
高利转贷行为犯罪问题研究

摘要

伴随着我国经济快速发展以及经济形势的不断深化,企业经营的方式与制度种类趋于多样化,经济发展的综合性也在不断提高,因此也产生了诸多新的市场问题,我国的犯罪行为也展现出各样的不同形式和不同的方式,犯罪分子利用了部分企业或个人对资金的迫切需求心理,和金融机构的管理缺陷,以各种形式将信贷资金从金融机构中套现并进行高利转贷行为,获取高额不法利益。高利转贷罪已经被写入刑法,但具体的转贷行为判断和构成尚有纷争之处。金融体系在我国市场经济的深入改革中,经济形势的不断深化,高利转贷行为在司法中面临着很多问题。面对高利转贷行为,需要从刑法上寻求相应的措施。本文章笔者个人从高利转贷行为犯罪问题进行研究。

文章一共分为五个部分:第一部分对高利转贷行为的相关内容进行了梳理,明确了高利转贷的概念、特征、类型、成因以及高利转的行为的危害,对高利转贷行为有了全面地认识;第二部分对高利转贷的犯罪相关问题进行阐述,主要简述高利转贷行为犯罪化中存在的争议进行理论分析、高利转贷罪犯罪的构成以及高利转贷罪与其他类似相关犯罪进行比较;第三部分阐述了对司法实践中几种转贷行为的认定,主要对以下转贷行为进行认定:套取新贷款用于偿还旧贷款行为、一手贷款一手放贷行为、变相转贷行为的认定、与金融机构工作人员内外勾结行为;第四部分主要简述对域外立法的述评以及从域外立法中获得的启示与借鉴;第五部分主要讲述对于规制高利转贷犯罪行为的建议,从规划市场主导、加强政府管理、完善法治化体系提出建议。

关键词: 金融犯罪; 高利转贷行为; 高利转贷罪; 牟利

Abstract

With the rapid development of China's economy and the continuous deepening of the economic situation, the types of business operation and systems tend to be diversified, and the comprehensiveness of economic development is also constantly improving, so there are many new market problems. The criminal behavior in China also shows a variety of different forms and ways. Criminals make use of some enterprises or individuals to force funds. We should pay attention to the psychology of demand and the management defects of financial institutions, cash out the credit funds from financial institutions in various forms, and transfer the loan with high interest to obtain high illegal interests. The crime of usury has been written into the criminal law, but there are still disputes on the judgment and constitution of the specific act of usury. With the deepening reform of the market economy and the deepening of the economic situation, the financial system faces many problems in the judicial practice. In the face of usury, we need to seek corresponding measures from the criminal law. The author of this article studies the crime of usury.

The article is divided into five parts: the first part combs the relevant contents of usury, clarifies the concept, characteristics, types, causes and harms of usury, and has a comprehensive understanding of usury; the second part expounds the crime related problems of usury, mainly describes the existence of the crime of usury. The theoretical analysis of the dispute, the constitution of the crime of usury and the comparison between the crime of usury and other similar crimes; The third part expounds the cognizance of several kinds of loaning behaviors in judicial practice, mainly including the cognizance of the following loaning behaviors: taking new loans to repay the old ones, first-hand loaning and first-hand loaning behaviors, cognizance of disguised loaning behaviors, and collusion behaviors with the staff of financial institutions inside and outside; the fourth part mainly describes the review of foreign legislation and the Enlightenment from foreign legislation. The fifth part is mainly about the suggestions for regulating the crime of usury, including planning market leading, strengthening government management and improving the legal system.

Keywords: financial crime; usury; usury; usury; profit making

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