

# **The Legal Dogmatics Study of Network Financial Crimes under the Background of Risk Society**

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**Abstract:** The network financial risk is essentially the technical risk derived from the risk society and the business risk of traditional financial transactions which is the product of “superposition”, it is characterized by strong communication, deceptive and high degree of uncertainty breeds the stakeholders online financial fraud, such as fraud, online money intrusion and cross-border money laundering. The regulation based on online financial activities requires a trade-off between innovation protection and normative constraints. Therefore, judicial personnel should establish the interpretation concept of legal aid guidance. Abiding by the formal rationality advocated by the criminal law and statutoryism within the framework of the “Roxin's breakthrough” which properly plays the value-oriented role of criminal policy prevention goals.

## **1. The network financial system structure**

### **1.1 Conceptual model of network finance**

The Internet finance (ITFIN) refers to a new financial business model in which traditional financial institutions and Internet companies uses the internet, information and communication technologies to achieve a financial, payment which is the investment and information intermediary services.

In recent years with the widespread use of digital technologies such as artificial intelligence, cloud computing, big data, and blockchain in the financial sector with online finance, which is dominated by online credit, third-party payment, crowd funding, and smart investment is the main form of online finance.

### **1.2 The aggregation of “positive energy” in online finance**

From the macro level, online finance has played an important role in accelerating the implementation of innovation-driven development strategies, promoting supply-side structural reforms and assisting economic transformation. From a micro perspective, online finance relies on information and technology platforms for fund gathering and information sharing. The functions of credit evaluation and price discovery have fully utilized their own efficiency and cost advantages, which has opened up a convenient and efficient investment and financing path for small and micro-finance financiers, effectively solving the real dilemma of “funding difficulties and expensive financing” and greatly promoted Fair competition in financial markets.

### **1.3 The dispersion of “negative energy” in an online finance**

The Internet finance is essentially a product of the integration of financial technology and financial functions. Therefore, in addition to the traditional credit risk, the online finance has the implications of “technical risk”.

#### **1.3.1 Strong communication**

The sudden emergence of online finance is largely due to the fact that its mode of operation has greatly reduced the barriers to entry and transaction costs for financiers and investors and can as well provide a series of specialized and personalized “private subscriptions” for the majority of financial consumers for “Financial Services. However, while the online finance has successfully

expanded the boundaries of financial possibilities is because the financier liabilities and market leverage have also been increased. Therefore, under the influence of the laws of market economy, the network financial risk is more contagious, spreads faster and more widely which is very easy to produce a herd effect.

### **1.3.2 Confused nature**

The Internet finance has promoted the innovation in financial business models and due to the lack of supervision of functional departments, the lack of self-discipline in the industry coupled with the anonymity and virtual nature of the network in reality, these new business models have been alienated in terms of operating methods and legal relationships resulting in more and more confusing risks in online financial transactions, and the Internet has also become the “Invisibility cloak” of financial crime. For example, some P2P platforms are separated from the essence of information brokers and they are engaged in financial fraud by registering companies, buying and leasing web servers and the entire P2P website pages to cover up the platform's “true color” and implement financial fraud crimes.

## **2. The network financial crime type induction**

According to the position and role of the network financial platform in the entire financial chain, the online financial crime can be divided into the following three categories:

### **2.1 Cases in which the online financial platform is the subject of crime**

Such cases are mainly caused by financing, private placement, crowdfunding, lending, virtual transactions and other activities related to online financial platforms. The crimes may include illegal public deposits, fund-raising fraud, illegal distribution of stocks, corporate bonds, and the crime of setting up the financial institutions without authorization.

In recent years, such stakeholder-type economic cases have increasingly presented a new trend of “Internet + MLM + illegal fund-raising”. Criminals use online platform and online store to infiltrate into the daily life of nationals eating, shopping, investment and wealth management, setting up a financial scams, and brainstorming and gathering people to enhance the “customer” stickiness the stronger deception the greater temptation.

### **2.2 Cases in which a third-party payment platform is the subject of a crime**

In the narrow sense third-party payment refers to a non-banking institution with certain strength and credit guarantee which is by means of communication, computer and information security technology and the electronic payment mode is established between the user and the bank payment settlement system by signing with the major banks. This can not only provide a comprehensive multi-channel personalized fund payment and settlement services, but also can effectively monitor and restrict the online transaction process. Therefore, the third-party payment represented by Alipay quickly becomes the dazzling in the current fund settlement service system. “The rising star.”

## **3. The network financial crime interpretation path guide**

### **3.1 Advocacy of the interpretation of the concept of “legal protection”**

The concept of interpretation is the thought and soul that guides and leads the interpretation of law. The law is not enough and there is always a room for interpretation and judgment. Moreover, the finiteness of the text and the ambiguity of the semantics determine that the existing criminal law norms cannot correspond to the various forms of illegality in judicial practice. The atypical situation in practice is still an objective existence that is difficult to avoid.

Therefore, judges need to interpret the law to judge the applicability of specific laws to specific cases. In theory, the interpretation of the concept has the opposite of “the normative maintenance theory” and “legal protection theory.” But this article advocates on the theory of legal protection.

From the perspective of legislation, the maintenance of legal norms can only be reasonable to

explain the necessity and legitimacy of legislators to formulate criminal law norms by means of legal protection. In the context of the deep penetration of technological risks into all aspects of social life, the legislatures of various countries have added penalties for Abstract dangerous criminals, and China is no exception. For example, the Criminal Law Amendment (IX) clearly expands the scope of the regulation of dangerous driving offences and incorporates “serious double-over-driving” and “illegal transport of dangerous chemicals” as new illegal types into the constitutive elements of the crime. However, the maintenance of the norm is basically impossible to provide a basis for the creation of new criminal penalties because the two new types of illegal driving offences neither have nor can deny the effectiveness of one of the 133th articles of the Criminal Code. Obviously, only through the help of legal protection theory, empirical research can fully demonstrate the illegality and accountability of the two types of behaviors: “serious double-over-driving” and “illegal transportation of dangerous chemicals” can be used in criminal law with “drunk driving” and “chasing”. “Competition” is an Abstract hazard that threatens public safety and can correctly reveal the “good intentions” of legislators to criminalize them.

### **3.2 The correctness of the logic of legal teaching**

At present, the four-element system that occupies a general status in the field of criminal law in China regards the concept of substantive value marked by social harm as the cornerstone of the entire criminal law system, and this concept of substantive value overrides the formal constituent elements. It is difficult to avoid the subjective waywardness and arbitrariness of the conviction process: judges either use the analogy of expanding the interpretation to interpret the truth, or habitually ignore the application of the bottom-type clause should be bound by the same interpretation rules of the same nature, similar means, and considerable consequences. Academic norms and practical requirements. Therefore, the conclusion of the case interpretation deviates from the rational orbit of the sin form. It also reflects that the four-element crime theory has substantive judgment before the formal judgment, the value judgment precedes the fact judgment, and the individual judgment precedes the type judgment and other legal teachings.

This paper advocates abandoning the four elements of the plane and adopting a three-level criminal theory system. As a normative science, criminal law is a kind of doctrine, which follows the law of logic. In the three-level criminal theory system, the criminal law class theory establishes a logical hierarchical relationship between the elements of criminal establishment, thereby making the criminal establishment elements form a system with inherent logical relationship. In detail, when an act is identified as a crime, it must be evaluated three times. The constitutive element is a factual evaluation, which provides a factual basis for the establishment of the crime; the illegality is a legal evaluation, and the illegal defense, emergency hedging, etc. are excluded. Resist the cause; responsibilities are subjective evaluations and provide a subjective basis for criminal accountability. These three elements form a filtering mechanism: as long as the behavior conforms to the constitutive elements, in principle, it can be presumed to constitute a crime, except for those that are illegally blocked; in the case of illegality, in principle, the perpetrator can be presumed to be responsible, but The act of the actor is not responsible, or is not guilty, or does not have the possibility of expectation.

It can be said that “level” is the essence of the three-level criminal theory system, and it is also the fundamental flaw of the four elements of the criminal constitution system. It is true that “level” itself is a kind of order, but the order cannot be equal to the level, the order is just a concept of establishing context, and the level has logical implications.

### **3.3 Strengthening the value of criminal policy**

F. von, the famous German criminal jurist and founder of the criminal sociology school, once put forward a famous proposition: “Criminal law is an insurmountable barrier to criminal policy.” The German scholar Professor Roxin used the term “Liszt'sche Trennung” in German to describe the practice of Liszt's which is the distinction between criminal law and criminal policy. Chinese scholar Cai Guisheng translated it into a “Liszt's Divide”. Historically, the “Liszt's Divide” advocated the formal rationality advocated by the criminal legalism and the series of democratic

and legal guarantee mechanisms constructed by it, which played an irreplaceable role in restraining the state's penal power and safeguarding national freedom. .

After entering the risk society, the alienation tendency and structural imbalance between the supply of criminal law theory and the current judicial practice value demand in the context of “Liszt's Divide” is increasing and the real judicial practice has proved that the systemicity of criminal law and the case of criminal policy are difficult to balance. The dogmatic nature of criminal law and the flexibility of criminal policy cannot be comprehend and the logic of criminal law and the value of criminal policy cannot coexist.

This article advocates that the practice of “Roxin breakthrough” and the realization of the policy guidance on the understanding and application of criminal law norms should adhere to the formal rational logic of law. On the other hand, the “maximum common denominator” of “criminal prevention” as a criminal policy provides a universally applicable referee path for criminal justice conviction evaluation by constructing punitive (karma) and impunity (utilitarian The dual value judgment model based on the theory) regulates the crimes and penalties of illegality because the rationality of criminal punishment comes not only from the necessity of punishment, but also from the necessity of prevention; on the other hand, it constitutes the essential elements for precise positioning, Interpretation limits, when the judicial personnel achieve the specific purpose of specific criminal policy objectives, in fact, the source of the purpose is the specific content value orientation that are clearly displayed.

## References

- [1] Chen Xingliang: “Teaching Criminal Law”, Renmin University of China Press, 2010 edition.
- [2] Chen Xingliang: “Situational Research on the System of Criminal Theory”, in Law Research, No. 4, 2010.
- [3] Chen Xingliang: “The Relationship between Criminal Law and Criminal Policy: From Liszt's Divide to Roxin”, in “Chinese and Foreign Law”, No. 5, 2013.