

Original Paper

Scope Determination of Economic Criminal Law under the Field of Economic Law

Zheng Chen¹

¹ Gansu University of Political Science and Law, Gansu, 730000, China

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Abstract

Economic criminal law, as a cross-sectoral field of law, is preceded by sectoral laws including economic law, civil law and administrative law. The essence of economic criminal law is different from the personal legal interests protected by criminal law, and focuses on the protection of supra-personal legal interests. The legislative content of economic criminal law mainly includes three aspects, i.e., criminal law concerning economic management, criminal law concerning economic regulation, and criminal law concerning the protection of market transactions.

Keywords

Economic criminal law, Transpersonal legal interests, Economic regulation, Administrative regulations

1. Introduction

Domestic research on the basic theories of economic criminal law is still incomplete, and one of the most noteworthy issues is how to appropriately define the concept and scope of economic criminal law. The first time the concept of 'economic crime' was formally put forward in China was in 1982, when the Standing Committee of the National People's Congress adopted the Decision on Severe Punishment of Criminals Who Seriously Damage the Economy. Liu Bai Pen on 26 September 1986 published in the China Legal News 'economic criminal law,' an article, in China for the first time put forward the concept of economic criminal law. Since then, the scope of economic criminal law in the domestic academic community has been the definition of different opinions. Over the past few decades, the domestic concept of economic criminal law rough statistics as many as 60 kinds of economic criminal law, the most common concept of economic criminal law is to refer to all economic activities, economic interests related to all criminal law norms. However, the domestic scholars of this concept is still in a situation of inconsistency. Looking abroad, such as Japan, Germany as the main representative of the civil law system, for economic criminal law to form a unified and clear concept is very difficult.

At present, the concept of economic criminal law at home and abroad is not accurate, from the more common definition of economic criminal law, from the surface of the direct emotional part of the criminal law involving 'economic' or 'economic field' of the criminal law provisions labelled as economic criminal law. However, it is also obvious that the specific scope of 'economic criminal law' is not clear, and there is a lack of strong theoretical arguments. Therefore, analysing and defining the concept and scope of economic criminal law, taking into account other sectoral laws, can clarify the direction and focus of regulation of economic criminal law, as well as the biased understanding of relevant legal interests in economic criminal law.

2. Tracing Economic Criminal Law from the Perspective of Economic Law

The intersection of the relevant sectoral laws, i.e., criminal law and economic law, is used to compare and contrast the definition of the concept and scope of economic criminal law. This can draw on the theoretical basis of criminal law, but also take into account the theoretical literacy of economic law. The study of economic law can start from the field of economic law at home, where there is a more suitable cultivation environment for the development of economic law than abroad, and the advantages may be more obvious. First of all, from the point of view of foreign socio-economic development environment, the foreign economy has been pursuing the economic policy of liberal economicism, stressing that in economic development, the market can use the price supply and demand mechanism, the independent regulation of economic development, completion of the configuration, the government only needs to be passive attitude, play a good economic 'night watchman'. The government's negative attitude to deal with the economy, although from the 1930s after the Great Depression has improved, based on the Keynesian state intervention in the economy of the concept of the widespread implementation, but the roots of the free economy is still the main theme of the foreign economic operation, the relevant introduction of the economic regulation policy is only a slight correction. Since the first industrial revolution, the main areas of economic law mainly focus on the regulation of agriculture, land resources, forests, minerals, taxes and so on.

Many western countries do not have a specific nominal economic law system in their legal system, but a large number of relevant laws on the nature of economic law exist. China's economic system after the founding of the country's positioning for the planned economy, the state's macro-control of the economy has existed since the beginning. With the reform and opening up, the rapid development of China's economy, the socialist market economic system in constantly stimulate the vitality of the market economy at the same time, the same did not abandon the important role of the state's macro-control and the main position. Therefore, compared with the economic environment of foreign countries in the view of the background, China is more suitable for the foundation of the basic theory and practice of economic law.

Since modern times, the development of economic criminal law and economic law are complementary and companionable, and the theory between criminal law and economic criminal law is relevant. For

monists of economic criminal law, the extreme view is that economic criminal law is only the regulation and maintenance of the market economy, and should belong to the relevant content of administrative law, but in fact, it is not, the predecessor law of economic criminal law should be the most appropriate economic law.

3. China's Economic Criminal Law to Focus on Economic Management

From the point of view of China's economic criminal law, economic criminal law is a criminal law norm that protects the overall economic operation and the sectors or systems that have an important function in the economy as the object. It can be concluded that China's economic criminal law is essentially a kind of economic management of criminal law, and its protection is the economic order of the super-personal legal interests. Considering the adjustment scope and object of China's economic law, it can be concluded that there is no very obvious conceptual boundary between economic criminal law and economic law, it can be said that the economic law is the theoretical basis of economic criminal law, and similarly, the economic criminal law is the economic law of the guarantee. Economic law has the provisions of the relevant offences can constitute a criminal punishability. The object of adjustment of economic criminal law mainly occurs in the economic field and vertical economic management relations, with relevant economic characteristics. It is sufficient to show that economic criminal law should focus on economic management as a basis for clarifying the boundaries of the scope of adjustment of economic criminal law.

3.1 Economic Criminal Law Mainly Protects Supra-personal Legal Interests

Transpersonal legal interests refer to legal interests that are not exclusively belonging to a particular individual, and are also known as general legal interests, social legal interests, general legal interests, public legal interests, collective legal interests and so on. Transpersonal interest is divided into traceability and independence of transpersonal interest. Traceable super-personal interests are a collection of personal interests, and traceable super-personal interests can be explored from the basis of personal interests. In the case of retroactive transpersonal interests, the interests of individual consumers should be defended, and the need for order and institutions should be preserved.

Traceability of transpersonal interests can be an important means of realisation for the protection of individual interests. In the case of retroactive transpersonal interests the corresponding order and system need to be preserved, with the ultimate realisation of promoting the interests of individual consumers. That is, when the interests of individual consumers are not infringed upon or in imminent danger, even if the order and system are infringed upon or in danger, it is not considered an offence. If it is considered a crime, it should meet the elements of the offence against the individual's interests. In the sub-headings of the Criminal Code, 'causing significant property damage', 'cheating the other party out of a large amount of property' and 'causing serious harm to others' are the main protection of personal interests under economic criminal law. Individual legal interests. Independent super personal legal interests should also be protected by economic criminal law, which itself has independent

protection value, independent super personal legal interests are not directly related to personal legal interests, such as smuggling offences, undermining the financial management order and other crimes. These offences mainly infringe on the corresponding institutional legal interests, such as the customs system, the tax system, and so on. However, the over-protection of the independence of super-personal legal interests can also become improper influence and intervention in the market. The scope of the criminalisation of supra-individual interests in independence should be strictly defined, and should only be incorporated into the scope of criminal law if the act is of a significant nature and endangers the social and economic order. In addition, economic criminal law should also be in-depth in the following two aspects, in order to comply with the development trend of the times. On the one hand, such as the illegal absorption of public deposits offence whether due to the market itself to inhibit the defects caused. On the other hand, the uncertainty of hazardous behaviours against new industries, emerging economies and other potential crises caused by rapid socio-economic changes.

3.2 Relevant Substantive Law Components of China's Economic Criminal Law

The main three major classifications of China's economic criminal law. First, on market access management. In our country, for a particular market generally have a relative access rules threshold, need a certain 'concession' 'licence', for example, the most common is by the business sector need to issue special licences for franchising. The offence of unauthorised establishment of financial institutions is typical. This type of offence is also to protect the franchise rights of this industry, such as the management of the sale of domestic cigarettes, which aims to protect the exclusive operation of China's tobacco production and sales. Other traceable, many countries and regions in the criminal law whether for the market access order of the intervention are more cautious and modest attitude, more is the use of administrative law to deal with the perspective.

Secondly, regarding the management of market fundamentals. For example, the common tax, finance, intellectual property rights and other basic economic systems of the market, are to assist the healthy operation of the market economy system to ensure that producers, consumers and a series of market players in the macro system management support. But in fact, corresponding to China's criminal law also has a lot of for the protection of the market economic order of the conviction of the offence, such as financial aspects of the typical counterfeiting offence, customs aspects of the typical smuggling of goods, in this aspect of China's economic criminal law is also the development of relative maturity.

Thirdly, on market operation and management. Market operation has been in the dynamic movement, more emphasis on the market multi-party business subjects can be in a virtuous cycle upward business movement, in the operation of equal market players, multi-party to ensure that the main body of the transaction is generally based on the civil law contractual legal relationship. The system of establishment, survival and elimination of market entities also falls within the scope of adjustment of economic criminal law, but the economic entities here mainly include some state-owned enterprises and institutions, and also include some non-state-owned companies, and attention should be paid to the scope of the subject in the specific application.

4. The Need for Criminal Law Legislation in the Economic Sphere

Economic law is the main legal norm regulating the national economy, which has a profound impact on the socio-economic composition and mode of operation in order to achieve the goal of promoting socio-economic equity. The most representative of economic law is the anti-monopoly law and the anti-unfair competition law, which use the corresponding norms to exclude the market obstacles of unfair competition. Financial policies, such as fiscal and tax policies, are used to provide effective and specific guidance and constraints on the economy. Domestic viewpoints believe that in the continuous transformation of the market economy, the economic criminal law should also be adjusted accordingly, hoping to realise the change from the control of economic criminal law to the autonomy of economic criminal law, and to set up the individual legal interests and the economic order in parallel. In the past, the focus of economic criminal law was on economic adjustment, but the focus of economic criminal law has shifted to economic criminal law legislation in line with the economic development trend.

At present, legislation in the field of economic regulation focuses mainly on prices, for example, in special areas, such as energy, transport and health care, and should be initially adjusted to the legislative focus of economic criminal law, complementing and protecting each other with the penal provisions of the two counter-measures and the consumer protection provisions of the economic law. However, the current situation is obvious that the economic criminal law has legislative provisions also have shortcomings. For example, there are inherent legal shortcomings such as lack and lag in the legislative supply of economic criminal law; the intervention of economic criminal law in the scope of corresponding adjustment is too narrow or too broad; and the corresponding protection of economic criminal law during and after the implementation is insufficient, and so on. In view of this, in the economic criminal law legislation is bound to make the corresponding response, for example, should be added to deal with the regulation of the economic field of the relevant and appropriate offences, clear refinement of the infringement of consumer rights and interests and other acts of intervention in the criminal law, for the abuse of market monopoly, the anti-undue competition, anti-monopoly, etc. in the destruction of the market in the effective order, to achieve the effective criminal law intervention in the vertical or horizontal regulation. In fact, as early as in our country to formulate 'the People's Republic of China anti-monopoly law' at the beginning, there will be whether the monopoly behaviour should be criminal law is quite controversial. There are views that, in the market economic order, monopoly behaviour should be regarded as a crime, should be introduced to the corresponding criminal law provisions specific corresponding to the conviction and sentencing standards. However, it is clear that this view has not been adopted.

5. Specific Scope of Economic Criminal Law that Should be Applied

5.1 *Economic Criminal Law in the Scope of the Violation of Economic Order Qualification*

Whether the violation of economic order belongs to the scope of economic criminal law needs to be adjusted, in fact, there are different views in the academic community. The more mainstream scholars

believe that the violation of economic behaviour and criminal acts should be distinguished from each other. For example, in 1949, the German economic criminal law introduced in the Schmidt public notice for the first time in legislation to stress economic violations and criminal behaviour should be differentiated system. Germany in the continuous implementation of the two separate reform system construction, but the reality of the implementation of crime and order violation of the border division can not be reasonable, so that the economic sector in the existence of a large number of protection of the same legal interests, such as in the context of the financial market operating environment, the consumer environment and so on. From the perspective of Germany's legislative intent in this regard, when distinguishing between economic crimes and violations of economic order, initially the size of the specific social harm of the act is directly measured by the criteria for sentencing, i.e., socially harmful acts are certainly involved in criminal law, while socially harmful acts belong to the violation of economic order. But such a classification of which the specific scale is still difficult to grasp, but will be ultra-personal legal interest into account, this distinction is obviously more incomplete, legal interest attributes of the diversity and differences should also be the corresponding distinction standard. If the introduction of the consideration of the legal interest factor, it will result in the consideration of only the legal interest infringement and weaken the consideration of the social harm. For example, if only the distinction of legal interests is considered, property crimes against ordinary consumers and property crimes against economic subjects, such as enterprises and businessmen, and crimes against the national economic system and economic transactions. If the distinction is made on the basis of social harm, it is clear that the seriousness of offences against the national economic system, for example, is more obvious. However, according to the aspect of infringement of legal interests, such acts are only violations of the economic order and should not be elevated to the level of offences in the criminal law. Then a single consideration will be biased, so if the establishment of 'binary' criteria to consider whether it can be appropriate to solve the confusion. One of these 'elements', if the criterion of attribution of legal interests is used in relation to the need to define economic attributes, is more focused on prioritising transpersonal legal interests. The other 'element', in relation to the definition of economic order, would need to focus on the degree of social harm.

5.2 Economic Criminal Law Attribution of Several Transpersonal Legal Interests

In the complex social life, the offence of simply violating a single super-personal legal interest does not cover all, and the compound situation of the offence of violating several super-personal legal interests is more common. For example, in China's Criminal Law sub-rule of the crime such as smuggling weapons, its criminal behaviour at the same time violates the national public security, social public security and customs management system and other legal interests. For the composite super personal legal interests of the economic criminal law attribution, should be used depending on the situation of the flexible classification processing, to the specific case of the degree of infringement, infringement of the main body, infringement of the fact that depending on the specific problem of specific analysis. Moreover, the application of specific provisions of the criminal law to offences in the economic field

should also take into account the actual legislative intent and purpose and effect of the criminal law legislator. For example, in the case of the arms smuggling offence mentioned above, which infringes on a number of legal interests, it is worth noting that the smuggling-related offence directly infringes on the customs tariff administration, and its legal interests are not traditional elements of the economic system. However, its main evaluation is the legal interests infringed during the smuggling process, taking into account the public security of the society that may be infringed during the smuggling process, but endangering public security is not the evaluation of the conviction of the offence of smuggling weapons. There is a discrepancy between the two, and the economic criminal law legislation is inappropriate.

5.3 Dynamic Adjustment of Economic Criminal Law

The dynamic adjustment of economic criminal law is a crucial measure to ensure that the law adapts to the continuously changing economic environment and social conditions. Against the backdrop of globalization and technological advancement, the forms and methods of economic crime are becoming increasingly diverse. Legislative bodies must promptly adjust the content of economic criminal law to respond to emerging economic crimes.

5.3.1 Emerging Industries and New Economic Models

With the rapid development of technology and continuous economic innovation, emerging industries and new economic models are constantly emerging. For instance, the application of internet finance and blockchain technology has significantly altered traditional economic operations. Although these emerging fields have brought new opportunities for economic development, they also come with new forms of crime, such as online fraud, virtual currency laundering, and illegal fundraising.

Legislative bodies should closely monitor the development trends in these areas and promptly adjust and improve the content of economic criminal law. Firstly, for internet finance, there should be strengthened legal regulation of new financial services such as online lending, crowdfunding, and third-party payments to prevent financial risks and protect investors' interests. Secondly, regarding blockchain technology and virtual currency, specific laws and regulations should be formulated to clarify the legal status of virtual currencies, regulate their trading behaviors, and prevent their use in illegal activities such as money laundering and terrorist financing.

5.3.2 Transnational Economic Crime and International Cooperation

Economic crimes often have a cross-border nature, especially in the context of globalization, where transnational economic crimes are increasing. Transnational economic crimes include money laundering, international drug trafficking, cross-border fraud, and intellectual property infringement, all of which severely threaten international economic order and national security.

To effectively combat transnational economic crimes, countries need to strengthen international cooperation. Firstly, they should actively participate in international criminal judicial assistance and extradition, signing bilateral or multilateral extradition treaties to achieve the extradition and pursuit of transnational crime suspects. Secondly, cooperation with international organizations such as Interpol and the Financial Action Task Force (FATF) should be strengthened to timely share crime information

and intelligence, enhancing the efficiency of combating transnational economic crimes. Additionally, the establishment and unification of international legal standards should be promoted. By participating in international legal conferences and negotiations, countries can help formulate unified international economic criminal law standards, ensuring consistent legal bases and enforcement standards when combating economic crimes. This can avoid judicial obstacles caused by legal differences and improve the effectiveness of international cooperation.

5.3.3 Improving Legislative and Enforcement Adaptability

To ensure that economic criminal law keeps pace with the times, legislative bodies should establish a dynamic adjustment mechanism. Firstly, the current economic criminal law's effectiveness should be regularly evaluated to promptly identify deficiencies in legal provisions and carry out revisions and improvements. For example, specialized legal research institutions can be established to study the characteristics and development trends of emerging economic crimes, providing scientific basis for legislation. Secondly, the interpretation and guidance of the law should be strengthened to ensure flexible application. Judicial interpretations and case guidance can be issued to clarify the application standards of legal provisions in specific cases, solving legal application problems and improving the law's operability.

5.3.4 Strengthening Implementation Safeguards

The life of the law lies in its implementation. To ensure the effective execution of economic criminal law, implementation safeguards must be strengthened. Firstly, the professional capacity of law enforcement agencies should be enhanced. This includes establishing specialized economic crime investigation teams equipped with advanced technical equipment, such as big data analysis tools and network monitoring systems, to improve the detection and combat of economic crimes. Secondly, legal supervision should be strengthened by establishing independent legal oversight bodies to ensure that the implementation of economic criminal law complies with legal provisions, preventing injustices and corruption in the enforcement process.

Through these measures, the dynamic adjustment and effective implementation of economic criminal law can be ensured, ultimately maintaining economic order and protecting public interests in a constantly evolving economic landscape.

5.4 *Implementation Guarantees for Economic Criminal Law*

The life of the law lies in its implementation, and the effectiveness of economic criminal law depends not only on scientifically sound legislation but also on robust implementation guarantees. To ensure the effective execution of economic criminal law, it is essential to strengthen implementation guarantees from multiple aspects.

5.4.1 Enhancing the Professional Capacity of Law Enforcement Agencies

Strengthening the professional capacity of law enforcement agencies is crucial for the implementation of economic criminal law. Firstly, specialized economic crime investigation teams should be established. These teams should consist of professionals with strong backgrounds in economics and law, capable of conducting in-depth investigations into complex economic crime cases. Secondly, advanced

enforcement technologies and equipment, such as big data analysis tools and network monitoring systems, should be deployed to improve the detection and combat of economic crimes.

5.4.2 Improving Enforcement Efficiency

To improve enforcement efficiency, law enforcement agencies should optimize work processes and enhance inter-departmental coordination and cooperation. For example, a cross-departmental economic crime coordination mechanism could be established to ensure that the police, procuratorates, courts, and tax authorities can promptly share information and resources to jointly combat economic crimes. Additionally, training for law enforcement personnel should be intensified to improve their professional skills and legal knowledge, ensuring accurate application of the law in the enforcement process.

5.4.3 Strengthening Legal Supervision Mechanisms

To ensure that the implementation of economic criminal law complies with legal provisions and to avoid injustices and corruption in the enforcement process, it is necessary to strengthen legal supervision mechanisms. Independent legal supervision bodies can be established to oversee the actions of law enforcement agencies. These supervision bodies should possess independence and authority to effectively constrain and monitor the behavior of law enforcement agencies.

5.4.4 Public and Media Supervision

In addition to legal supervision mechanisms, the supervision of the public and media should also be fully utilized. Law enforcement agencies should enhance transparency in their work, proactively disclose enforcement information, and accept supervision from the public and media. Through media reports and public opinion, problems in the enforcement process can be promptly identified and corrected, enhancing the transparency and credibility of the law.

5.4.5 Improving Legal Safeguards

To ensure the effective execution of economic criminal law, relevant legal safeguards should also be improved. For example, supporting judicial interpretations and implementation rules should be formulated to clarify the application standards of economic criminal law provisions in specific cases and address the difficulties in legal application. Additionally, a comprehensive reporting and reward mechanism should be established to encourage the public to report economic crimes, thereby increasing social participation.

5.4.6 International Cooperation

Economic crimes often have cross-border characteristics, especially in the context of globalization, where transnational economic crimes are increasing. Strengthening international cooperation and participating in international criminal judicial assistance and extradition can effectively address transnational economic crimes and enhance the internationalization of economic criminal law.

By adopting these measures, the dynamic adjustment and effective implementation of economic criminal law can be ensured, ultimately maintaining economic order and protecting public interests in a constantly evolving economic landscape.

6. Conclusion

In conclusion, economic criminal law plays a vital role in the modern economic system. It not only significantly impacts the maintenance of market order and protection of economic interests but also plays a crucial role in combating economic crimes and safeguarding public interests. However, the effectiveness of economic criminal law depends not only on scientifically sound legislation but also on robust implementation guarantees. By improving the professional capacity and efficiency of law enforcement agencies, strengthening legal supervision mechanisms, fully leveraging public and media oversight, and enhancing legal safeguards, the effective execution of economic criminal law can be ensured.

Firstly, specialized law enforcement teams and advanced technical equipment form the foundation for combating economic crimes. Only with high-quality law enforcement personnel and cutting-edge technology can complex economic crime cases be promptly detected and handled. Secondly, optimizing work processes and enhancing inter-departmental coordination and cooperation can significantly improve enforcement efficiency, ensuring the timely and accurate application of the law. Strengthening legal supervision mechanisms is a necessary measure to prevent injustices and corruption in the enforcement process. Independent legal supervision bodies can effectively oversee the actions of law enforcement agencies, thereby enhancing the transparency and credibility of the law.

Additionally, public and media supervision is indispensable. By increasing the transparency of law enforcement work and proactively disclosing enforcement information, illegal activities during enforcement can be effectively prevented. Finally, improving related legal safeguards, such as developing supporting judicial interpretations and implementation rules and establishing comprehensive reporting and reward mechanisms, can further enhance the operability of the law and public participation. International cooperation also plays a crucial role in addressing cross-border economic crimes. By participating in international judicial assistance and extradition, increasing transnational economic crimes can be effectively tackled, enhancing the internationalization of economic criminal law.

In summary, the effective implementation of economic criminal law requires a comprehensive and systematic guarantee mechanism. Only with scientifically sound legislation, through multi-party collaboration and integrated governance, can economic criminal law truly function in maintaining economic order and protecting public interests, providing a solid legal foundation for economic development. By continuously adjusting and improving the content and implementation measures of economic criminal law, ensuring that the law keeps pace with the times and adapts to the ever-changing economic environment and social situation, a healthy and orderly economic environment can be built, providing strong support for the stable development of the social economy.

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