

CRIMINAL DETERMINATION OF USURY IN CIVIL TRANSACTIONS IN THE SOUTHEAST PROVINCES, VIETNAM

DETERMINAÇÃO CRIMINAL DE USURA EM TRANSAÇÕES CIVIS NAS PROVÍNCIAS DO SUDESTE, VIETNÃ

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competentes. No entanto, embora as disposições da lei tenham sido complementadas nos últimos tempos e criado um corredor legal relativamente claro, com as características deste tipo de crime, é relativamente complicado. Portanto, a determinação penal da Usura nas transações cíveis ainda enfrenta algumas dificuldades e inadequações inclusive nas províncias da região Sudeste. Portanto, os autores optaram por analisar o problema da persecução penal por Usura em transações cíveis nas províncias do Sudeste no período de 2020 a 2022.

Palavras-chave: Ofensas criminais. Transações civis. Sudeste. Vietnã.

Abstract: Money laundering during civil transactions is a crime regulated relatively early in the Criminal Code. However, for a long time, this type of crime rarely appeared in reality so the regulations as well as the application of criminal law to handle this type of crime were not paid much attention. In recent years, when Usury in civil transactions has occurred a lot in reality and has become a problem for society, the handling of this crime has received more attention from the competent authorities. However, although the provisions of the law have been supplemented in recent times and created a relatively clear legal corridor, with the characteristics of this type of crime, it is relatively complicated. Therefore, criminal determination for Usury in civil transactions still faces some difficulties and inadequacies including the provinces of the Southeast region. Therefore, the authors chose to analyze the problem of criminal prosecution for Usury in civil transactions in the Southeast provinces in the period from 2020 to 2022.

Keywords: Criminal offenses. Civil transactions. Southeast. Vietnam.

Resumo: A lavagem de dinheiro em transações civis é crime regulamentado relativamente cedo no Código Penal. No entanto, durante muito tempo, este tipo de crime raramente apareceu na realidade, pelo que os regulamentos, bem como a aplicação do direito penal para lidar com este tipo de crime, não receberam muita atenção. Nos últimos anos, quando a Usura nas transações civis tem ocorrido muito na realidade e se tornado um problema para a sociedade, o tratamento desse crime tem recebido mais atenção das autoridades

1. Introduction

The Southeast which is a new land in the development history of the country with many urban centers located between the South Central provinces and the South Central Highlands, is the region with a lot of land, forest, and mineral resources. The West and Southwest regions bordering the Mekong River Delta are places with great potential for agriculture and also are the largest granary of our country; The East and Southeast regions bordering the East Sea have a lot of seafood, oil, and gas resources and are favorable for the construction of seaports creating a link in the commercial economy between regional provinces and international countries; The Northwest region bordering Cambodia has Tay Ninh border gate creating wide exchanges with Cambodia, Thailand, Laos, and Myanmar. With this position, the Southeast is an important exchange hub of the Southern provinces with the whole country and the world. The East borders the Central Highlands and the South Central Coast, the North borders Cambodia, the South borders the East Sea, and the Southwest borders the Mekong River Delta. Scope of territory: the area is 23.6 thousand square kilometers including Ho Chi Minh City, Binh Duong, Binh Phuoc, Tay Ninh, Dong Nai, Ba Ria - Vung Tau.

With such a geographical position, it has created many conditions of rapid economic development for the Southeast region. In addition to the advantages of geographical location, the crime situation in general and Usury in civil transactions in particular in the Southeast provinces have many complicated developments, sophisticated criminal tricks and methods of committing crimes are changed frequently creating a lot of difficulties for the functional forces in crime prevention and control. Currently, the crime situation for Usury in civil transactions is complicated, the nature is increasingly serious and tends to increase causing the anger in public and leaving many serious consequences for society.

2. Research methods

Within the scope of the paper, the author uses analytical and synthesis methods, statistical methods, comparative methods, and combining theory with practice. The data cited in the article is the number of cases and the number of defendants who have been tried for Usury in civil transactions that occurred in the Southeast provinces in 3 years (from 2020 to 2022).

3. Research results

Within the scope of the paper, the author analyzes the criminal elements of Usury in civil transactions according to the provisions of the Vietnam Criminal Code 2015 (amended and supplemented in 2017) and evaluates the practical application of the regulations in the determination of crime based on the practical basis in the Southeast provinces.

Criminal Signs of Usury in civil transactions

A criminal determination sign is a characteristic sign that fully reflects the dangerous nature of a crime for society, thereby distinguishing between one crime and another and considering whether the act is a crime or not. These are the four basic elements of a crime.

Objects of Usury in civil transactions

“Objects of crime are social relations protected by criminal law and infringed upon by criminals” (Hanoi Law University, 2019, p.102). This is one of the four elements that constitute a crime. Any criminal act causes damage or threatens to damage one or more social relations protected by criminal law. The dangerous nature of the crime depends mainly on the nature and importance of the social relations infringed upon by the crime. Acts of Usury in civil transactions infringe upon the State's management order in finance and banking, causing damage to the borrower's interests.

“There is an opinion that in addition to the monetary business, Usury in civil transactions also includes other business fields such as property rental (including movable and real estate) because not only lending money but also leasing and borrowing properties with a very large amount money with having exploitative nature, if it is limited to the monetary business, it will not enough to meet the situation, especially in the economy market” (Que, 2006. p.107).

However, the provision of Usury in civil transactions in the Criminal Code 2015 (amended and supplemented in 2017) only stipulates the act of lending but does not stipulate the act of “leasing”, although, in essence, the act of lending is also the act of leasing for the object of money. In addition, up to now, legal science has not determined the type of rental transaction for the object of money, there is no concept of currency rental and the rental of currency is not governed

by the Civil Code 2015 on interest rates. The object of the impact of Usury in civil transactions is the amount of money that the offender lends to others.

The objective side of Usury in civil transactions

“The objective side of the crime is the external side of the crime, including the manifestations of the crime that take place or exist outside the objective world” (Hanoi Law University, 2019, p.116). Which, signs of the objective side of the crime include: Acts and their consequences that are dangerous to society; a cause-and-effect relationship between the behavior and its consequences; external conditions of the commission of a crime such as tools, means, and methods for committing the crime, the time, circumstances, and location of the crime,... In which, objective acts are the most basic and mandatory sign. Other expressions of the objective side such as tools, means, locations, time of crime, and so on, only have meaning when there is objective behavior.

"Behavior is understood in criminal law science as "manifestations" of people outside the objective world in specific forms to achieve intended and desired purposes" (Hanoi Law University, 2019, p.118). Clause 1, Article 201 of the Criminal Code 2015 (which was modified and supplemented in 2017) specifies the goal behavior of Money laundering in civil transactions. It is the act of lending at an interest rate that is 05 times or higher than the maximum interest rate specified in the Civil Code of 2015. Lending can be communicated in a variety of ways; lenders and borrowers can be discussed through a written contract as well as an informal contract.

If a written contract exists, it is simply a handwritten document confirming the loan and is not notarized. Currently, in some cases, the lending is done more sophisticatedly when lenders take advantage of the borrower's predicament and force them to sign a contract to transfer land use rights or buy and sell properties. Therefore, when the contract expires, if the borrower can not pay the principal and interest, the lender will carry out the procedures to transfer the land use right or property and sell that property, even if there are cases, the lender uses the such contract to initiate a lawsuit in court to collect the debt or denounce the borrower at the police station.

The lending interest rate in civil transactions is now defined in Clause 1, Article 468 of the Civil Code 2015, which states: "The rate of interest for a loan shall be as agreed upon by the parties." Unless otherwise required by law, the interest rate on a loan agreed upon by the parties may not exceed 20% per year. The Standing Committee of the National Assembly shall adjust the aforesaid interest and provide a report to the National Assembly at the latest session based on real conditions and the Government's proposal. If the promised interest exceeds the maximum rate

provided in this Clause, the agreement becomes null and void." According to this provision, the State allows the parties in a civil transaction to agree with each other on the interest rate. However, this agreement must be within allowable limits. Specifically, according to current regulations, the State stipulates the maximum interest rate that the parties are allowed to negotiate, this interest rate must not exceed 20%/year (equivalent to 1.66%/month) of the loan amount. However, this highest interest rate is still binding and may change when the State has other regulations related to lending interest rates or adjusted by the National Assembly at the request of the Government. This regulation has introduced the ceiling interest rate and overcome the limitation of the basic interest rate. In addition, the regulation on the interest rate adjustment structure has created favorable conditions for the ceiling interest rate to be suitable for the fluctuations of the market. This regulation creates transparency, clarity, and accessibility to help parties in civil transactions as well as competent authorities facilitating the determination of interest rates and grounds for violations to handle acts of Usury in civil transactions. Therefore, before the proceeding agencies prosecute, they are required to inspect the State banking system of Vietnam to determine the maximum interest rate which is limited in civil transactions. According to the provisions of Article 468 of the Civil Code 2015 and Article 201 of the Criminal Code 2015 (amended and supplemented in 2017), lending transactions have interest rates from 20%/year (1.66%/month) or less if the loan amount is legitimate interest bearing transaction. In case the parties in a civil transaction have an agreement on an interest rate from 21% to less than 100 %/year, the interest rate will exceed the limited interest rate allowed by law. Therefore, this is an illegal transaction and the excess interest rate will not have a legal effect but not to the extent of criminal prosecution. In this case, the lender is responsible for returning the excess interest received from the borrower.

If the parties agree on an interest rate that is five times or greater than the greatest interest rate listed in Article 468 of the Civil Code 2015, that is, the interest rate is from 100%/year (equal to 8.33%/month) or more, and the act bears one of the three following signs: earns a unlawful profit of 30,000,000 VND or more; recommits this offense despite having received an administrative fine or having an unspent conviction for the same offense, the act exhibits signs of Usury in civil transactions, as provided for in Article 201 of the Criminal Code 2015 (which was modified and supplemented in 2017).

To begin, the lender must amass an illegal profit of at least 30,000,000 VND. "The illegal profit is the sum of interest above the highest loan interest rate specified by the Code of Civil Affairs and other illegal revenues of the borrower" (Judicial Council of the Supreme People's Court, 2021). More specifically, it is the amount of interest gained after reducing the interest

amount according to the Civil Code's interest rate of 20% each year. If the illicit profit is a non-cash asset, it will be transformed into cash when the borrowed item is transferred. If the act of usury is committed repeatedly over a long period of time with many people, the illegal profit is found to be the total amount of interest earned by the offender from all those borrowers. Furthermore, the illegal profit includes not only the interest rate that exceeds the State's regulations, but also other illegal revenues set by lenders to force borrowers to pay, such as fees transactions (monthly or daily debt collection fee...) or other fees to penalize borrowers. The exact determination for illicit profit is as follows:

In case the parties agree on an interest rate of 5 times or more of the highest interest rate specified in Article 468 of the Civil Code 2015, that is, the interest rate is from 100%/year (equivalent to 8.33%/month) or more and the act has one of the following three signs: earns an illegal profit of from 30,000,000 VND or more; recommits this offense even though he/she has taken an administrative penalty or has an unspent conviction for the same offense, then the act shows signs of Usury in civil transactions as provided for in Article 201 of the Criminal Code 2015 (amended and supplemented in 2017).

Firstly, the lender must collect an illegal profit of 30,000,000 VND or more. "The illegal profit is the amount of interest above the highest loan interest rate prescribed by the Civil Code and other illegal revenues of the borrower" (Judicial Council of the Supreme People's Court, 2021). More specifically, it is the amount of interest earned after deducting the interest amount corresponding to the interest rate of 20 %/year according to the provisions of the Civil Code. In case, if the illegal profit is an asset that is not money, it will be converted into cash at the time of transferring the borrowed property. In case the act of usury is carried out continuously, successively in terms of time with many people, the illegal profit is determined to be the total amount of interest earned by the offender of all those borrowers. In addition, the illegal profit is not only the interest rate that exceeds the State's regulations but also includes other illegal revenues which were set by lenders to force borrowers to pay, for example, fees transactions (monthly or daily debt collection fee...) or other fees to penalize borrowers. The specific determination for the illegal profit is:

If there is usury but the loan term has not expired as negotiated, the illegal profit is calculated as follows: Interest and other illegal revenues that the borrower must pay to the lender after deducting the equal interest amount matching to the Civil Code's highest interest rate for the entire loan term.

If the usury has not yet expired the agreed-upon loan term and is discovered by the authorities, the illegal profit will be calculated as follows: Interest and other illicit revenues that the borrower must pay to the lender minus the interest amount equal to the highest interest rate prescribed by the Civil Code until the relevant authorities find and prevent it.

If the borrower has paid interest and other unlawful revenues ahead of time, the illegal profit is used to calculate criminal culpability, which includes interest and other illegal revenues provided to the lender after deducting the interest corresponding to those payments. If, on the other hand, the lender intends to collect an illegal profit of 30,000,000 VND or more but, due to unintended consequences, the lender does not earn any illegal profit or earns less than 30,000,000 VND, the lender will still be prosecuted for criminal liability under the penalty frame corresponding to the total illegal profit that was aimed to achieve. This is an unsuccessful offense, and the Court will assess the punishment based on Article 15 and Clause 3 of Article 57 of the Criminal Code 2015 (as amended and supplemented in 2017).

Second, after having received an administrative penalty, recommitting this offense. "Taken an administrative penalty" is one of the prerequisites for becoming a criminal sign of Usury in civil transactions recorded in the fundamental framework established in Clause 1, Article 201 of the Criminal Code 2015 (amended and supplemented in 2017). According to the rules of the Criminal Code 1999 (amended and supplemented in 2009), even if a person is administratively sanctioned multiple times for the act of Usury in civil transactions, but there is insufficient quantification of the illicit profit, this person is not criminally liable. Many persons are willing to be administratively sanctioned multiple times for the act of Usury in civil transactions, and they continue to do so since the administrative sanctions are applied when the administrative sanctions are relatively mild. The sanction is a fine, however the fine level is extremely modest. The fine level for usury acts is only from 5,000,000 VND to 15,000,000 VND, according to the provisions at Point d, Clause 3, Article 11 of Decree No. 167/2013/ND-CP issued on November 12, 2013, providing for the sanctioning of administrative violations in the field of social security, order, and safety; prevention of social evils; fire protection and prevention; and family violence prevention and control. This Decree has been superseded by the Government's Decree No. 144/2021/ND-CP, issued on December 31, 2021, which provides for the sanctioning of administrative violations in the fields of social security, order, and safety; prevention of social evils; rescue; fire protection and prevention; and family violence prevention and control. The fine level for usury acts has not changed significantly. Point a Clause 3, Article 16 of Decree No. 144/2021/ND-CP specifically states that "abusing the organization to make usury and lending interest rates exceed the interest

rates prescribed by the Civil Code" would result in a fine ranging from 10,000,000 VND to 20,000,000 VND. This legislation does not limit the amount of illegal profit, but simply the interest rate based on Civil Code prohibitions. While the unlawful earnings from the borrowing are frequently substantial. Administrative sanctions are very low in comparison to the amount of illegal profit, hence they are insufficient for deterrence. The general invisible is that penalizing administrative infractions is ineffective in stopping and discouraging people from engaging in usury acts. If administrative punishments are used repeatedly without considering them as a premise and condition for criminal culpability prosecution, they will neither deter or cause unfairness in society.

An act is considered an "administrative penalty for the usury act", if it has been received previously administratively penalty following the provisions of the Law on Handling Administrative Violations or has been disciplined following the provisions of the Ordinance, the Charter of the People's Armed forces or has been disciplined following the provisions of the competent state agency, it means before committing the act of usury, the offender has been received administratively penalty for the act by the competent authority. If the offender has received an administrative penalty for acts that are not usury, it will not be in the case of having received an administrative penalty but still committing. However, currently, the administrative penalty for this act is only Decree No. 144/2021/ND-CP in Article 16: Violation of Regulations on Tontine. However, the penalty only applies to acts of taking advantage of the Tontine organization to lend usury, not all acts of usury in any form. Therefore, the scope of usury acts sanctioned for administrative violations has been limited in application and is not handling all usury acts. On the other hand, this is a form of loan without collateral. For the act of lending with a mortgage that is not regulated so this document cannot be applied administratively penalties.

Furthermore, in practice, the usurers will often not sign into a loan or mortgage contract, they often use the form of unsecured debt or the form of a contract for the sale of property to conceal the mortgage transaction. Then they continue to sign a loan contract (the false transaction) and promise to return the property to the borrower. When the borrower is unable to pay interest, the lender will reclaim the property. That causes lots of difficulties for criminal or administrative proceedings when the borrower fails to provide the evidence of monthly interest payments or the evidence of the property sale contract and can not prove that it is a false transaction to conceal the mortgaged property loan contract. Therefore, there is not enough evidence to prosecute.

Third, if the offender has been convicted of this felony and has not had his or her criminal record wiped but continues to commit the act. This is one of the indicators, along with the excess

interest rate, that is used to prosecute Usury offenders in civil transactions. This is the case where, prior to committing the act of Usury in civil transactions, the offender was convicted by the Court of Usury under Article 171 of the Criminal Code 1985, or Usury under Article 163 of the Criminal Code 1999 (amended and supplemented in 2009), or Usury in civil transactions under Article 201 of the Criminal Code 2015 (which was modified and complemented in 2017), but his criminal record has not been expunged as prescribed in Chapter X of the Criminal Code.

The consequences of usury behavior are tangible and intangible damages to borrowers and society. Tangible damages can be mentioned as making the borrower unable to repay the debt, from which the lender commits illegal acts (such as: Destroying the property, beating causing injury, forcing to transfer houses and lands with a price lower than the market price, and so on). Intangible damages can be mentioned as causing insecurity, social order and safety, causing fear and insecurity psychology, affecting the life and activities of the borrower's family, and confusion among the public... For Usury in civil transactions, the consequences are not a mandatory sign of the criminal composition, the amount of loaned assets which is more or less, is also not a mandatory sign of the basic criminal composition. However, the determination of consequences is meaningful in assessing the nature and level of danger of usury behavior when deciding punishment.

In addition to the behavior, consequences, and objective side of Usury in civil transactions, there are other signs such as means of committing the crime; methods, tricks, time, place, and circumstances of the crime. Forms of usury can be expressed in many different forms, lenders, and borrowers can with a handwritten contract (very rarely done in practice) or can lend money with just an oral contract or just write down the loan amount in the book and the borrower signs it. If there is a receipt, it will not record the interest rate and loan period and just only record the daily interest amount. For example: borrowing 1,000,000 VND with the interest rate is 5,000 VND (equivalent to an interest rate of 180%/year or 15%/month). In fact, in a very short time, the borrower has money without having to spend a lot of time, the procedure is very simple, one just needs to photocopy the identity card, household registration, driver's license, birth certificate, marriage certificate, student card, and so on. In addition, borrowers do not need to notarize the contract, mortgage assets, or prove their income. Although they have bad debts at financial companies, they can still borrow money. For reputable customers who pay their loans on time, these lenders will lend a much higher amount by applying the form of loans in the form of installments with high-interest rates in the next loan times. These are necessary, easy incentives for those who need money for doing business or maturing a loan, or for personal consumption in life.

Loan packages are often divided into small groups to reduce interest and avoid criminal prosecution. On the other hand, lenders usually collect interest first or convert the interest into principal. Thus, if the incident is discovered, it is not possible to conclude that the lenders collect illegal profits (For example, lending 10 million, but only giving 08 million, the remaining 02 million is the interest that the lenders keep. In the next month, the borrower still has to pay the full 10 million). Lending is also often done through false transactions. In which, lenders draft and sign contracts and loan transactions with fake content to hide illegal interest rates and create easy conditions to control borrowers to collect debt and at the same time legally binding so that when the borrower (debtor) fails to pay, the lender (creditor) can sue in court. In many cases, the creditor also proposes to the legal authorities to handle the debtor with criminal law. For example, using a disguised trick in the form of a borrower selling property to a lender then renting it back to circumvent regulations on lending with collateral; establishing the “fake contracts”, in which the lenders act as the giver of money to the borrower for reasons such as applying for a job, exporting labor,... to force the borrower into Obtaining property by fraud if the debt cannot be paid. The current usury method is very sophisticated and complicated. Lenders are often operated publicly under the guise of legally licensed businesses such as pawnshops, investment consulting firms, and financial services with the advertising tactics of “connecting customers – banks” to support loans, and property rentals through the printing of advertising leaflets lending money and then hanging, pasting and dropping on the roads; using social networks or creating software applications on phones for advertising and lending money; creating applications running on mobile phones to lend money online such as “Vaytocado”, “Moreloan”, “VD online”,... Lenders often do not show specific interest rates on contracts. When borrowers fail to pay debts as agreed, lenders do not give up any tricks to be able to claim loans. Currently, the usury behaviors not only focus on big cities where the economy is developing but also have crept into every corner from urban to rural, and are present in all provinces and cities across the country. The trick used by the offender is often to take advantage of the borrower's unexpected difficult circumstances such as the damages caused by natural disasters, illness, or other difficulties that urgently need an amount of money to cover so that the lender has forcing borrowers to bear very high-interest rates which is higher than the interest rates set by the State many times. However, tools, means, circumstances, and conditions for committing crimes are not mandatory elements of the crime of Usury in civil transactions.

The subject of Usury in civil transactions

"The subject of a crime is a person who has criminal capacity, including cognitive capacity, the ability to control behavior as required by society, and has reached the age of legal responsibility

when committing a crime" (Hanoi Law University, 2019, p.142). The subject of a crime in Vietnamese criminal law is a person or corporate legal entity who has committed a specific offense specified by the criminal law as a crime. Usury in civil transactions, on the other hand, is not one of the offences listed in Article 76 of the Criminal Code 2015 (as revised and expanded in 2017). As a result, the corporate legal body is not subject to criminal culpability for money laundering during civil transactions, whereas only people are. Because usury in civil transactions is a less serious crime, people between the ages of 14 and 16 are not criminally liable for it in any event. Thus, in civil transactions, the subject of Usury is a person who has the criminal ability and is at least 16 years old.

The subjective side of money laundering during civil transactions

"The subjective side of the crime is the internal psychological feature of the criminal behavior that infringes upon the object protected by the criminal law, it means the psychological attitude of the subject is expressed as follows: an intentional or unintentional form of acts dangerous to a society committed by themselves with the consequences of such acts" (Cam, 2005, p.367)

The subjective side of crime includes many different contents, in which, the mandatory sign is that the person who commits a socially dangerous act must be at fault and the two optional signs are the crime motive and the criminal purpose. The subjective side of money laundering during civil transactions is the internal happenings that reflect the lender's psychological state towards the usury act and the consequences caused by that behavior. Money laundering during civil transactions are committed with intentional direct faults. The offender is aware that the usury act is dangerous to society, and foresees the consequences caused by that act, but still wants to perform the act. The motive, and the purpose of committing the crime is not a mandatory sign of this criminal composition, but most offenders commit crimes because of the self-seeking purposes.

Current status of criminal determination for Usury in civil transactions in the

Southeast provinces

In recent years, the crime of Usury in civil transactions occurring in the whole country in general and in the Southeast provinces, in particular, has not occurred much compared to some other types of crimes. Even before 2014, there was no case of this crime being handled. However, from 2015 to now, especially from 2020 to 2022, the number of cases of Usury in civil transactions detected and handled in the whole country in general and the Southeast provinces in particular is

relatively large and increased dramatically when compared to the previous period. Usury in civil transactions or often called “black credit” has become a social problem, posing a big problem for both the proceedings agencies and the whole society. According to statistics, in the last 3 years, from 2020 to 2022, there are a total of 174 cases in the Southeastern provinces with 300 defendants being tried for Usury in civil transactions. Specific data is shown in the following table:

| Year | The number of cases of Usury in civil transactions | The number of defendants tried for Usury in civil transactions |
|-------------|---|---|
| 2020 | 64 | 115 |
| 2021 | 53 | 86 |
| 2022 | 57 | 99 |

Data source: People's Procuracy of the Southeast Provinces

With the number of cases that have been resolved in the past 3 years, criminal determination for Usury in civil transactions in the Southeast provinces has been conducted with relative accuracy. Through trial practice, most of the proceedings officers clearly understand the content, nature, and common forms as well as regulations on Usury in civil transactions. It is the unity of perception that has helped the prosecution agencies' position on the criminal determination with Usury in civil transactions to be relatively consistent. The conflict of opinion about criminal determination between the proceeding agencies and proceeding officers does not occur too often. Most of the cases were correctly determined, and the prosecution officers applied the Usury in civil transactions rules correctly. In the past 3 years, in the provinces of the Southeast region, no case of Usury in civil transactions has been protested for wrongful conviction. This stems from many causes, including the correct perception of the proceeding officer; regulations on this crime have their characteristics, there is no crime with similar elements, so it is less likely to be confused with another crime when determining a crime;... For this crime, there are only two penalty frames with relatively clear separate signs, so the framing is also relatively accurate when examining the criminal liability of this offender. The conclusion about Usury in civil transactions is based on relatively close and complete grounds. Therefore, the judgment of the proceeding agencies in general and the proceeding agencies in the Southeast provinces in particular for Usury in civil transactions in recent years has been mostly conducted with caution. When there are clear signs,

they will be applied and ensure an accurate assessment of the objective circumstances of the case, warranted criminal prosecution of the right person, and the right crime with the right law.

However, the actual number of usury acts is estimated to be more than the number of cases that have been prosecuted. This stems from the caution of the proceeding agencies when handling this type of case as well as the complexity of detecting and proving criminal acts. Normally, reports and denunciations about usury behavior are relatively numerous but clarifying and proving the offense is very difficult. The proceeding agency can only prosecute when it has clarified and proven exactly the criminal acts. The prudence coupled with the difficulty in handling the crime has led to some cases of crime omission or prosecution but not being able to go to trial. The difficulties and obstacles in determining the crime of Usury in civil transactions in the Southeast provinces in recent years are expressed in some specific forms as follows:

Firstly, the difficulty in determining the offense to handle. To prosecute the criminal liability to determine crime with criminal acts, the proceeding agency must detect criminal acts. However, detecting this behavior in practice is not easy. Many difficulties and obstacles are characteristic of this type of crime. Lending activities are civil transactions so detecting usury offenses is very difficult. Until the incident is discovered, the borrower is menaced, arrested, beaten, mentally terrorized, and threatened with life and health, it is reported to the competent authority, and on that basis, the violation can be handled. Besides, this is a civil transaction, the two parties agree with each other before making the loan so the borrowers sometimes are not aware that the lenders are breaking the law or they may know but still think that they volunteer, no one forces them and the lenders just help them in the difficult times. In some cases, when borrowers use the money for illegal purposes such as gambling, buying and selling banned goods, and so on, there is almost no denunciation. On the other hand, because the lenders are often criminal subjects, borrowers often have fear of retaliation, affecting the health and life of their loved ones so they do not dare to denounce or provide relevant evidence. Therefore, it is very difficult to take testimonies of witnesses or people who have related interests and obligations. Most of the victims still quietly paid their debts and arranged themselves together, so the competent authorities could not handle them. Normally, at the time when the amount of interest is getting bigger and bigger, the debt is so large that the borrower is unable to repay the loan and is mentally terrorized by the lenders, the borrowers just denounce it. However, there are many cases where borrowers report but cannot provide documents to prove loan transactions. Lenders often reside in other localities, they deal with helpers mainly through mobile phones, social networking accounts, or underground activities

and use fake names, and fake sims so it is very difficult to clarify. The loan usually does not record the interest rate, the interest payment is not signed and after the payment is complete, the lender often cancels the loan certificate so it is difficult for the investigation agency to fight and collect evidence. In the case that lenders take advantage of the Internet to lend online and provide unsecured loans, the collection and evaluation of electronic evidence during the investigation process face many difficulties and there is not enough evidence to determine a crime. On the other hand, the fact that this criminal act is often carried out over a long period of time, in many different locations, and is often carried out under legal covers so the collection of evidence to prove the crime is quite difficult, especially when the quantity to be able to handle is relatively large (the illegal profit must be from 30 million VND or more). Many cases have to be investigated in many different locations to be quantitative enough to handle so the investigation and handling of this crime is not easy. For example the following case:

Mr. M and Mrs. N (M's wife) borrowed from T an amount of 100 million VND with an interest rate of 10,000 VND/1,000,000 VND/1 day and agreed to pay interest once every 20 days. When borrowing, T only gave to Mr. M and Mrs. N 80 million, and for the remaining 20 million, T deducted the interest of the first 20 days. When the first loan expires, T asked Mr. M and Mrs. N to pay the interest of 20 million VND for the next 20 days, but Mr. M and Mrs. N could only pay 8 million VND of the interest. When the loan expired, T did not see that Mr. M and Mrs. N came to pay the full 20 days of interest as agreed, so T asked T to take H and C to Mr. M's house to collect the interest but Mr. M did not have the money to pay. T called H to inquire about the situation and H said Mr. M and Mrs. N had no money to pay and in Mr. M's house, there was a motorbike of his son-in-law. T asked H and his accomplices to bring the motorbike back at all costs. H instructed his accomplices to bring back motorbikes worth 28 million VND. The subjects were prosecuted, investigated, prosecuted, and tried for the crime of Extortion.

Although during the investigation, it was determined that in addition to the above crime, T and his accomplices also lent money to many people in the area with high-interest rates to collect the illegal profit. However, because the loan documents did not specify the interest rate and the amount of interest, many documents were closed and canceled. Many borrowers so far were not present in the locality, so the Investigation Agency could not summon to get testimonies. Therefore, there were not enough grounds to determine how many borrowers T and his accomplices had lent, the specific amount of the loan, the interest rate, and how much the specific illegal profit was collected. On the other hand, the investigation period had expired and the

separation of T and their accomplices' behavior of lending money did not affect the handling of Extortion so the investigating agency had separated T's behavior of lending money with high-interest rates and his accomplices to Mr. M and Mrs. N and some people in the area and continued to seize documents and objects related to this behavior for further investigation, verification, clarification, and later handling.

Besides, the line between the borrowed civil relationship and the usury offense is very thin, a long time ago, we mistook it as a civil transaction agreed upon by the parties themselves. Until the parties have a dispute over the interest rate, the Court will settle it. There are many cases that, if not thoroughly investigated, will lead to the criminalization of civil relations. Therefore, the proceeding agencies are also quite cautious and “afraid” to handle this type of case.

Secondly, the difficulty in identifying the accomplice's role. When conducting proceedings for this type of case, it is difficult to determine the role of an accomplice to the person hiding behind to give money. For example, in case A gives money to B so that B lends money to other objects with high-interest rates, the interest is divided by a percentage depending on the agreement between A and B. When the usury behavior is discovered, B's behavior will usually be easier to prove. Because, B directly deals with the borrower and so normally, there will be paperwork and testimony from many people about the loan. However, for A's behavior, it is very difficult to find evidence to prove because B's testimony about reaching an agreement with A is not acknowledged by A, and there are no books or documents to prove it. Therefore, the proceeding agencies only know about A's conduct when B confesses, and if known, it is also very difficult to prosecute criminal liability against A because there is no evidence and it is not possible to use only B's testimony to prosecute the criminal liability against A.

In addition, in the process of conducting proceedings for this type of case, there are limitations and mistakes when not fully determining the roles of the subjects participating in the case. For example the following case:

H specialized in performing usury for people in District B. C was hired by H to help H collect money from borrowers every day. N was hired by H to drive H to meet the borrower, called to remind the borrower to repay the loan, and threatened the borrower if necessary. However, the Trial Panel considers that the role of C and N in the case were limited because they were only hired to do some things as agreed and did not satisfy the regulations on accomplices so it was not necessary to handle the crime. Therefore, only H has prosecuted the criminal liability for Usury in civil transactions. In the author's opinion, even though they were hired, N and C knew

that the performance of their behavior was helping H to perform the act of usury and they willingly performed this act of helping along with H to implement usury behavior. On the other hand, the behavior of N and C had an important meaning in debt recovery and helped H to gain illegal profits. In other words, N and C were accomplices in the chain of criminal acts of defendant H and limited H's actions to collect the debt to avoid detection by competent authorities. In other words, H, N, and C were accomplices in this case. Therefore, N and C must prosecute the criminal liability to avoid crime omission and ensure the strictness of the law.

4. Conclusion

Usury in civil transactions is a type of crime that has been regulated since early in the Vietnam Criminal Code but the application of this law to deal with criminal acts is not much in practice due to many reasons. The Southeast region has a relatively high number of cases of Usury in civil transactions compared to other localities across the country, the prosecution of criminal liability in general and the determination of crimes in particular for this type of crime in the Southeast provinces are facing some difficulties and problems that need attention and overcoming. Especially in the current conditions, when this type of crime is appearing more and more and becoming a problem in society leading to the appearance of many other crimes and affecting the security and social order as well as the citizen life.

References

- Cam, L.V. (2005). *Basic issues in criminal law science in general, (Graduate monograph)*. Hanoi: Hanoi National University Publishing House.
- Congress. (1999). *Penal Code 1999*. Hanoi.
- Congress. (2017). *Criminal Code 2015 (amended and supplemented in 2017)*. Hanoi.
- Doan, L.D., & Oanh, C.T. (2017). *Scientific commentary of the Criminal Code 2015 (amended and supplemented in 2017)*. Hanoi: Labor.
- Hanoi Law University. (2018). *Textbook of Vietnamese Criminal Law – Crimes Section, Vol1*. Hanoi: People's Public Security.
- Hanoi Law University. (2019). *Textbook of Vietnamese criminal law- general part*. Hanoi: People's Public Security.
- Hanoi Law University. (2019). *General Course of Vietnamese Criminal Law*. Hanoi: People's Public Security Publishing House, Hanoi.
- Ho Chi Minh City Law University. (2019). *Textbook of Vietnamese Criminal Law - General part (first edition, with amendments and supplements)*. Hanoi: Hong Duc – Vietnam Lawyers Association.
- Judicial Council of the Supreme People's Court. (2021). *Clause 2 Article 2 Resolution No. 01/2021/NQ-HDTP of the Judicial Council of the Supreme People's Court dated December 20, 2021 guiding the application of Article 201 of the Criminal Code and the adjudication of criminal cases on crime of Usury in civil transactions*. Hanoi.
- Que, D.V. (2006). *Scientific commentary on the Criminal Code (section of crimes) – Crimes of infringing upon economic management order, vol. 6*. Ho Chi Minh City: Ho Chi Minh City Publishing House.
- Thanh, L.Q. (2020). *Scientific commentary on the 2015 Penal Code, as amended and supplemented in 2017*. Hanoi: Labor.
- Vinh, V.K. (2020). *Legal policy*. Hanoi: Social Science Publishing House.