

**RESEARCH ON THE CURRENT SITUATION AND
COUNTERMEASURES OF GUANGXI-ASEAN TELECOM NETWORK
FRAUD**

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Abstract

Guangxi is connected with many countries of ASEAN, and its geographical advantages have brought a lot of dividends to the bilateral economy. Besides, many negative factors have also quietly emerged. Telecommunication fraud is a new type of crime, which is not only rampant in China, but also a serious disaster area. It has brought many challenges to the rule of law in ASEAN countries. This Journal only takes Guangxi ASEAN telecommunication fraud as the research object, analyzes the current situation and characteristics of transnational telecommunication network fraud, and then analyzes the judicial dilemma of transnational crackdown on telecommunication network fraud and puts forward countermeasures in combination with judicial practice.

Keywords: Transnational, Telecommunication Network Fraud, Jurisdiction.

Abstrak

Guangxi terhubung dengan banyak negara ASEAN, dan keunggulan geografisnya telah membawa banyak keuntungan bagi ekonomi bilateral. Selain itu, banyak faktor negatif juga diam-diam muncul. Penipuan telekomunikasi adalah jenis kejahatan baru, yang tidak hanya merajalela di Tiongkok, tetapi juga daerah bencana yang serius. Ini telah membawa banyak tantangan pada supremasi hukum di negara-negara ASEAN. Jurnal ini hanya mengambil Guangxi ASEAN menegnai telekomunikasi sebagai objek penelitian, menganalisis situasi saat ini dan karakteristik penipuan jaringan telekomunikasi transnasional, dan kemudian menganalisis dilema yudisial penumpasan transnasional pada penipuan jaringan telekomunikasi dan mengajukan langkah-langkah penanggulangan dalam kombinasi dengan praktik peradilan.

Kata kunci: Transnasional, Penipuan Jaringan Telekomunikasi, Yurisdiksi

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INTRODUCTION

In the sectoral industries, namely telecommunications (telecommunications / communication), computing and broadcasting, it is indicated that the convergence of the three industries is caused by several factors, namely: ² digitalisation technology (digitalizati - on)³; falling prices of computing devices; reduced costs arising from use frequency or bandwidth; and the telecommunications industry competition⁴.

Telecommunications networks and broadcast networks currently have the ability to carry two-way transmissions simultaneously for voice, data and video⁵. Digital compression technology has also increased the capacity to carry information in the network and allows more information. to be transmitted over the same bandwidth or spectrum⁶. The technological change is intended to have led to the creation of new, interactive services, multimedia services such as 'video on demand', teleshopping, telebanking and interactive games, as well as broadband development, communication systems and high-speed interactive information (information superhighways)⁷.

RESEARCH METHODS

In this study in accordance with the issues raised, the authors use the type of normative juridical research. Because in the Guangxi-ASEAN Telecom Network

² Angeline Lee, Loc.Cit; And Jerker B. Svantesson, "Borers On, or Border Around - the Future of the Internet", Albany Law Journal of Science and Technology, Vol. 16 Number 343, 2006, Albany: Albany Law School of Union University, p. 345.

³ Matthew Bloom, "Pervasive New Media: Indecency Regulation and the End of Distinction Between Broadcast Technology and Subscription-Based Media", Yale Journal of Law and Technology, Vol. 9 Issue 1, 2007, New, Hares: Yale Law School, p. 111-113.

⁴ John Blevins, "Death of the Revolution: The Legal War on Competitive Broadband Technologies", Yale Journal of Law and Technology, Vol. 12 Issue 1, 2010, New Hall: Yale Law School, p. 87.

⁵ Dan L. Burk, "Law as a Network Standard", Yale Journal of Law and Technology, Vol. 8 Issue 1, 2006, New Ha-ven: Yale Law School, hlm. 85.

⁶ Daniel B. Levin, "Building Social Norms on the Internet", Yale Journal of Law and Technology, Vol. 4 Issue 1, 2002, New Haven: Yale Law School, p. 116.

⁷ Stephen M. McJohn, "A New Tool for Analyzing Intellectual Property", Northwestern Journal of Technology and Intellectual Property, Vol. 5 Issue 1, 2006, Chicago: Northwestern University School of Law, p. 101

Fraud, besides studying the applicable laws and regulations, there are also legal facts that must be developed, researched, and observed the Guangxi-ASEAN Telecom Network Fraud.

Normative legal research methods, namely legal research conducted by examining library materials or secondary data. Normative legal research is also called doctrinal law research, because this research is carried out or is aimed only at written regulations or other legal materials.

ANALYSIS

A. Current Situation of Transnational Telecommunication Network Fraud

1. Internationalization and Collectivization of Criminal Organizations

After a long period of development, the development of telecom fraud crime is increasingly divers. No matter its management mode or the form of crime, it has brought many challenges to the present judicial organs. At present, most of the telecom fraud groups bring team crime into the mode of modern company management. The criminal groups have their own special names for internal and external. Within the group, they have established staff rules, and stipulated management systems such as evaluation methods, reward and punishment methods. The criminal groups have a complete operation system as support from top to bottom, from inside and from the table. After joining the gang, a series of “training” is needed before “taking up the post”. In transnational groups, because of their different nationalities, the “work arrangements” are not the same. Although all departments are independent, they are connected and restricted each other. After the successful implementation of the criminal act, the “company” will be dissolved immediately, and the property obtained from the fraud will be transferred accordingly. In this way, even if the judicial organ immediately performs the arrest act, it will fall into the problem of recovery.

2. Specialization of Criminal means

Enjoying the dividends brought by “one belt and one road”, the development of network technology in China and ASEAN countries has been unprecedentedly promoted, but the subsequent means of network information fraud have gradually become professional. With the rapid development of the times, mobile phones have become the most indispensable thing for modern people. Mobile payment is also born with it. Due to its convenience, the most common means of crime at present is fraud through mobile payment software. We know that when using mobile phones to transfer some money, due to the limitation of technology and the decrease of everyone’s vigilance, we usually don’t pay attention to the information of the payee during the transfer, but when the password is input, the transfer procedure is completed, but if the information of the payee is found to be inconsistent at this time, it’s too late to remedy. This is the most common means, but now it has also derived a series of systematic means of crime, which is more professional and systematic than the previous means of crime. When the public security and judicial organs break a link in the criminal means, they will quickly cut off the contact, to protect the concealment of criminal organizations and ensure their safety. The Central Bank’s “24-hour delayed payment” policy was proposed before, and the cross-border fraud criminals responded to this policy by innovatively using the third-party payment platform for money laundering. There are many more such acts.

3. The Scope of Influence is Expanded and the Difficulty of Recovery is Increased

Due to the transnational geographical advantage of China-ASEAN, it provides convenience for the implementation of criminal acts and also expands the influence of crime. If the crime is only committed in China, the number of crime strongholds will not be too large, the number of people will be relatively scarce, and the target of crime will be more specific. But once

the transnational crime is committed, the criminal groups will not only be “Friends of three or five”, but also a huge and crowded organization system, and the crime strongholds will be spread all over country because of the diversity of personnel distribution. The dispersion of strongholds will also lead to the dispersion of criminal targets, and the non-specificity of criminal targets will also appear. With the help of the “one way and one way” free ride, criminal acts are implemented more conveniently. When criminals commit crimes, they will also consider the cost of committing crimes. The human and material resources needed for transnational crimes are larger than the general cost, so the amount involved in crimes is also increasing step by step, which not only threatens the property security of the people, but also sometimes threatens the national security. Because of transnational crime, large population flow and rapid flow of stolen money, police forces from several countries are usually required to cooperate in the process of recovery, but a series of examination and approval procedures are required for transnational crime, usually until the examination and approval procedures are completed, the stolen money is hard to recover. The criminals also make use of this advantage. In recent years, they commit crimes crazily, which brings many challenges to the public security organs of various countries.

B. Judicial Dilemma of Transnational Telecommunication Network Fraud

1. Difficulty in Cross-Border Jurisdiction

With the easterly wind of “one belt and one road”, China and ASEAN countries have not only become more and more economically connected, but also because of geographical advantages, transnational criminal activities are becoming more frequent. Criminal means are also constantly updated. For example, many criminals will deliberately carry out criminal activities on the means of transportation between the two countries, and commit crimes at the border of the two countries or the multinational border, so as to open up the multinational market, expand the scope of crime, expand criminal groups and

develop criminal members at the same time. From the previous cases, because they are all involved in transnational cases, Guangxi and Southeast Asian countries have different provisions. Courts in various regions hope to take over the jurisdiction of the case on the basis of their own jurisdiction, which leads to disputes in different countries and regions. Because of the dispute of jurisdiction, the police force of every country is always in an awkward situation of “powerless” and “powerless”.

2. Defects in Legislation

There is no accurate provision in the legislation of criminal law on telecommunication fraud. We have common related charges in criminal law, such as contract fraud or illegal access to personal information and so on. There is not only a gap in legislation, but also insufficient attention to the relevant punishment. For example, compared with robbery and theft, the punishment of telecommunication fraud is too low to be a warning. Not only scholars have put forward such opinions, but also the heads of relevant domestic public security departments have made it clear that in China, punishing the criminals of telecommunication fraud is in situation of no dependence and no management at this stage. After that, although the “interpretation on the specific application of law in dealing with criminal cases of fraud” (hereinafter referred to as the “interpretation on the punishment of fraud”) of the supreme law and the highest detection station in 2011 has made provisions on the conviction and sentencing of the crime of telecommunication fraud, it is obviously difficult to achieve in judicial practice if the specific evidence requirements specified in the “interpretation on the punishment of fraud” are to be met it costs a lot to catch criminals, but there is no way to convict them.

3. It is Difficult to Obtain Evidence and Recover Stolen Money

- a. Incomplete bank transactions. The new type of criminal suspects are very cunning, absorbing the experience of previous criminals, and will not

wait for the victims to transfer all the money successfully before withdrawing, nor will they directly transfer the money into the Bank. Now, when the victim is cheated, the stolen money involved in the case often passes through many countries in a short time, and finally gets back the cash. Especially in ASEAN countries, the land area is generally relatively small, the flow of people is fast, criminals with money involved in the case transfer quickly, and can quickly flow to several countries. The transaction record of the Bank card involved in the case is the key to the conviction and recovery of the stolen money. However, because there is no data exchange between the Bank of ASEAN countries and the Bank of China, the key data cannot be provided, which often leads to the interruption of the clue of the capital chain and the failure to form a complete evidence chain. The whereabouts of the stolen money is unknown, which leads to the difficulty of money recovery.

- b. The timeliness of evidence is easy to be ignored. Due to the difficulty of transnational crime detection, the police forces of all parties are not able to transfer personnel in a timely manner. When investigating cases, the case handling department usually has unclear clues and fails to grasp the information and evidence of all criminal groups in a timely manner. Criminal suspects often flee to commit crimes. It is normal for them to commit crimes in Southeast Asia and other countries. The police forces of many countries want to arrest them. They usually need to go through many procedures. After many arrest, the suspects dig deep. Even if the later suspects admit the facts of the crime, due to a long time, the relevant evidence has passed the time limit, which cannot be recovered or shaped a strong chain of evidence.
- c. Evidence is easy to destroy and difficult to obtain. There will be a large number of physical evidence in telecommunication fraud cases, but due to the difficulty of handling the case, the time from the occurrence of the case to the resolution of the case is often too long, during which the physical

evidence is easy to be destroyed. Electronic evidence cannot be recovered after physical demagnetization or data coverage of the hard disk. Even in the case of searching relevant evidence, it is impossible to be related to the case handling department, and the case information related to it is not available, which may result in serious punishment or even a guilty judgment. In addition, under the background of the rapid development of the financial industry, there are many regional minority Banks in China. Because their business outlets have not been popularized nationwide, it is a time-consuming and laborious thing to investigate the transactions of these minority banks.

- d. Relevant institutions involved in the case are unable to provide evidence. At present, in the high-pressure situation of the public security organs in the fight against telecommunication fraud cases, the criminal suspects' anti investigation experience is more and more rich, and all kinds of prevention means are trying. In the past, they were only vigilant to prevent the victims. Now they turn their eyes to the third-party companies. In the process of handling the case, the public security organ also found that the stolen money in some cases was directly transferred through the third-party payment company or platform for many times, and was not withdrawn by the suspect. This new means of transferring money makes the public security organs face a very difficult problem. However, the evidence provided by these companies cannot effectively explain the whereabouts of the stolen money, and generally, there is no evidence to prove it. When the evidence of the third party is not enough or the evidence is not enough, the money of the victim will be more difficult to recover.
- e. It is difficult to investigate and verify the implementation of the case. The crime of telecommunication fraud is mostly a series of cross regional crimes. After the investigation organ has solved the case according to the Bank card transaction record, a large number of cases can be listed. However, due to

the long time of the case and fraudulent act of posing as “Public Security Bureau, procuratorate and court”, the victim is unwilling to cooperate with the public security organ to obtain evidence, or for a few reasons, the implementation of the case is difficult to verify, resulting in war The outcome of the cannot be expanded. The crime of cross-border telecommunication fraud can be divided into many links. Firstly, the gang premeditated, assigned, relevant personnel to call (or send text messages), tricked the other party to answer the phone, and after getting in touch, tricked the victim to remit the money. After receiving the stolen money, the criminals would transfer and take out the stolen money in a non-stop manner, and finally divided the stolen money. The structure of fraud links is basically the same, but each link is “checked” by professional personnel. It seems that there is no common ground in each link, but it is indispensable.⁸

CONCLUSION

Conclusion of this journal, The development of science and technology has brought great benefits to the people and the country, but the following problems have also brought challenges to everyone. China and ASEAN countries are connected by land and sea, and the geographical advantages also give many criminals a chance to commit crimes. The characteristics of groups crime and the specialization of criminal means also lead to a greater impact than the ordinary telecommunication fraud cases in the past.

With the promotion of the “one belt and one way” policy, telecommunications fraud activities are becoming more and more prominent, and the ways of committing crimes are constantly updated, bringing more and more influence to the society and the public. Since 2018, the special strike departments of Guanxi and ASEAN countries have taken a series of joint actions, breaking a

⁸ [Wang Xiaohong, Cheng Hong. “on the Construction of Evidence System of Cross-Border Telecom Fraud Cases”. [j] Public Security Research, 2012, 12:37-44.

number of transnational telecommunication fraud cases, successfully capturing thousands of suspects and collecting hundreds of millions of stolen money, which has sounded the alarm for telecommunication fraud criminals and successfully curbed the crime momentum. Because the police forces of various countries are trying their best to solve the controversial issues, at the same time, they are strengthening the information exchange and resource sharing, and they working together to fight jointly, so as to curb the high incidence of telecommunication fraud crime from the source. Telecom fraud belongs to a new form of crime, with novel means of crime and wide range of crimes committed by criminal gangs. Only by uniting various forces, combining with the police forces of various countries, and jointly striking, can we continuously crack down on the crime of telecom fraud, so as to maintain regional peace and promote the common development of Guangxi ASEAN.

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