

Problems and Countermeasures of China's legislative model of economic crime

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Abstract. China's legislative model of economic crime has undergone three stages of evolution: from 1949 to 1979 the legislative model was based on the single criminal law and the subsidiary criminal law; next, from 1979 to 1997, the legislative model based on the single criminal law; finally, after 1997, to the legislative model based on the criminal code. There are three key problems in the existing legislative model of economic crime: the form of legislation is too singular and there is no flexibility; the revisions of the criminal code are too frequent; finally, the current situation where the administrative laws are relatively decentralized, but the criminal law in the case of economic violations and economic crimes is centralized to a problematic degree. The solution to the above problems is to retain the most critical and stable economic crimes in the criminal code; a portion of minor and unstable economic crimes can be transferred to the subsidiary criminal law, maintaining communication between the subsidiary criminal law and the criminal code. Formulating the *Law on Violation of Order* in appropriate times.

1. Introduction

With the rapid development of China's economy and society, crime has changed and grown, and the criminal law has undergone a series of three major and many minor revisions. Among them, the criminal law provisions of economic crimes have become the most varied part of the entire criminal law, and this trend may continue in the future. The legislative model should be taken seriously. Since the founding of the People's Republic of China, the legislative model of economic crime has undergone three major revisions, and many new problems have arisen as a result of solving existing problems. It is, therefore, imperative to propose new countermeasures.

2. The evolution of China's legislative model of economic crime

2.1 The stage of the legislative model based on the single criminal law and the subsidiary criminal law

This legislative model mainly existed after the founding of the People's Republic of China in 1949, and before the *1979 Criminal Code* was enacted. It is worth noting that the subsidiary criminal law during this period was, to a large extent, a true subsidiary criminal law, although there were no independent economic crimes and penal provisions in economic laws and regulations. However, due to the judiciary's power to identify crime as given by the Constitution, the judiciary could directly determine whether a crime was committed according to relevant economic laws and regulations. Additionally, the single criminal laws were formulated to regulate economic crimes. Therefore, the legislative model of this period was dominated by the single criminal law and the subsidiary criminal law. Significantly, there was no criminal code.

2.2 The stage of the legislative model based on the single criminal law, supplemented by the criminal code

After the promulgation and implementation of the *1979 Criminal Code*, before the *1997 Criminal Code* was promulgated, the legislature enacted a large number of single criminal laws. During this period, although the criminal code had been enacted, for economic crimes, the relevant provisions in the single criminal law were far more numerous than in the criminal code. Therefore, the legislative

model of economic crime at that time was based on the single criminal law and supplemented by the criminal code. The subsidiary criminal law had also been transformed from the original subordinate criminal law to the non-essential subordinate criminal law. Subsequently, there was no subordinate criminal law of true significance in China.

2.3 The stage of the legislative model in which the criminal code was nearly the basis, and the criminal law amendment was the revised form.

After the *1997 Criminal Code* came into effect, China only promulgated one single criminal law, and abolished the legislative form of the single criminal law and changed it into the legislative revised form of the criminal law amendment. The criminal law amendment was not a form of legislation in an independent sense, because if there is no criminal code as the basis, the criminal law amendment cannot directly be used as the source of criminal law. Therefore, from this period onwards, the unified form adopted by the legislative model for economic crimes was the criminal code. Neither the single criminal law nor the subsidiary criminal law was maintained.

3. Current problems in China's legislative model of economic crime

3.1 The legislative form of economic crime is too singular and has no flexibility

Presently, China has virtually adopted the criminal code as the only form of legislation of economic crime. Although this kind of legislative model is highly systematic, it may reduce flexibility. Systematization requires the classification of different economic crimes. China's current economic crimes are divided into eight main categories which requires that each category should be further divided into subcategories. Some crimes obviously belong to a category of crimes, but some crimes may fit into multiple categories. If more forms of legislation are allowed, the crimes that are currently not neatly classified can be properly dealt with.

3.2 The revision of the criminal code is too frequent

Since economic crimes are all stipulated in the criminal code, the economic criminal provisions can only be added, deleted, and changed by modifying the criminal code. As a result, the revision of the criminal code is too frequent. In total, there are 129 economic crimes provisions in the *1979 Criminal Code*, of which 116 provisions have been amended. After the *1997 Criminal Code* was promulgated, one single criminal law and ten criminal law amendments were introduced to amend 73 articles, add 44 articles, and delete four articles. Therefore, that the criminal code has been revised eleven times in the past twenty years.

3.3 The separation of the administrative laws corresponds to the centralization of the criminal law in the case of economic violations and economic crimes

The concentration of economic crimes is stipulated in the criminal code, while economic violations are scattered between different administrative laws. As a result, the separation of administrative laws corresponds to the centralization of the criminal law. The connection between criminal law and administrative law is not very close, and the economic violations and economic crimes are difficult to identify in some cases. More importantly, the process of criminalization and decriminalization of criminal law has become more difficult because there is no administrative law that can directly compliment the criminal law.

4. Countermeasures for the reform of China's legislative model of economic crime

China's economic crimes are all stipulated in the criminal code, therefore, when it is necessary to add, delete, and change the economic criminal provisions, amendments are the only method. Frequent amendments to the criminal code also lead to instability of the criminal code, which leads to conflicts between an unstable criminal code and the legal idea of stability. Some people have proposed to move all economic crimes from the criminal code to the single criminal law or the subsidiary criminal law to solve the problem. However, in order to maintain the stability of the criminal code, the legislature

frequently may modify the single criminal law or the subsidiary criminal law, which achieves the stability of the criminal code rather than the stability of the criminal law. In particular, the amendments to the subsidiary criminal law or the single criminal law may be more lenient than the formulation and revision of the criminal code. The frequency of revision will not be lower than the criminal code, but may be higher than the criminal code, which in turn will aggravate the instability of the criminal law.

Contrary to the inherent problem of statutory law, no matter which kind of legislative form of economic crimes is adopted, it can neither carry the mission of coordinating the stability and variability of criminal law under the framework of statute law, nor escape lagging and non-permanence of statutory law. If we use the above method, it is simply moving the problem from the criminal code to other forms of criminal law legislation, but it is impossible to solve the root of the problem. Therefore, the more realistic approach is to make the following adjustments under the premise of maintaining the existing legislative model of economic crime:

4.1 Retain the most critical and stable economic crimes in the criminal code

China has a historical tradition of enacting a criminal code, and retaining most economic crimes in the criminal code has historical inevitability. At present, all economic crimes are stipulated in the criminal code, and it is neither necessary nor realistic to make major adjustments. Retaining the most critical and stable crimes in the criminal code is conducive to the emphasis on the general preventive function of major crimes.

The critical and stable economic crimes include the crimes which are related to personal and property rights of the unspecified majority about the crime of producing and selling fake and inferior commodities, the crime of smuggling, the crime of damaging the management order of companies and enterprises, the crime of destroying financial management order, the crime of financial fraud, the crime of tax collection and management, the crime of infringement of intellectual property rights and the crime of disrupting market order.

4.2 A portion of minor and unstable economic crimes can be transferred to the subsidiary criminal law and maintain communication between the subsidiary criminal law and the criminal code.

Compared with the most critical and stable economic crimes, a small part of economic crimes can be called secondary and unstable economic crimes. They mainly involve the crimes that are not related to personal and property rights of the unspecified majority and mainly reflect administrative purposes. For example, there are some crimes in the crime of disrupting market order, purely to maintain convenience of market management, and the most typical example is the crime of illegal business. However, if these crimes become more common, more frequent, and more harmful, they should be removed from the subsidiary criminal law to the criminal code, and vice versa.

4.3 Formulating the *Law on Violation of Order* in appropriate times

It is highly recommended to formulate the *Law on Violation of Order* based on the current *Law on Penalties for Administration of Public Security*, which can integrate violations of economic, administrative and other violations of order with traditional law and order violations. It can set a transitional zone between the criminal code and other laws. It can play an important role as a uniform regulation to rule acts that are not severe enough to be punished by the criminal code but are more serious in nature than economic violations. First, the *Law on Violation of Order* can be configured for the pre-selected library and recycle bin for the criminal code. Secondly, the creation of the *Law on Violation of Order* is in line with the principle of proportionality and is conducive to crime prevention. Finally, the penalties for acts of violations of order should be security measures.

5. Conclusion

The legislative form of the criminal code, the subsidiary criminal law and the single criminal law have no absolute reason to replace each other. In this case, the insistence on changing the current

legislative model may not be a wise choice. Therefore, in the choice of the legislative model of economic crime, specific issues should be deeply considered, rather than focusing on debating what kind of model should be adopted, which may promote the study of the legislative model of economic crime. Under the premise of adhering to the current legislative model of economic crime in China, it is more feasible and efficient for us to adapt to specific aspects such as legislative technology, legislative methods, legislative content, and modification methods.

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References

- [1] Xingliang Chen, Retrospect and prospect: forty years of Chinese criminal law legislation. *Law Science*, vol.6, pp. 18-33,2018.
- [2] Mingru Huang. On the modified form of criminal law. *Legal Forum*, vol.3, pp.12-20,2011.
- [3] Mingru Huang, Tingting Xiang. The choice of China's financial crime legislation Mode—the final transformation to the "independent affiliated criminal law model". *People's Procuratorial Semimonthly*, vol.11, pp. 27-31,2017.
- [4] Jianping Lu, The source of criminal law and the model of criminal legislation, *Global Law Review*, vol.6, pp. 5-25,2018.
- [5] Ziping Li. Reflection and reconstruction of the cohesive mode of criminal law and criminal code in China. *Research on the Rule of Law*, vol.1, pp. 46-51,2014.
- [6] Zhixiong Liu. Reflection on the criminal law model of single codification. *Journal of South-Central University for Nationalities(Humanities and Social Sciences)*, vol.1, pp. 108-111,2009.
- [7] Zhongwei Liu. Investigation on the criminal policy of criminal law legislation mode. *Modern Law Science*, vol.3, pp. 48-55,2010.
- [8] Dehua Tong. Critique of codification of criminal law in contemporary China. *Law Review*, vol.4, pp. 78-87, 2017.
- [9] Penghui Tian. Economic security and economic criminal law legislation mode selection. *Studies in Law and Business*, vol.3, pp. 95-104, 2018.
- [10] Anyi Wang. The legislative basis of China's economic criminal law. *Criminal Science*, vol.3, pp. 47-53,2011.
- [11] Zhonghua Xiao. Concentration is the direction of development, scattered as the form of existence——on the choice of legislative model of economic crime. *Research on the Rule of Law*, vol.5, pp. 10-13,2010.
- [12] Bingzhi Zhao. Research on the codification of criminal law in contemporary China. *Chinese Journal of Law*, vol.6, pp. 181-191, 2014.