Proceedings of ICILLP 2025 Symposium: Property Law and Blockchain Applications in International Law and Legal Policy
DOI: 10.54254/2753-7048/2025.LD29516

Problems and Solutions of Telecommunications and Internet Fraud Crimes of the Type of "Pig Butchering Scams" in Criminal Law Regulation Based on Criminal Law Elements Analysis

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Abstract. In recent years, online fraud crimes of the type of "pig butchering scams", which use the method of emotional deception, spread rapidly worldwide and seriously damage social order and citizens' property safety. This article analyzes and discusses the regulatory dilemma faced by criminal law in China for the above behavior, takes the controversial problems in the identification of deceptive behavior, mistaken understanding and subjective knowledge of accomplices as research points. The results are as follows. First, emotional deception cannot be regarded as the deceptive behavior of fraud. It should be combined with the false object information of property to be punished. Second, as long as the deceptive behavior is one of the primary inducements for the disposition of property, the causal relationship for fraud is established. The victim's mentality of speculation does not affect the establishment of the above causal relationship. Third, the subjective knowledge of accomplices should be presumed according to the accompanying relationship between subjective and objective behaviors. If they know that the payment instrument is provided and the transfer of funds is participated, they should be charged with accomplices; otherwise, they are guilty of aiding and abetting or concealing the facts. The conclusion is that "pig butchering scams" have challenged the traditional elements of fraud and caused the dilemma of different adjudication standards. China should improve the effectiveness of regulation through improved judicial interpretation, strengthened technical countermeasures and international cooperation.

Keywords: pig butchering scams, telecommunications and internet fraud, deceptive behavior, mistaken understanding, subjective knowledge

1. Introduction

With the rapid development of information network technology and social environment in recent years, the newly emerged telecom fraud schemes named "pig butchering scams" taking advantage of victims emotionally have been booming and seriously threatened citizens' property security and social harmony and stability [1]. The crimes often use social networks to forge identity and cultivate

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fake friends with victims for a long period of time and then carry out the following fake investment or gambling behavior to swindle money from the victims. The crimes are covert, long period of deception, involve multiple areas, and are even accompanied by new technologies such as virtual currency and transfer across countries. These new situations bring new challenges to public security organs in investigation, extraction, and confirmation of evidence and to judicial organs in adjudication. China's Criminal Law regulates the above-mentioned behavior in Article 266, Crime of Fraud. However, in the actual judicial practice, the elements of traditional fraud show certain limitations when facing the new type of fraud behavior, fraud model, which causes different adjudication standards for similar cases, seriously damaging judicial credibility and effectiveness [2].

Currently, there are still obvious differences between academics and practitioners in defining the controversial content of "pig butchering scams" in terms of deceptive behavior, determining victim misconception and the need to prove knowledge of the principal offender. Most of the existing research has focused on overall prevention and control strategies for telecommunications fraud or on the analysis of victims' psychological state, while research that systematically decomposes the controversial issues of telecommunications fraud from a criminal law doctrinal perspective is still lacking. In judicial practice, different interpretations have led to significant discrepancies in adjudication and severely affected the uniformity of judicial application [3].

This article takes root in Chinese criminal legislation and judicial practice. It takes on three controversial issues that criminal law faces in the field of "pig butchering scams". By clarifying doctrine and solutions, this article attempts to provide a systematic interpretation and adjudicative approach. The purpose of this article is to solve theoretical differences, unify judicial application and provide a reference for future legislation improvement and fraud crime governance [3].

2. Issues in the criminal law regulation of "pig butchering scams"

2.1. Difficulties in finding deceptive behavior

Butchering pigs fraud's main behavior is "feeding pigs", which is the fraud suspect's gain in the victims' trust through false emotional relationship establishment. Its technical means are encrypted social platform, false identity packaging and blockchain asset transfer [4]. Its deceptive behavior is implemented through daily emotional interaction. Its concealment and deception are very strong. In criminal law theory, deceptive behavior usually manifests itself in fabrication of facts or concealment of truth. However, in pig butchering scams cases, the fraud suspects do not directly fabricate facts about the disposal of property. Instead, they gradually entice the victims to commit investment fraud or gamble fraud through emotional deception. This leads to a big controversy in judicial practice. Is simple emotional deception (such as forging an identity or false relationship establishment) enough to constitute the deceptive behavior for fraud?

In theory, the deceptive behavior for fraud must be with the purpose of illegal possession, and must directly lead the victim into a false belief and the later disposal of property. Although the emotional deception is regarded as a means, it cannot lead the victim to later dispose of the property. Therefore, some people believe that it doesn't constitute the deceptive behavior for the crime of fraud. Professor Zhang Mingkai believes that the deception in fraud must be the fact directly related to the disposal of property, not just the emotional relationship [4]. However, in pig butchering scams cases, the emotional deception and later property fraud link together to form an integral part of the whole scheme.

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In practice, the courts in different parts of the country have taken different attitudes towards this issue. Some judgments hold that emotional deception is preparatory to fraud and does not amount to deceptive behavior by itself; others hold that emotional deception combined with subsequent false investment promotions constitutes an overall deceptive act. For instance, in Qiu's Fraud Case tried by the Wenzhou Intermediate People's Court in Zhejiang Province, the court held that the defendant's use of a fake identity to fabricate an emotional relationship with the victim constituted part of the behavior of committing fraud, and together with their other act of fabricating an investment opportunity, it caused the victim to transfer property [5]. In other cases, if the behavior of deceiving emotions cannot be combined with specific facts of property disposal, it is rather hard to independently identify it as mistaken understanding by the victim in the crime of fraud.

At the level of evidence, it is also quite challenging to identify the fraudulent behavior. As "pig butchering scams" are usually committed by creating virtual online identities, most of the deceptive content appears in the electronic data such as chat logs, whose authenticity and integrity are often challenged. In addition, suspects often use overseas servers and encryption tools to communicate with victims, making it difficult for police to collect and preserve evidence, and also making it difficult to prove the existence of fraudulent behavior in court.

In summary, identifying fraudulent behavior in "pig butchering scams" faces three major challenges: the complex structure of the behavior, divergent approaches to criminal law application, and the difficulty in obtaining and preserving evidence, which are the root causes of frequent disputes in judicial practice.

2.2. Controversies in determining the victim's mistaken understanding

Determination of "mistaken understanding" is an essential element of constituting the crime of fraud. The controversial issue lies on whether the victim's voluntary transfer of money to the perpetrator based on false promises of joint investment or romance under certain speculation should be established as the crime of fraud or not. The subjective view believes that the establishment of the crime of fraud requires that the victim is completely mistaken. That is, if the victim subjectively makes some doubts or the victim participates in the transfer with speculative mentality, the elements of fraud cannot be established and the perpetrator does not constitute a crime [6]. For example, in some cases, the court holds that if the victim has some understanding of the investment risks, the victim's voluntary disposal of the property is not based on the mistaken understanding, then the crime of fraud cannot be established. In contrast, the objective view believes that as long as the perpetrator falsely misrepresents some important facts (such as return of investment), the victim's speculation mentality or other motives do not affect that the elements of fraud are established. For example, the Supreme People's Court believes that the crime of fraud is focused on the nature and effect of the perpetrator's deceptive behavior, not that the victim subjectively exercises reasonable care. In practice, similar cases caused huge differences in adjudication due to the different court doctrines. For example, in the fraud case of Li Moubin and others, the court adopts the objective approach and holds that as long as the perpetrator fabricates the investment platform and return, whether the victim is optimistic or not does not affect the determination of fraud [7]. In contrast, in some cases of romantic relationship fraud, the victim subjectively knew that he/she transferred money in large amount to the online romantic friend but still knew that the identity of the other party was unclear, some courts mitigated the sentence of defendant or even ruled that the fraud was not committed and believed that the victim was not under a mistaken understanding.

In short, in order to resolve the judicial disputes on the definition of misunderstanding, we should further clarify the criteria of misunderstanding, promote the development of judicial rules based on

DOI: 10.54254/2753-7048/2025.LD29516

the objective approach and guide the courts at all levels to adopt unified adjudicative standards in similar cases through exemplary cases.

2.3. Subjective knowledge of an accomplice

Whether the subjective knowledge of an accomplice constitutes an accomplice to fraud is important. Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Telecommunications and Internet Fraud clearly stipulates that knowing that others are committing telecommunications and Internet fraud and providing ruch payment settlement, communication transmission and other technology or assistance shall be treated as co-conspirators. However, in practice, determining knowledge depends on verbal and circumstantial evidence a lot. Suspects often refuse to confess and even evade the investigation by encrypting communication and destroying data, so it is very difficult for the prosecutor to prove it [8].

Some people believe that knowledge should be understood widely, which includes two situations: first, the perpetrator knew that others were committing fraud; second, the perpetrator should have known. The situation that the perpetrator should have known can be judged by a full review of the professional situation of the perpetrator, the way of counter-investigation, profit model and previous penalty situation [9]. For example, Professor Zhang Mingkai believed that the person who simply offered technical support or repeatedly assisted could be presumed to have the general intent, and there was no need to prove the perpetrator knew the specific situation of the fraud.

In practice, prosecutors often conduct comprehensive assessments based on the following dimensions: first, technical background and behavioral patterns, such as long-term provision of number-changing software, virtual platforms, or payment interfaces to fraud rings; second, evasive behavior, such as the use of encrypted communication tools and frequent account changes; third, unusual financial transactions, such as high illegal profits, are clearly inconsistent with the so-called "technical services"; fourth, the perpetrator's location in a region or industry with a high risk of fraud, such as a technology park or payment platform with a history of fraud cases [10].

For example, in the fraud case of Zhao Mouyao and You Mouliang, the court, taking into account the fact that several defendants had long provided communication support to the fraud ring in northern Myanmar, used false identities, and had unusual profit-sharing ratios, determined that they should have known that their organization was engaging in fraudulent activities [11]. In some cases, involving providing bank cards or assisting with cash withdrawals, if there's no clear evidence of prior collusion between the perpetrator and the fraudster, some courts tend to convict the perpetrator of concealing or hiding criminal proceeds or aiding in information network criminal activity.

To solve the problem of proof, judicial interpretation and guideline should further clarify what circumstances would apply to the presumed knowledge, and promote the use of indirect evidence to establish a system of proof and effectively strike at the whole link of telecom fraud assistance [3].

3. Addressing issues in the criminal law regulation of "pig butchering scams"

3.1. Addressing difficulties in recognizing deceptive behavior

Simple emotional deception, such as the fabrication of identity and the establishment of fake love, though immoral, generally does not constitute deceptive behavior in the crime of fraud according to the criminal law doctrine [12]. The essence of fraud is that the perpetrator fabricates facts or conceals the truth to mislead the victim into losing his property [12]. Emotional deception only creates the conditions and paves the way for the later property fraud. It does not participate in the

DOI: 10.54254/2753-7048/2025.LD29516

disposal of property directly. Based on the principle of legality and the modesty of criminal law, criminal law should not intervene in the field of moral regulation too much.

What should really be regarded as the object of fraud in criminal law is the combination of emotional deception and the later false information about property, for example, after the perpetrator misleads the victim and makes the victim believe him, he fabricates the fact that there is an investment platform, the vulnerability of the gambling website, the insider information etc to induce the victim to transfer money [12]. At this time, the later false information is directly and closely linked to the property, and the behavior has met the behavioral elements of fraud. In the judicial practice, we should adhere to the principle of holistic evaluation. For example, in Qiu's Fraud Case, Wenzhou Intermediate People's Court of Zhejiang Province believed that the defendant's previous emotional deception and the later inducement of investment made up a coherent and linked link of fraud and should be evaluated as a crime of fraud altogether [5]. According to the judicial interpretation in the past, the judge can strengthen the evidence review in the later case and focus on the mistaken perception of the property.

To address the inconsistent standards for identifying deceptive behavior in practice, judicial authorities should focus on examining whether the deceptive content is directly related to the property and strengthen the collection and review of objective evidence such as electronic data [13]. For example, the timing and content of chat logs discussing investment and financial management can help accurately distinguish emotional deception from deceptive behavior in the crime of fraud.

3.2. Addressing disputes in the determination of the victim's mistaken perception

When determining a victim's misperception, an objective standard should be adopted. That is, as long as the fabricated facts are sufficient to mislead the general public and cause them to dispose of their property, the causal relationship for the crime of fraud should be established. The requirement that the victim must be completely ignorant should not be excessive. Criminal law focuses on protecting property order from the malicious harm caused by false information, not on whether the victim's subjective perception is perfect [12]. The victim's speculative mentality, a sense of luck, or slight suspicion, induced by temptation, is not sufficient to dismantle the causal relationship between the perpetrator's deceptive behavior and property loss.

At the level of evidences, the investigating police should focus on the examination of whether the counter fictitious elements have any material impact on the victim's decision to dispose of his/her properties. That is, chat box, money transfer and the falsity of the platform can be analyzed to fully play the role of the fictitious behavior in the process of crime. Furthermore, Supreme People's Court has also issued the relevant guiding cases that fraud does not be affected by the victim's fault [10]. As for the subject element, the perpetrator's intention to commit evil is the basis of liability.

Therefore, if adopting the objective standard can avoid the similar cases appear in the past due to the excessive judicial discretion in the practice, the guidance should be strengthened by publishing typical cases and the judgment rule that "the victim's fault does not affect the establishment of fraud" should also be clarified [14]. It can be considered at the discretion of the court when sentencing as a right to balance combating crime and protecting human rights

3.3. Solving the subjective element of fraud

Determining the subjective element of fraud is an important link to resist the telecommunication fraud. Those who know that the perpetrator of the telecommunication fraud provides the credit card, fund settlement, technical support and other help before and during the implementation of the

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telecommunication fraud should be treated as accomplices of the crime of fraud. The subjective element of the crime can be judged by comprehensively analyzing the cognitive ability, work experience, profit, behavior pattern (such as using encrypted software to communicate, frequently changing the account), etc. objective evidence [9]. It does not necessary to require the perpetrator to know the specific content and details of the fraud.

Helpful behavior, that is, the behavior of providing cash withdrawal and transfer after the fraud is successful, if there is clear evidence that the accomplice does not know that the other person's behavior is fraudulent, the nature of behavior should be recognized as constituting the crime of aiding information network criminal activities or concealing or concealing the gains of the criminal. If both elements are established, the more serious one should be punished.

In order to solve this problem in proving the crime, it is recommended that the judicial authorities fully use the criminal presumptions and analyze all the evidence in the case to play a conscious conviction. For example, if the person provides payment interface and technical maintenance for a long time and makes obvious abnormal profit, it can be presumed that the subjective element exists. In addition, the identification rules in Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Telecommunications and Internet Fraud should be further improved so as to provide more operational basis for the judicial practice, so as to realize the comprehensive and accurate strike [13].

4. Conclusion

"Pig butchering scams" is a new type of complex crime which involves elements of both emotional deception and property crime. Because the crime is covert, long-term and highly technical, it brings new controversial issues to judicial identification of elements of fraud, and even criminal justice practice. This article analyzes three typical controversial issues in judicial identification of elements of "pig butchering scams": definition of elements of deceptive behavior, determination of elements of mistaken belief and burden of proving subjective knowledge of accomplices. The research finds that although pure emotional deception is morally culpable, it should be accompanied by the subsequent so-called "property facts" to constitute a fraud offense; elements of mistaken belief of victims should be determined by objective standards and cannot exclude the culpability of the perpetrator; determination of elements of subjective knowledge of accomplices should stop relying on "clear knowledge" and should presume from objective behavior.

In the face of regulatory dilemma posed by "pig butchering scams", the country should address this problem by coordinated efforts involving norms, technology, social governance and international cooperation to establish systematic governance system. At the regulatory level, the standards of elements of deceptive behavior, mistaken belief and elements of knowledge of subjective culpability of "pig butchering scams" should be further unified by issuing detailed judicial interpretations and publishing typical cases, which would provide clear and operable adjudicative guidelines for frontline judicial personnel. At the technical level, public security organs should enhance the ability to use big data, blockchain, artificial intelligence and other technologies to ensure electronic evidence, track capital flow, identify online identity and conduct cross-border investigation to solve problems brought by covertness and cross-border nature of crime in obtaining evidence. At the social governance level, the main responsibility of financial institutions, telecommunications companies and online platforms should be strengthened, and source prevention measures such as real-name account registration, monitoring of suspicious transactions and filtering of false information should be promoted to break the link of crime. In addition, further efforts should

DOI: 10.54254/2753-7048/2025.LD29516

be made to strengthen international judicial cooperation and intelligence exchange to strike at cross-border fraud rings and eliminate their nests.

Only by upholding the systematic concept and using various governance tools such as legal norms, technical means, industry supervision and international cooperation to form a multi-level and comprehensive prevention, control and punishment system, can we curb the high incidence of "pig butchering" crime, effectively protect citizens' property safety and social integrity system and at last achieve all-round improvement in the country's criminal law regulatory capacity and social governance effectiveness, and provide a more solid legal guarantee for protecting citizens' rights and interests in the digital economy era.

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