
Crime research on identity theft behavior

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Abstract

In recent years, identity theft cases are common. From the case of "Qi Yuling", "Luo Caixia", "Lin lin" and recently disclosed cases like "Zou Zhijing", "Wang Xiao incident", "Wang Jun Liang" and HIV women events, which all highlight the frequent occurrence of identity theft and serious harm to the society in our country's present stage. From the point of view of the delimitation of the criminal justice expansion and crime circle, if the application of criminal law is inevitable, the seriously behaviors harmful to the society should be considered to take as criminal events. Of course, a type of behavior of the crime involves many considerations and design. Based on this point, this paper discusses the definition and status quo, the reason of the identity theft incrimination and its basis and method.

Keywords

Identity, social harmfulness, legal interpretation.

1. The origin of the problem

In March 2003, owing to the lack of a temporary residence permission, Sun Zhigang were sent to the detention and repatriation station asylum by the police offices, then died in the transfer station. This event gave birth to the promulgation and implementation of the "the salvage and manage way to the vagrants and beggards in cities", and abolished "vagrants and beggars shelter and repatriation measures in cities" at the same time. The importance of identity is self-evident and identity also contains a huge interest in the other side. Because of this, theft and fraudulent use of identity has gradually become common. Every event has adverse effects on all of the victims. Some lost the chance to study, someone several years' effort has vanished like soap bubbles, some cannot find a job, and some reach the bottom of the life in society. Identity theft is a serious social harmful behavior, the criminal law should not ignore its harms. By comparison, "AIDS woman incident" happened in 2009, the criminal law has played a more important role. According to insult, libel, court sentences the person who stole the identity of conviction. But if the defendant did not insult, libel, such as the former events of Qi Yuling, Luo Caixia event, the existing criminal law cannot intervene. But the right to receive education is constitutional enjoyed by everyone, violations of the right to education behavior of social harmfulness is not less than the ordinary crime. Work is one of the basic conditions for our survival, once lose jobs, our life will face with the great difficulties. Moreover, identity theft has other serious social harmfulness, and it is reasonable and necessary to regulate the criminal law.

I believe that identity theft refers to the behavior which use the means of stealing other people's identity to harm the interests of other people in order to acquire property, services, qualifications, etc. Mentioned above like using others' identity to enter colleges and universities, using another person's identity to find work, using others' identities to release information without control, they all belong to identity theft. In addition, posing as a well-known enterprises to recruit, sign a contract, applying another car's license, using others' identity information to open accounts for money laundering, fraud and other acts all belong to identity theft.

2. Basis of the crime of identity theft

On the principle of the crime, or the delineation of the crime circle, different scholars have different views. Bentham, a representative of utilitarianism, opposed the abuse of punishment, invalid punishment, excessive punishment and expensive punishment. In our country, some scholars have summarized the standard of criminal legislation in five aspects: (1) behaviors with serious social harmfulness and the vast majority of people cannot tolerate and advocate for the needs to regulate by the criminal law; (2) no other sanctions force can take the place of the criminal law, only the use of criminal law can restrain this kind of behavior and can fully protect the legitimate rights and interests; (3) the use of penalties by criminal law to punish such acts will not lead to the prohibition of social benefits and will not be a great limit to the freedom of citizens; (4) this kind of behaviors can obtain objective and fair treatment by criminal law; (5) the use of the punishment for such acts by criminal responsibility is in accordance with the purpose of criminal responsibility, which has the effect to prevent or restrain the behavior[1]. Some scholars believe that the first step of criminal justice expansion is to go through moral, civil law and the restriction of administrative law, and secondly to after the criminal policy constraints of the constitution of crime[2]. Actually, scholars' point of view for crime principle are similar, basically it can be summed up in the following three aspects: one is with serious social harmfulness behavior, the second is the necessity and complementary of the intervention of the criminal law and the third is the criminal treatment needs to adapt to the existing regulations and need to be practicable. In the following, this paper expounds the basis of the crime of identity crime according to the above mentioned three aspects.

2.1 The substantive basis of the crime of identity theft - social harmfulness

Identity is the prerequisite for the enjoyment of other personal and property rights. No identity, there is no carrier for personal rights and property rights. The act of stealing another person's identity may also infringe upon the personal rights and property rights of others. However, compared with the general personal property crimes, the identity theft act also has a serious social harm. In Qi Yuling case, the behavior of people stole her identity and entered college and finally got a job. But Qi Yuling failed to enjoy the higher education gained by her own efforts and faced many difficulties in terms of finding a career. Damage because of identity theft is always existed for Qi Yuling and it completely changed her life. If her identity is not stolen, her life may be much better than it is now. Identity theft will also cause great damage to the personal property rights of the victims. Let the car license plate as an example, when the perpetrator steals someone's identity, they can excessively do whatever and the fines of the automotive violation and a traffic accident happened to fall on the victims and they should bear the responsibility, and it may even cause the victim to be subject to criminal prosecution. At the same time, it also increases the difficulty of the judicial organs to solve the case. And, this kind of behavior is also difficult to use theft, fraud or false accusation and other crimes to regulate. Taking others' identity to open a bank account to do money laundering crimes which not only has the common money laundering crime harm, the others may be subject to criminal prosecution of the judiciary and it also increase the judicial handling costs. Taking others' identities to get employed not only affect the real identity's employment rights, but also makes the recruitment unit into a wrong understanding and missed the ideal candidate. In addition, the information protection of citizens is not comprehensive, the citizen individual information is at your fingertips. Under such status, it greatly contributed to the occurrence of identity theft crime. People in the identity of others is more likely to commit other crimes based on the circumstance that all the consequences of the behavior are borne by others. Therefore, identity theft has serious social harmfulness.

2.2 The necessity of the crime of identity theft - the lack of regulation of morality, civil law and administrative law

"Lost principle, people attach more on morality, lost morality, people attach more importance on benevolence, then righteousness and courtesy, and the last is legal." Thousands of years ago, this section

from Lao Tzu, who clearly demonstrate that the relationship between the moral, civil law, administrative law and the criminal law. Principle, morality, benevolence and righteousness are what we call the morals today; courtesy is the standard of civil law and administrative law; the law is criminal law. The order of this three to regulate the behavior should be moral-civil law and administrative law -criminal law. The moral is the code of conduct to praise virtue and punish vice, which not only emphasizes the condemnation of evil behavior but pays more importance on encouraging people to actively do good things. Ethics in the three norms adjusts widest, and its demand is also the highest. Such as civil law, administrative law, they generally do not adjust to the innermost thoughts of people, and modern criminal law also ignore the thinking idea which just stays at the level of people. Morality is the standard of people's thinking, and requires that everyone has a good quality. Just because of this, as a kind of standard system, the binding force of moral is lowest. Although we can't say the behaviors driven by sympathy, kindness and caring for others are just subjective choices and decisions, but it is the fact that it gives greater self-discipline degree in the pure moral issues to people than the free will range allowed by the mandatory legal norms [3]. Morality is based on self-evaluation, social evaluation, public supervision to compose of its mandatory regimes. So for identity theft, only through the moral adjustment, the effect is not ideal. Using the sage standard to require these identity criminals, it is harsh. Using the self-evaluation, social evaluation, supervision and other public opinion as the center to form a forced system, when in front of the perpetrators in the identity theft cases, it also appears to be powerless. As two different legal departments, civil law, administrative law and criminal law are different in the adjustment of objects, scope and means of adjustment. Civil law is the general title of the legal norms to adjust personal relations and property relations between equal subjects. Administrative law is the legal norms and rules to adjust the administrative relations and supervision of the administrative relationship generated on administrative relations [4]. The criminal law is the sum of legal rules to stipulate crime and its legal consequences. The adjustment scope of civil law is extensive, and it is in accordance with the legal principle of will autonomy, private law freedom, honesty and credibility and so on. The administrative law is to punish the acts of violating the administrative obligation and breaking the administrative order. And the criminal law is located in the second law or the position of the supplementary law, and uses the crime determined by the criminal law as the highest standard. The criminal law protects a wide range of legal interests, but due to the nature of the supplement, the adjustment range of criminal law is not complete. It's the common circumstance that the civil law and the administrative law cannot adjust effectively, it passes to the criminal law regulation. From the Qi Yuling affair and the Luo Caixia affair, we can see the role that the civil law and administrative law play in the field of identity theft. Maybe there's a point of view that Qi Yuling is in the win. But from the perspective of the infringement of the right to education, it has lost the opportunity to receive higher education. If there is no identity theft occurred, her life may be another scene, which is not 100 thousand yuan can make up for the. From the angle of view of the actor, compared with gaining admission qualification of colleges and universities and finding a job, only 100 thousand yuan of illegal costs, it is too low. In addition, "even if it is the smallest consequences, once identified, it is always a heart palpitations. However, in the hope that this heaven sent, often in our hearts can replace everything, so it is often make people fantasize. Stinginess and weak and allowing no penalty is even more powerful [5]. Low illegal costs, fuzzy and uncertainty of punishment have contributed to the high incidence of identity theft cases. In the case of moral, civil law and administrative law cannot adjust the identity theft effectively, with the nature of supplementary and the final means, criminal law is necessary to play its due role.

2.3 The legal basis of the crime of identity theft -- from the perspective of course interpretation and system interpretation

Course interpretation refers to the truth in accordance with the formal logic, normative purposes and the nature of the transaction attribute although the provisions of the criminal law does not express a specific matter and it will be explained as included in the provisions of the applicable scope. System interpretation is a interpretation method according to the status of provisions of the criminal law in the

whole criminal law to contact with the relevant law meaning and explain the intention and the specification. From the point of view of course interpretation and system interpretation, it can also explain the basis of identity theft. As mentioned earlier, relating to the identification crime, it generally includes three stages: collecting personally identifiable information, identity theft and implementation of other crimes. The third stage, in general there is a corresponding punishment provisions the existing criminal law. The first phase, "Criminal law amendment (seven)" rules that crimes of illegal selling and providing personal information of citizens and illegal access to gain personal information of citizens, which makes this stage also have the relevant provisions. It can be seen that if identity theft is the preparation of other crimes, then the collection of personal identity information is the preparatory act of identity theft act. "Criminal law amendment (7)" has been seen the acts of part collection of personal information as the crime. Then based on the crime treatment of preparatory acts of preparatory acts, it has no reason to not give crime to the preparation behaviors namely theft of identity. From the perspective of the theory of criminal law, this belongs to the meaning of course interpretation. Moreover, fighting the behaviors in the second stage in advance can better protect the people's lives and property security. From the point of view of system explanation, we can also find the basis of the crime of identity theft. Chinese current criminal law has also made some provisions on identity theft, such as crime of cheating and bluffing, posing as the serviceman mooching crime, respectively is posing as a state functionaries and soldiers. Since in order to maintain the authority of the state organs, the credibility of the military personnel responsibility, it is able to crime treatment of the behaviors of stealing the status of the state organs and the status of military personnel. So in order to maintain personal property and other legitimate rights and interests, criminal law has no reason to ignore the status of ordinary citizens. In addition, the implementation of identity theft is possible to implementation of other crimes, such as identity theft of credit card fraud; fraudulent use of others' identity to sign contract to make contract fraud. But this does not become non-criminal reasons of identity theft. Behaviors the person done after stealing identity may cannot make a reasonable evaluation in criminal law, such as Qi Yuling case, applying other vehicle's licence case and other behaviors. At this time the criminal law evaluation on the subsequent behavior cannot include identity theft behavior. On the other hand, identity theft and subsequent behavior are related to each other, but they also have independence with independent basis for punishment, but also the need for early protection. Crime of cheating and bluffing and posing the serviceman mooching crime may have subsequent criminal acts, but this does not prevent the crime treatment to the behavior itself. As for the implementation of theft, fraud after identity theft, same as the implementation of other crimes after cheating and bluffing, is the matter that crime number theory of implicated offense, imaginative joinder of offenses need to disposed of.

From the above analysis, we can know that identity theft crime, is not linked to new technologies and it is also not new types of crime, but is the reaction that the criminal law make for the identity theft which is increasingly serious harmful and needs to be regulated, is the results of criminal law to confirm the identity and is also the respect and protection of the criminal law for the identity. Visibly, crime of identity theft reflects the protection of the policy.

3. The path of identity theft behavior

3.1 The nature of identity theft crime

As mentioned before, we should reasonably distinguish the difference between identity theft and other illegal and criminal acts using the identity after the implementation of identity theft. Subsequent crime, is the issue of concern for other crimes regulation. It does not belong to the field of identity theft crime. The author believes that stealing the identity of others belonging to the infringement of personal rights of citizens. Personal right is an inalienable right including the right of life, body, health, freedom, fame, etc. The so-called personal rights, is the human rights, is the fundamental differences between the human and other biology. As a manifestation of the status of the person, the status of qualifications, it is no doubt that it belongs to one kind of personal rights. Identity theft, although it is also mixed with the

violation of property, social order, economic order and other legal interests, but as for the behavior itself, the nature of behavior and the pointing are also the identity of the victim and is still a violation of human rights. If the identity theft of the unit identity needs to be punished. Putting the unit identity theft on the violation of the rights of citizens and democratic rights, it does not seem appropriate. But in order to maintain the compact and the integrity logic of the criminal law, it might as well put it in violation of the rights of citizens and democratic rights to use one rules to solve.

3.2 The crime constitution and the legal punishment setting of identity theft

As for the crime constitution of identity theft, subjective element is a fraudulent use of another person's identity intent and objective implementation of the fraudulent use of another person's identity. Generally speaking, the only behavior of identity theft whose legal interests of the infringement has not reached the degree of punishment. Therefore, identity theft, if the circumstances are serious, it should be treated as a crime. Serious circumstances refers to many times identity theft cases, causing others lose the opportunity to work and study or causing others have serious obstacles in study and work or causing others with mental disorders, family discord and so on.

In the establishment of legal penalty, in order to adapt to its harm to the society and the crimes like selling or illegally providing personal information of citizens and illegal access to personal information of citizens and crime of cheating and bluffing, the author suggests that as for identity theft, if the circumstances are serious, it shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and concurrently or independently be sentenced to a fine. It should be noted that the identity of this article, including the identity of the natural person and corporate identity.

3.3 Research on the type of identity theft

As a new type of crime, it needs to be clear about the type of such behaviors. For identity theft, scholars have put forward legislative suggestions for identity theft. If the circumstances are serious, it shall be sentenced to three years of fixed-term imprisonment or criminal detention, or impose a fine; if the circumstances are especially serious, more than three years and less seven years of fixed-term imprisonment shall be given and shall also be fined. As for unit identity theft, if the circumstances are serious, it shall be convicted and punished in accordance with the provisions mentioned above [6]. If so, in the application, the judicial office may doubt what is identity theft? Identity theft is not a natural crime, it is necessary for the criminal law to clear the implementation of its type of behavior when regulating identity theft cases. In the legislative proposals, the author advocates to take "combining nature description with the list (specifically listing and transparency provisions)" and make clear its range of application: one is without permission, theft on behalf of others and interfere with others' study process. Second is without permission, misappropriation of the name of others results in the loss or damage of people's job opportunities. Third one is the fraudulent use of another car license. Forth, without permission, theft on behalf of other units' identity causing the result of the work, production, business, teaching, scientific research cannot be carried out smoothly. The fifth is to use other methods to implement identity theft. So, on the one hand, it can adapt to the requirements of identity theft which makes the judicial authority not be at a loss. On the other hand, it also makes the criminal law has certain flexibility to adapt to the social development. When there is a new identity theft case, the Supreme People's court can take judicial interpretation to guide other judicial organs apply transparency provisions.

3.4 The relationship between identity theft and other crimes

Stealing other people's identity itself generally will not offend other charges. But in practice, the implement of identity theft through forged or altered, sold of state official documents, certificates or seals or seal forgery of companies, enterprises, institutions, people's organizations or forged, altered identity card or through illegal access to citizens' personal information also exist. The means and the purpose or the reason and the result respectively violate the different charge, which belongs to the implicated offense. Identity theft is the purpose act or result of the act. On the other hand, after the

identity theft, the situations that may occur that using the stolen to conduct theft, fraud, terrorist activities, money laundering and other criminal acts. At this point, identity theft is one of the means of behavior or cause behavior. For implicated offense, it is generally believed that, in the absence of criminal law expressly provided in the case, it should be a serious punishment. Therefore, regardless of identity theft is a former act, or as a post act, it should be treated with a serious punishment.

3.5 Legislative proposals

"Identity theft, within one of the following acts, if the circumstances are serious, it shall be sentenced with imprisonment or criminal detention of less than three years, and with a fine or a single penalty:

- (1) Without permission, in the name of another person to obstruct the course of others' study;
- (2) Without permission, in the name of another person, causing the damage of other people's job opportunities;
- (3) Illegal use of vehicle license;
- (4) Without permission, misappropriation of other units' identity, resulting in the work, production, business, teaching, scientific research and so on cannot be carried out smoothly;
- (5) Using other means to steal the identity of another person.

If there are acts mentioned above, it shall be convicted and punished in accordance with the heavier punishment.

4. Conclusion

In the process of writing the paper, the author repeatedly associated with the dangerous driving of the crime process. Sun Weiming case in Sichuan Chengdu, Zhang Mingbao case in Nanjing, Jiangsu, Li Jingquan case in Guangdong, Foshan, Hu bin case in Hangzhou, Zhejiang Province, all those cases are major traffic accident cases caused by drunken driving and chase race driving which gave birth to the establishment of the dangerous driving crime in "criminal law amendment (eight)". From the point of view of distinguishing public security crime by dangerous mean, "criminal legislation sets chase race driving and drunk driving as a crime, which is due to the larger reality possibility of transforming such abstract dangerous acts to specific great risk. It is not conducive to the protection of legal interests until the specific risk appears then gives its criminal regulation. In our country, it is in the period of the rapid development of economy and society, motor vehicle retains the volume rapid growth. Facing with cases of drunk driving, chase race driving and other serious traffic accident cases, the legislature establishes the dangerous driving crime in order to achieve the purpose of general prevention and special prevention. It is reported that, from May 11, 2011 to April 20, 2012, the country have investigated and dealt with 354 thousand of drunk driving cases, which have down 41.7%. Among those, the number of drunk driving cases is 54 thousand, down 44.1%. The guiding role of the legislation and the deterrent effect are immediate (similar crime process still exists in the credit card management, fraud, financial documents and other crimes.) Also, with the progress of the society, the further spread of the Internet, identity impersonation behavior gradually increases. If the criminal law waits for the implementation of the theft, fraud and other acts of this behavior after identity theft to punish, it is too late and there is also the necessity of the protection and regulation of the criminal law in advance. Let alone the following behaviors the criminal law are difficult to regulate like illegal use of vehicle licence, masquerade to go to university. Therefore, the author hopes, the same as the crime of dangerous driving, identity theft can also enter the perspective of criminal law regulation.

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