protection of social interests in the exercise of sovereign functions and cause harm to another, compensation may not necessarily be payable (Katouzian, 2007). This rule may exempt the state from civil liability where it acts in the exercise of sovereign authority for legally recognized public purposes. Nevertheless, distinguishing sovereign acts from operational or proprietary acts is difficult in practice, and Iranian law has not always provided a uniform criterion for drawing the distinction (Katouzian, 2007). In capital markets, regulatory and policymaking institutions frequently exercise public or sovereign powers, and this classification may therefore operate as a significant obstacle to civil claims.

In French law, public-authority liability may also encounter limitations arising from *actes de gouvernement* and other doctrines restricting judicial review. *Actes de gouvernement* are governmental acts regarded, because of their constitutional or political character, as outside the ordinary scope of administrative judicial review (Chapus, 2001). Certain high-level economic or governmental decisions may therefore be insulated from conventional liability claims, depending on their legal characterization (Morand-Deviller, 2017). French administrative jurisprudence has, however, progressively restricted the category of non-justiciable governmental acts and has developed broader mechanisms of administrative accountability (Delaunay, 2023). In some regulatory contexts, particularly historically, establishment of liability required proof of *faute lourde*, or gross fault, where complex supervisory functions were involved (Chapus, 2001). Such an elevated threshold can itself constitute a significant obstacle to claims against regulatory authorities.

In English law, civil liability of financial regulators is subject to important limitations, including statutory immunity and restrictions governing recovery of pure economic loss. Under the Financial Services and Markets Act 2000 and related statutory arrangements, regulators such as the FCA and bodies exercising prudential functions benefit from significant statutory protections in relation to the performance of regulatory functions, subject to legally specified exceptions (Davies, 2003). These protections are intended, among other things, to prevent excessive exposure to private claims from undermining effective supervision. In addition, English negligence law adopts a restrictive approach to pure economic loss, permitting recovery only within recognized categories and where the applicable requirements concerning duties of care and proximity are satisfied (Stanton et al., 2018). These limitations make civil claims by investors against financial regulators particularly difficult. Misfeasance in public office nevertheless remains available in serious cases involving deliberate illegality, bad faith, or reckless indifference to unlawful exercise of public power (Wade & Forsyth, 2014).

Comparatively, civil liability of regulatory and policymaking institutions is subject to significant conditions and barriers in all three legal systems. In Iranian law, the legal characterization of sovereign acts and the developing state of judicial doctrine constitute important limitations. In French law, *actes de gouvernement* and historically elevated fault standards have constrained liability, although Conseil d'État jurisprudence has progressively refined and, in some areas, reduced these barriers. In English law, statutory immunity of financial regulators and restrictions on recovery for pure economic loss constitute major obstacles, while liability remains possible in particularly serious cases such as misfeasance in public office. These differences reflect the distinctive legal structures, judicial traditions, and approaches to sovereignty and market regulation in each system.

5. Conclusion

The comparative analysis demonstrates that the differences among the three legal systems concerning the foundations and constituent elements of the civil liability of regulatory institutions do not primarily concern the general principle that legally cognizable harm may require compensation. Rather, they concern the "legal policy of risk allocation" and the manner in which each legal system draws the boundary between sovereign authority and accountability. Iran possesses broad theoretical capacity for regulatory liability through fault theory, risk theory, and the *la darar* principle; however, the multiplicity of competent authorities, ambiguity surrounding the legal nature of the Securities and Exchange Organization, and the broad operation of the concept of sovereign acts may transform this theoretical capacity into practical non-liability or judicial uncertainty. France offers an intermediate model through administrative fault, no-fault liability, and the active jurisprudential role of the Conseil d'État, in which state liability is neither rejected nor extended without limitation; nevertheless, *actes de gouvernement* and demanding fault requirements in certain fields may continue to present obstacles to investors. England, by relying on negligence, breach of statutory duty, and misfeasance in public office, imposes stringent requirements on claims against public authorities, while statutory immunity and restrictions on pure economic loss further complicate investor litigation. Thus, the principal point of divergence among the three systems does not lie in the "principle of liability" itself but rather in the "degree and conditions under which liability becomes legally actionable."

The article concludes that, for Iran, the preferable model is neither absolute immunity for regulatory institutions nor broad and unqualified liability. Instead, the legal system should move toward a model of "regulated liability proportionate to risk." Such a model could combine objective standards of professional care, mandatory regulatory impact assessment, documentation and disclosure of the expert basis of regulatory decisions, a precise distinction between sovereign and operational functions, and improved investor access to relevant evidence with mechanisms of no-fault compensation for systemic losses and recognition of the doctrine of loss of a chance in sufficiently certain cases. Within this framework, the French experience concerning objective liability and compensation for loss of a chance, the English approach to liability for bad faith and misuse of public powers, and the jurisprudential and statutory capacities of Iranian law arising from the *la darar* principle and investor-protection doctrines can contribute to the development of an effective indigenous model. Ultimately, civil liability of regulatory and policymaking institutions should not be regarded as a substitute for ex ante supervision but as its necessary complement, an instrument for ensuring accountability and protecting the social capital of the market. Without such accountability, even technically sound regulation may, over time, lose its legitimacy and the confidence of market participants.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

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