Research on the incrimination of self-money laundering

Chen Xinya

Southwest University for Nationalities, Chengdu China，610041;

Abstract: The act of self-laundering has been included in the scope of the subject of the crime of money laundering by the " Criminal Law Amendment (11), " which means that the scope of regulation of the crime of money laundering has been further expanded. As a serious crime that undermines the order of financial management and hinders the normal activities of the judiciary, money laundering has been widely concerned for a long time. The traditional criminal law theory holds that the crime of money laundering is a downstream crime attached to the upstream crime, and the money laundering behavior carried out by the upstream criminal actor belongs to the " non-punishable ex post facto behavior. " However, with the deepening of anti-money laundering work and the strengthening of global anti-money laundering cooperation, the criminalization of self-laundering has become an important issue in the revision of criminal law.

Keywords: self-laundering money ; the crime of money laundering ; post act shall not be punished ; criminal Law Amendment (11)

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1.Legislative overview of money laundering crime in China

In the international environment, drug-related crimes are rampant. Influenced by the " United Nations Drug Treaty, " China adopted the " Decision on Drug Control " in 1990. This is the first document on money laundering crime. It is worth noting that at that time, China 's anti-money laundering legislation was not intended to combat money laundering crimes, but to curb upstream crimes. With the increase of criminal activities such as smuggling, drugs, corruption and bribery, China 's money laundering problem has become increasingly prominent, undermining the financial order and endangering economic security and social stability. Based on this, in 1997, the ' Criminal Law ' was revised to formally establish the crime of money laundering and incorporate it into the crime of undermining the financial management order.Since then, the crime of money laundering has been revised many times. However, from the perspective of the international environment, after the fourth round of mutual evaluation in China, the Financial Action Task Force (FATF) believes that most of the content of " criminalization of money laundering " in China has reached the qualified standard, but the failure to criminalize self-laundering is a " major defect " in technical compliance. Therefore, it is suggested that China should rectify it as soon as possible. Therefore, it was not until 2020 that the ' Criminal Law Amendment (XI) ' made major amendments to the crime of money laundering, deleted the terms ' knowingly ' and ' assisting ', and incorporated the ' self-money laundering ' behavior into the scope of the regulation of the crime of money laundering, expanded the scope of cross-border money laundering, and revised the provisions of the fine penalty.

2.Theoretical basis for the criminalization of self-money laundering

2.1.Self-laundering is not an impunity after the act

The so-called ex post facto impunity refers to the act of " bleaching " the illegal gains obtained by criminals in order to protect the illegal gains obtained after their crimes. From the perspective of criminal form, the act satisfies the constitutive elements of relevant criminal acts, but it is different from the original legal interests. That is to say, after the completion of the upstream crime, the criminal actor conducts self-money laundering in the next step for the purpose of ensuring or using the illegal benefits obtained therefrom to carry out money laundering activities, and does not infringe on a new legal interest.

In our country, some after-the-fact behavior is not identified as the essence of the crime because the after-the-fact behavior does not infringe on the new legal interests, that is, the legal interests infringed by the after-the-fact behavior are still within the scope of the legal interests protected by the previous crime. On the contrary, if the ex post facto act

infringes on the new legal interests and conforms to the independent constitutive elements of crime, it is necessary to evaluate the ex post facto act as a new crime.

Therefore, clarifying the legal interests infringed by self-money laundering is the key to judging whether it is an impunity after-the-fact act. China 's criminal law stipulates the crime of money laundering under the crime of ' undermining the financial management order ', and the crime of money laundering infringes on the national financial management order. In addition, because the object of money laundering is the proceeds and benefits of upstream crimes, and the proceeds and benefits of upstream crimes are recovered and confiscated by the judicial organs according to law, money laundering interferes with the judicial organs ' crackdown on illegal actions, so money laundering also infringes on the normal activities of the judicial organs. The legal interests infringed by money laundering are the normal activities of the national financial management order and judicial organs. The seven types of upstream crimes of money laundering include social public order, public safety, foreign trade management system, etc. It is clear that the legal interests infringed by upstream crimes cannot be fully absorbed by the legal interests infringed by money laundering. It can be concluded that self-laundering is not an impunity afterwards act.

2.2.Self-laundering behavior is not without the possibility of expectation

As the crystallization of human rationality and the means of social norms, the law must conform to human nature to the greatest extent. It is not expected to prohibit the perpetrator from concealing and transforming the illegal income obtained by the crime through various means afterwards.

Both German and Japanese criminal law and China 's criminal law hold a cautious and negative attitude towards the application of the theory of anticipated possibility. The " German Criminal Law Book " clearly points out that the possibility of expectation is an exception and needs to be avoided as much as possible. Even in some cases, even if the parties make great sacrifices, they must also be required to obey the law. In the legal practice of our country, it is impossible to expect the perpetrator to carry out legal acts in a very few minor cases, and the possibility of expectation may be occasionally applied. However, for most types of crimes, especially serious crimes, the possibility of expectation is excluded in practice.

Therefore, in order to judge whether the act of self-laundering is exempted from liability because it does not have the expected possibility, it is necessary to analyze whether the act of self-laundering is a choice made under special circumstances. The purpose of self-laundering is to cover up the source of illegal property. The act of self-laundering is a means to protect their own ' interests '. In the case that the expected possibility is strictly limited, the act of self-laundering has the expected possibility, and the actor can be expected to implement the legal act rather than the act of money laundering.

2.3.Self-laundering behavior into sin can better reflect the balance of crime and punishment

Before the ' Criminal Law Amendment (11) ' criminalized the act of self-laundering, China 's criminal law stipulates that the crime of money laundering can only be composed of subjects other than the perpetrator of the upstream crime, that is, the crime of money laundering is only against him. Money laundering. The balance of crime and punishment refers to the crime of multiple crimes, it is necessary to bear the same degree of criminal responsibility, bear the same degree of punishment. The most directly related to the severity of the crime is the size of the infringement of legal interests, that is, the severity of the infringement of legal interests. The act of self-laundering, like his money laundering, also infringes on the normal activities of the national financial management order and judicial organs. It is not appropriate to only evaluate his money laundering behavior but not to evaluate the infringement of legal interests of self-money laundering behavior. It cannot reflect the principle of balance between crime and punishment in criminal law, and will make people who have the intention to drill the legal gap without being punished. Therefore, the ' Criminal Law Amendment (XI) ' incorporates self-money laundering into the evaluation system of criminal law, which better reflects the principle of balance between crime and punishment and the principle of adaptation of crime, responsibility and punishment.

3.Justifiable grounds for criminalization of self-laundering

3.1.Harmfulness of self-laundering

The fundamental purpose of these upstream crimes, such as drug crimes, smuggling crimes, and corruption and bribery crimes, is to obtain money and material benefits. After obtaining illegal benefits, the subjective will will cover up and conceal these illegal benefits, so it will actively take various actions to carry out money laundering activities. The self-laundering behavior often involves huge amounts of stolen money. In the money laundering activities, the perpetrator often uses complex behavior methods to achieve the purpose of " cleaning " by mixing in normal financial circulation channels, which has a serious impact on the daily financial supervision of the country and the economic operation order of the society, and its harmful consequences are very serious. Criminalizing self-laundering helps to crack down on money laundering in the financial sector and maintain the stability of the financial order. In addition, although the object of self-money laundering inherits from the upstream crime, it does not have an inevitable attachment relationship with the upstream crime. In view of this, it is necessary to judge the act of self-laundering as an independent act, and to combine the upstream crime to double the perpetrator, to some extent, is also reducing the crime rate of the upstream crime.

3.2.Strengthening international cooperation against money-laundering

It is not only the decision of China to criminalize self-laundering. Many western countries, such as the United States, Russia, Britain and Germany, have already recognized the punishability of self-laundering in criminal law or judicial practice. For example, Article 324-1 of the French Criminal Code and Article 420 of the Dutch Criminal Code clearly stipulate the criminal responsibility of self-laundering. With the globalization of the economy, more countries are tied to each other, the international financial order and the integration of global governance have a direct impact on criminal legislation, and the multiple revisions of the crime of money laundering reflect the characteristics of ' internalization of international factors '. The international community has paid more and more attention to anti-money laundering work. The international community generally believes that it is difficult to effectively combat money laundering crimes by a country alone, and it is necessary to strengthen domestic legislation and international anti-money laundering cooperation. As a full member of the Financial Action Task Force (FATF), China needs to fulfill its international anti-money laundering obligations. Criminalizing self-laundering will help to enhance the international image of China 's anti-money laundering work and strengthen international cooperation and exchanges.

References

[1] Wei Jiayi. Research on some problems of money laundering crime after money laundering [D].Jilin University, 2023.DOI : 10.27162 / d.cnki.gjlin.2023.003937.
[2] Wang Xin : " Judicial Application after Criminalization of Money Laundering, " Politics and Law, No. 11, 2021, p. 45.
[3] Chen Wei. International factors in the revision of money laundering legislation and domestic response to the rule of law [J].Political Law Forum, 2025,43 (01) : 45-59.
[4] Yuan Shujuan. Research on the judicial application of self-money laundering after criminalization [J].Journal of Hubei Vocational and Technical College, 2024,27 (04) : 70-74.DOI : 10.16347 / j.cnki.cn42-1742 / z.2024.015.