

Study on the Application of Criminal Law to Usury

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Abstract. In recent years, usury has become a prominent phenomenon, and there are different opinions on how to deal with usury. Usury lending, which should be sentenced, is a kind of continuous high-interest lending behavior aiming at the unspecified majority. It can be applied to the crime of illegal business operation to investigate criminal responsibility for two reasons: one is that the act of Usury lending conforms to the constitutional requirements of the crime of illegal business operation in criminal law; the other is that the existing successful cases can be used for reference.

Keywords: usury; private lending; illegal operation.

1. Introduction

In recent years, on the one hand, with the continuous prosperity of the market economy, the social demand for funds is increasing. On the other hand, the State implements a tight monetary policy, financial institutions are facing a growing shortage of money and the threshold of lending. At the same time, the huge investment channels of social funds are limited, so a large number of private loans appear. Some individuals and companies specialize in usurious lending business and use violent means to safeguard their illegal interests. The problem of usurious lending has been highlighted in many parts of the country, which should be paid attention to and studied by departments at all levels. This article is to discuss whether usury can be criminalized. On the basis of defining the difference between usury, usury and ordinary folk lending, the application of criminal punishment is discussed and analyzed.

2. What is Usury

2.1 Definition of Usury

At present, the common view is that the interest rate of private lending is more than four times higher than that of similar loans in banks, which belongs to usurious loan. It is based on the provisions of Article 6 of the Supreme People's Court's 1991 "Some Opinions on the People's Court's Trial of Lending Cases": "The interest rate of private lending can be appropriately higher than that of banks,... But the maximum should not exceed four times the interest rate of the same kind of bank loans." In fact, the above-mentioned provisions define the boundary between usury and ordinary private lending, that is, whether the interest rate exceeds four times that of the same kind of bank loans, the excess is usury, and the non-excess is ordinary private lending.

2.2 The Usurious Behavior Convicted of Crime Should have Specific Connotation.

It needs to be clear that not all usurious lending acts should be criminalized. The usurious lending acts that we are discussing here are actually limited by certain conditions. It must be a continuous act aimed at an unspecified majority, lasting for a long time, accumulating a large amount of money and making a living by usurious lending. Here it is defined as "the behavior of individuals or units without financial business qualification to lend money to the unspecified majority at interest rates more than four times higher than that of banks in the same period for the purpose of making profits."

3. Analysis of the Application of Criminal Law to Usury Lending

If the funds of usurious lending come from bank loans or funds raised from the society, the crime of usurious lending and illegal absorption of public deposits can be convicted; If the usurious lenders

use violent means or restrict other people's personal freedom to claim debts, they can be convicted of intentional injury and illegal detention; But if only usurious lending acts, they have not yet constituted the crime mentioned above, whether or not to pursue criminal responsibility and how to pursue it are controversial in the judicial circle.^[1] The author considers that "other illegal business operations which seriously disturb the market order" in Article 225, paragraph 4, of the Criminal Law can be applied as the crime of illegal business operations. There are two reasons: one is that usurious lending accords with the constitutional requirements of the crime of illegal business in criminal law; the other is that there are successful cases for reference.

3.1 Usury Lending Conforms to the Constitutional Requirements of the Crime of Illegal Business Operation in Criminal Law

According to the provisions of Article 225 of the Criminal Law, whether usurious lending constitutes the crime of illegal business operation needs to be seen from the following aspects: Is it "in violation of state regulations"? Does it belong to "illegal business activities that seriously disrupt the market order"? Is it serious?

3.1.1 Is it "in Violation of State Regulations"?

I think usury is a violation of state regulations. Article 96 of the Criminal Law of our country clearly defines "violation of state regulations". "Violation of state regulations referred to in this Law means violation of laws and decisions formulated by the National People's Congress and its Standing Committee, administrative rules and regulations formulated by the State Council, administrative measures stipulated, decisions and orders issued by the State Council". The Measures for the Suppression of Illegal Financial Institutions and Illegal Financial Business Activities, adopted by the State Council in 1998, clearly fall within the category of "state provisions" as referred to in the Criminal Law. Article 5 stipulates: "Without the approval of the People's Bank of China in accordance with the law, no unit or individual may establish financial institutions or engage in financial business activities without authorization." Article 4 (3) clearly stipulates that "illegally granting loans" belongs to "illegal financial business activities". The People's Bank of China has also made a more detailed explanation of the connotation of "illegally granting loans", that is, the act of "borrowing funds from unspecified objects for profit without the approval of the financial supervision department, in order to obtain high illegal income". The main body of illegal lending can be either a unit or an individual. Its behavior is characterized by regular lending of funds to non-specific units or individuals without the approval of the authorities and without legal qualifications for operating financial business. The amount of loans is usually large and the cumulative amount is large. The cumulative duration of multiple lending activities is long. It is an illegal financial industry that has objectively formed. Activities."^[2] Accordingly, we believe that the main body of usurious lending, without the approval of the People's Bank of China and without the qualification to operate financial business, is "illegally granting loans" to the unspecified public on the condition of repayment of principal and interest, which violates the aforementioned measures and has violated the state regulations.

3.1.2 Does it Belong to "Illegal Business Activities that Seriously Disrupt the Market Order"?

There are two aspects, one is whether usurious lending belongs to illegal operation, the other is whether usurious lending disturbs the market order.

1) The purpose of usurious lending is to make profits. Lenders usually do not have legitimate occupations and economic sources. They specialize in lending for a living. It is a profitable business activity to seize illegal interests by collecting high interest rates. This kind of operation is obviously illegal because it violates the aforementioned measures and many regulations issued by the People's Bank of China.

On this issue, some opinions put forward that Article 225 of the Criminal Law has a clear and detailed list of "illegal business operations". Although the fourth item has a baseline stipulation, it does not clearly point out that usury is an illegal business operation. According to the basic principle of "the law does not expressly stipulate that it is not guilty, and the law does not expressly stipulate that it is not punished", usury should not constitute a crime, otherwise it is against the law. Act on the

principle of legality. [3] The author believes that the basic provision of the fourth paragraph of Article 225 of the Criminal Law was originally set up in view of the fact that the provisions of the Criminal Law can not exhaustively list all the manifestations of illegal business, and also the space for criminal punishment for possible new acts in the future. It is obvious that the criminal law can not be convicted and punished for usury only because the provisions of the Criminal Law are not explicitly enumerated, but simply because the law has no express provisions and can not be convicted and punished. The rigid application of the provisions is a one-sided understanding of the principle of legality of crime and punishment. According to this logic, all the basic provisions in the criminal law provisions are identical to nothing. We believe that the measurement of usurious lending whether it belongs to the so-called "illegal business" in the criminal law or should be discussed from the behavior itself. From the enumeration of Items 1, 2 and 3 of Article 225 of the Criminal Law, it can be seen that the "illegal business operation" suspected of committing a crime is an industry and field that violates the state monopoly system or the access system implemented by the state, while the financial industry obviously belongs to the access industry, that is, without the approval of the state financial supervision department in accordance with the law, no unit or individual may enter this field and engage in relevant financial business. Only with the approval and possession of the Financial License issued by the Financial Regulatory Authority of the State Council and the approval and registration by the administrative department for Industry and commerce can the loan business be operated. Usury lenders, without the approval of the State Banking Regulatory Authority and without the possession of the Financial License, enter this access industry to carry out loan business without authorization, should be regarded as "illegal business operations".

2) Usury lending not only violates the state's financial supervision system, disrupts the normal financial order of the country, destroys the rules of financial market access, competition and transaction of a country, but also disrupts normal social life because of its high interest rate. Lenders are often forced to break their families and die by various means of debt recovery, and easily lead to other crimes, which is extremely harmful to society.

Therefore, usurious lending is not only an illegal business behavior, but also an act of disrupting the market order. It is of great realistic urgency and necessity to crack down on such behavior.

3.1.3 Is it Serious?

Not all usurious lending that is four times higher than the same lending rate of banks should be criminalized, or whether it has reached the "serious" level. What is the "serious situation"? The author believes that the number of usurious loans, the number, amount, time, impact, debt collection means and other factors can be considered comprehensively. If the perpetrator does not have the authorized department's approval and legal qualification to operate financial business, but issues usurious loans to non-specific objects, with a large number of times, a large number of people, a large cumulative amount, a high lending interest rate, a long duration, the normalization of lending behavior, and the bad nature of debt collection means, the degree of personal and mental injury caused to the lender can be regarded as "serious circumstances".

3.2 Successful Precedents on the Application of Illegal Business Offences to Usury Lending can be used for Reference.

Although China is a country of continental law system and applies statute law rather than case law, cases in judicial practice can still serve as an effective reference for our theoretical research and practical handling of cases. The cases of Mr. Tu and Mr. Hu illegal business in Wuhan in 2003 and Mr. Li and Mr. Jiang illegal business cases in Yixing, Jiangsu Province in 2008 were all tried by two levels of people's courts and sentenced for the crime of illegal business in usury lending. Their application of law was also recognized by the written reply of the Second Criminal Court of the Supreme People's Court. On November 26, 2010, the People's Court of Xiaguan District of Nanjing tried the first case of usury in Nanjing. The court held that since 2007, the two defendants had illegally lent 3.35 million yuan to 14 people at monthly interest rates ranging from 4% to 20%, and made more than 680,000 yuan illegally. The two defendants violated the state law and provided high-interest loans to nonspecific majority without the approval of the financial authorities. Their behavior

seriously disrupts the market order, and they engage in illegal financial activities for a long time, a large number of times, a large amount of bad social impact, which belongs to the serious circumstances and constitutes the crime of illegal operation. It is worth mentioning that in the process of handling the case, the administrative identification of the relevant authority departments plays a key role in determining the nature of the case. After Jiangsu Provincial Banking Regulatory Department issued a written confirmation that the usurious lending behavior of the main persons involved was illegal financial business activities, the follow-up judicial action was carried out smoothly, and this characterization was finally recognized by the court. Accordingly, the court held that organizations and individuals that did not have permission for financial products to lend at high interest rates to the public could be classified as illegal financial institutions and illegal financial operations. In January 2010, Changde City, Hunan Province, arrested Mr. Zhang, the suspect of usury lending according to law. This is also the first case of the procuratorial organs in Hunan Province arrested for illegal operation of usury.[4] The successful handling of the case also benefited from the administrative identification of the suspect's behavior as "illegal financial business activities" by the local financial department.

4. Conclusion

Based on the above analysis, I think the following conclusions can be drawn:

- 1) Only when the interest rate exceeds four times that of the same kind of bank loan is usury.
- 2) Not all usurious lending acts should be criminalized. Only continuous acts aimed at the unspecified majority, lasting for a long time, accumulating a large amount and making a living by usurious lending can be criminalized.
- 3) The aforementioned usurious lending behavior can be considered as the crime of illegal operation, because the usurious lending behavior conforms to the constituent elements of the crime of illegal operation, and there are also successful cases for reference.

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