

# Study on the Limiting Path of The Offence of Aiding Criminal Activities in The Information Network

Yanan Xu

Major in Criminal Law, People's Public Security University of China, Beijing, China

## Abstract

The full name of the offence of helping to send a message is the offence of assisting criminal activities in the information network. From the viewpoint of legislative purpose, the State introduced the offence of helping to send a message mainly for the purpose of achieving the root causes of various types of information network crimes. However, from the perspective of judicial practice, in recent years, there has been a clear tendency to expand the application of this offence, which has seriously violated the principle of modesty in criminal law and seriously affected the people's sense of fairness and justice, thus necessitating a substantial limitation of the offence of helping the mail. To address this problem, this paper through the text analysis and jurisprudence combing found that the crime of helping the letter of the judicial expansion of the trend, mainly because the current judicial interpretation of the crime involved in the "knowledge", "help" and "seriousness" three key concepts are not clear enough. Serious" three key concepts are not clear enough, for these three aspects of the specific problems, this paper puts forward the corresponding recommendations for improvement, with a view to accurately and effectively play the role of the offence of helping the people to protect the legitimate rights and interests of the people and promote the smooth and healthy development of the economy. Provide certain reference and reference.

## Keywords

Offence of helping a letter, Knowledge, Helping behaviour, Aggravated circumstances.

## 1. Introduction

The article first introduces the legislative background of the offence of helping information network criminal activities. Prior to the introduction of this offence, for the helpers of information network crimes, China's judicial practice has always been to deal with them as accomplices in a joint crime, but the development of communication technology and the popularity of the Internet have led to a high incidence of information network crimes, which have been repeatedly prohibited by the state, and the fundamental reason lies in the fact that the various helpers behind the information network crimes have not been effectively regulated, and in order to better protect the benefits of the law, this offence was added after the ninth revision of China's Criminal Law in August 2015, which is now under review. In order to better protect the interests of the law, this offence was added after the ninth revision of China's criminal law in August. Starting from the expansion of the offence of helping information network criminal activities in judicial practice. Through the analysis of specific cases in judicial practice, it is learnt that the reason for the continuous expansion of the crime of aiding information network activities is the judicial expansion of "knowing", "helping" and "seriousness of circumstances". "Therefore, in order to substantially limit the offence of helping others, it is necessary to start from these three aspects. This paper puts forward the following specific countermeasures, the first is to the offence of "subjective knowledge" to carry on the substantive limitations, to remove the bottom clause, to carry on the complete enumeration. The second is to the crime of "help behaviour" for substantive limitations, the party whether to

implement the act of helping, to whom to implement the act of helping is the objective basis for judging the crime of helping the letter of the establishment or not. Lastly, the "aggravating circumstances" of the offence should be substantially reduced, and mechanical provisions should be optimised by removing the underlining and uncertainty clauses in the criminal law provisions.

## 2. Presentation of the Issue

The full name of the crime of helping the letter is the crime of helping information network criminal activities, which is a new offence added in August 2015 after the ninth revision of China's criminal law.

From the legislative background, before the introduction of this crime, for helping offenders, China's judicial practice has been in accordance with the common crime in the accessory to deal with, but the development of communication technology and the popularity of the Internet has led to a high incidence of information network crime, the state repeatedly prohibited, the fundamental reason is that the information network crime behind the various helping activities have not been effectively regulated, in order to the information network crime In order to "break the chain" of information network crimes, the State eventually added this offence to the Criminal Law. However, because the crime of helping the letter involves too wide a range, and the crime is also relatively hidden, in judicial practice, only relying on the judicial organs themselves, it is difficult to carry out investigations and obtain evidence, so that after the introduction of the crime for a long time, there is no "place for use".

However, after the introduction of the Anti-Fraud Law of the People's Republic of China in 2020, the state, in order to protect the legitimate rights and interests of the general public, has elevated the fight against telecommunication network fraud crimes to an unprecedented height, due to the fact that telecommunication network fraud is mainly the use of false identities of bank cards and mobile phone cards to carry out fraud, in order to clear the source of the root cause, since October 2020, the Ministry of Public Security has jointly carried out the "card-breaking action" in the strength of space, focusing on combating the black and grey industry chain of providing bank cards and mobile phone cards for telecommunication network fraud, which has led to a spurt in the crime of helping letters. Since October 2020, the Ministry of Public Security, in conjunction with other telecommunications, financial and other relevant departments, has united to carry out the "card-breaking action", which focuses on cracking down on the black and grey industry chain that provides bank cards and mobile phone cards for telecommunication network fraud, leading to the crime of helping the letter to show a blowout trend.

The work report of the Supreme Prosecutor's Office shows that for the whole year of 2022, as many as 130,000 people were prosecuted for the crime of "helping the letter", compared with 137 people in 2018, an increase of nearly 1,000 times. It has also made the crime of "help letter" the third highest crime rate among all crimes and the first major crime in the telecommunication network fraud series, almost every link in the criminal chain of telecommunication network fraud, such as information acquisition, promotion and attraction, technical support, place provision, payment and settlement. According to the statistics of the Supreme Prosecutor 2022, most of the defendants in the crime of helping the letter are young people, of which the proportion of defendants between 18 and 28 years of age reaches 55.09%, and from the point of view of social characteristics, most of the defendants are low-income groups, and the proportion of those who do not have a fixed occupation is 52.4%. Moreover, nearly 90 per cent were first-time offenders with no prior criminal record, and, judging from sample surveys conducted by a number of research institutions, a large proportion of them were college students who had not yet graduated.

Since 2020, the state has been strongly implementing the criminal justice policy of fewer arrests, more cautious prosecutions, and more cautious detentions, and there has been a substantial decline in the number of people arrested, demolished, sentenced, and remanded in custody for all types of crimes, but against this backdrop, the crime of helping the letter is still experiencing a spurt of growth, this is on the one hand because the status quo of this type of case is just like this, before the state did not have a comprehensive governance, due to the fact that the investigation and collection of evidence was more difficult, these cases were therefore all hidden in the "Underwater", but with the anti-fraud comprehensive governance continues to promote, the judicial authorities have been able to mobile phone cards, bank cards flow of in-depth tracking, which greatly reduces the case of investigation and evidence collection difficulties, which in turn led to the proliferation of such cases.

On the other hand, however, the proliferation of the offence of helping people with credit is also attributable to the phenomenon of an expanded interpretation of the offence in judicial practice, which has led to the gradual emergence of a trend towards "pocket crimes". Many parties who should not have been subject to criminal sanctions were eventually prosecuted and sentenced, seriously violating the principle of modesty of the criminal law and seriously affecting the people's sense of fairness and justice, making it necessary to substantively limit the offence of helping others.

### **3. Reasons for the Broadening of The Application of The Offence of Helping A Letter**

According to the provisions of China's current criminal law, three conditions are necessary to constitute the offence of aiding and abetting: firstly, the person concerned must "know" that another person is using the information network to commit a crime; secondly, the person concerned must have provided "assistance" to such a criminal act; and lastly. The helping behaviour must be of an aggravating nature. All three must be present for the offence to be established (Article 287 bis of the Criminal Law stipulates that the offence of assisting criminal activities in the information network refers to the provision of technical support, such as Internet access, server hosting, network storage, communication transmission, etc., or assistance, such as advertisement and promotion, payment and settlement, etc., for the commission of a crime by another person, knowing that he or she is using the information network to commit the crime; if the circumstances are serious, he or she shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and shall be sentenced to a fine in addition to or in addition to a single fine). However, the existing laws, regulations and judicial interpretations are not clear enough on all three, which leads to the fact that in judicial practice, the grass-roots case handlers only make judgement based on their personal subjective experience, while the state's attitude of strict investigation and punishment of information network crimes seriously affects the subjective judgement of the grass-roots case handlers. These are discussed below.

#### **3.1. Judicial expansion of "knowledge"**

Not only the offence of aiding and abetting a letter, but also all intentional offences in criminal law presuppose knowledge. However, the connotation and extension of knowledge is not clearly defined in the Criminal Law. From the general semantic point of view, "knowingly" should be clear and clearly know, but because knowingly is a kind of subjective consciousness, in reality it is very difficult to judge, so in judicial practice generally use presumption of knowledge, that is, through a variety of objective elements to presume that the parties in the normal cognition should know the nature of the act. Although there are many scholars do not agree with this, recognising that the interpretation of knowledge as presumption of knowledge belongs to the judicial expansion, contrary to the judicial principle of the law of criminal justice.

However, this article believes that, from the operability and feasibility, will know that the presumption of knowledge is the most pragmatic and the most efficiency and fairness of the practice. However, the problem is that the boundaries of the presumption of knowledge should be strictly limited.

With regard to the offence of facilitating trust, the current judicial interpretation cumulatively lists seven circumstances as the basis for determining that the perpetrator knew that another person was using the information network to commit an offence. Such circumstances are, respectively, the implementation of the relevant acts after being informed by the supervisory authorities; failure to perform the statutory management duties after receiving a report; obvious abnormality in the transaction price or method; provision of programmes, tools or other technical support or assistance specifically for the commission of crimes; frequent use of measures such as hidden Internet access, encrypted communications, destruction of data, etc. or the use of false identities in order to evade supervision or circumvent investigation; provision of technical support or assistance for others to evade supervision or circumvent investigation; and other circumstances that are sufficient to determine that the perpetrator is guilty of Providing technical support or assistance for others to evade supervision or investigation; and other circumstances that are sufficient to establish that the perpetrator knew it (See article 11 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law to the Handling of Criminal Cases of Illegal Use of Information Networks and Aiding Criminal Activities in Information Networks (hereinafter referred to as the Judicial Interpretation of the Offence of Helping to Commit a Crime)).

Of these seven provisions, the first six are clear provisions, but with the exception of articles 1 and 2, which are relatively clear and unambiguous, and are also more operational in practice, the remaining four provisions are relatively vague, leaving room for arbitrary interpretation by caseworkers in judicial practice.

For example, in the "Wu Mouming help letter case" (See Yantai Intermediate People's Court of Shandong Province Criminal Ruling (2022) Lu 06 Criminal Final No. 182), the defendant Wu Mouming's WeChat friend "old friend" borrowed a bank card from him, Wu Mouming claimed that he did not have one, so he intermediated and led Zheng Moumou and Mei Moumou to a hotel in Shantou City, Guangdong Province, and handed their bank cards to "old friend" and received a benefit fee of 0.14 million yuan. The "old friend", and get 0.14 million yuan in favour. Later the duo's bank cards flowed into the Philippines and were used for telecoms fraud. However, the court heard that Wu Mouming led Zheng Mou and Mei Mou to Shantou City to deal with the behaviour of face-to-face transactions, which is an unusual way of transaction, according to which it can be presumed that Wu Mou was aware that these bank cards were to be sent to the Philippines for telecommunications fraud. However, from a realistic point of view, the perpetrator could at most know that his bank cards had reached Guangdong, and it is typical of a strong man to think that he could have foreseen that the bank cards would eventually flow into the Philippines.

In addition, the last of the seven provisions is an underpinning clause, which leaves a gap for the unlimited expansion of the scope of interpretation of "knowingly" in practice. For example, in the "Li Moumou help letter case" (See Criminal Ruling of Sanmenxia Intermediate People's Court of Henan Province (2020) Yu 12 Criminal Final 224), Li Moumou in the Internet, by chance to see someone high pay to hire "legal representative", a moment of mind, took the initiative to contact the other party, and expressed the "should be hired!" Willingness, after the other party's guidance for the company registration procedures and opened a public account, the account was used as a telecommunications fraud. In this process, Li Moumou's behaviour did not involve any of the first six articles, but the court found that, based on his level of awareness, cognitive ability, manner of behaviour and confession, Li Moumou's behaviour

belonged to the "other circumstances sufficient to establish that the perpetrator was aware of the situation".

There are many similar precedents in judicial trials, and the common feature of these precedents is that they have neglected to make a strict judgement on the "knowledge" of the person in question, which has resulted in many people who did not have the intention to commit a crime being subjected to penalties.

### 3.2. Judicial expansion of the act of assistance

It is clear from the textual analysis that the second necessary condition for the offence of helping a trustee is that the person concerned must have provided "help" in the commission of the offence, but there is no clear provision in the Penal Code as to what constitutes help. The judicial interpretation of the crime of helping the letter also did not explain this. However, Article 25 of the Law of the People's Republic of China on Counteracting Telecommunications Network Fraud (hereinafter referred to as the Law on Counteracting Telecommunications Network Fraud) lists seven situations in which the offence of assisting in telecommunication network fraud is committed. (See Article 25 of the Anti-Telecommunications Network Fraud Law: No unit or individual shall provide the following support or assistance to others in the implementation of telecommunication network fraudulent activities: (a) selling or providing personal information; (b) helping others to launder money through virtual currency transactions and other means; and (c) other acts of providing support or assistance to telecommunication network fraudulent activities. Telecommunications business operators, Internet service providers shall, in accordance with the relevant provisions of the state, to perform reasonable attention to the obligation to the use of the following businesses to engage in fraud-related support, to help monitor the identification and disposal of activities: (a) to provide Internet access, server hosting, network storage, communications transmission, line rental, domain name resolution, and other network resource services; (b) to provide information distribution or search, advertising, attraction Promotion and other network promotion services; (c) provide applications, websites and other network technology, product production, maintenance services; (d) provide payment and settlement services).

Since the current offence of helping the letter mainly involves the field of telecommunication fraud, and even for other cybercrimes, the help that the helper can provide is no more than that, so in judicial practice, the provisions of this article are generally used to judge the help of the parties concerned, and this article also has a bottoming-out clause, which likewise leaves room for expansionary interpretation and contributes to the expansion of the offence of helping the letter, while the other six articles are more professional and are actually difficult to be defined by a non-professional. The other six articles are more specialised and difficult to define for non-professionals. For example, in the "Sun Moumou help withdraw money case" (See Criminal Judgement of the People's Court of Neixiang County, Henan Province (2020) No. 405 of the Criminal Judgement of Yu 1325), Sun Moumou will bank card lent to Ke Mou, Ke Mou to the card "transfer" 130,000 yuan of cash, and then, Sun Moumou in Ke Mou, at his request, to help him take out all the cash in the card, and after the incident, Ke Mou to Sun Moumou appreciation fee of 10,000 yuan. The fee of 10,000 yuan. Sun Moumou's behaviour, the judicial authorities eventually found to be to help the act of "payment and settlement". But in finance, withdrawal and payment and settlement have the essential difference, therefore, will sun moumou's behaviour for payment and settlement, in fact, is the payment and settlement of the misinterpretation is also to help the over-interpretation of the act.

On the other hand, in addition to articles 1 and 2, the remaining four items of the provision are all neutral acts, that is to say, there is no right or wrong in themselves, and the criterion for judging right or wrong should be the object being helped. From the criminal law article 287 bis provisions of the text of the expression, help the letter of the crime should be the use of the



information network specific implementation of the crime, but in judicial practice, the party as long as the information network crime involved in the case of the person has to help, regardless of the person in the information network of the crime in the status of how the level, whether the specific implementation of the implementation of the network network network of crime, the basic level of the court will generally be found to be The helping behaviour of the party concerned is established.

For example, in the "Wu Moumou help unfreeze card case" (See Hunan Province Liuyang City People's Court Criminal Judgement (2022) Xiang 0181 Criminal 641), Wu Moumou lent his own bank card to his brother to use, but did not expect his brother to sell the card to the telecommunications fraudsters. From the logical chain of view, Wu Moumou help is not the implementation of telecommunications fraud, and his brother in the fraud case is at best the status of telecommunications fraud helpers, under normal circumstances, his brother to help letter crime can be pursued, but unfortunately Wu Moumou the same did not get rid of the criminal penalties.

### 3.3. Judicial expansion of aggravating circumstances

It can be seen from the textual analysis that the third necessary condition for the offence of aiding and abetting is that the act of aiding and abetting must reach the level of aggravating circumstances, which is also the prerequisite for the establishment of all offences, otherwise the act of the person concerned can only be a violation of the law at the most. However, the Criminal Law also has no clear provisions on what constitutes aggravating circumstances. However, article 12 of the Judicial Interpretation of the Criminal Offence of Letter-Forming sets out seven criteria for determining the seriousness of the circumstances. (See Article 12 of the Judicial Interpretation of the Crime of Helping to Commit a Crime: If a person knows that another person is using the information network to commit a crime and provides assistance to that person in committing the crime, and if one of the following circumstances exists, the crime shall be deemed to have been committed with "aggravating circumstances" as stipulated in the first paragraph of Article 287 bis of the Penal Code: (1) if the person provided assistance to more than three targets; (2) if the amount of payment settlement is (ii) the amount of payment settlement is more than RMB 200,000; (iii) the amount of funds provided by way of placing advertisements is more than RMB 50,000; (iv) the illegal income is more than RMB 10,000; (v) the person has been subjected to an administrative penalty within two years for illegally using the information network, assisting in the criminal activities of the information network or endangering the security of the computer information system, and then assisting in the criminal activities of the information network; (vi) the crime committed by the object being assisted has resulted in serious consequences; and (vii) the situation is serious in other circumstances. (vii) other serious cases).

This provision not only also sets up a "other aggravating circumstances" as an underlining clause, but also adds an uncontrollable clause "if the offence committed by the person being assisted causes serious consequences", further providing room for an expanded interpretation of the term "aggravating circumstances". The "aggravating circumstances" further provides room for an expanded interpretation of "serious circumstances". Possibly realising that the provision of "other aggravating circumstances" is too vague, Article 9 of the Opinions on the Law Applicable to Handling Telecommunications Network Fraud issued in 2020 added two additional types, namely, "acquiring, selling or leasing" financial accounts of more than five (5) or more, or "leasing" financial accounts of more than five (5) or more, or "leasing" financial accounts of more than five (5) or more. accounts of more than five (5) or communication accounts of more than 20. In Article 4 of the Minutes of the Meeting on Issues Related to the Application of Laws in the "Card Breaking" Operation introduced in 2022, it is further stipulated that "the credit card leased or sold is used to commit telecommunication network fraud to the

extent of a criminal offence, and the amount of water flowing in the credit card exceeds three hundred thousand yuan " is dealt with in accordance with the seriousness of the circumstances. However, these two provisions are only an enumeration of other serious circumstances, rather than a clarification and limitation, and in addition to these two circumstances, it is also possible to use this article as a basis for an expansive interpretation of other behaviours, which leads to an extremely low threshold for the offence of helping to commit the crime of trust.

For example, in the "Liu Mou, Wang Mou help letter case" (See Criminal Judgement of the People's Court of Haizhou District, Lianyungang City, Jiangsu Province (2018) Su 0706 criminal 610), Liu Mou sales of the main software to open casinos, defined as help letter crime is not controversial, but Wang Mou just provide supporting software and help Liu Mou mail, does not meet the circumstances of seriousness of the standard of the first five criteria in any of the criteria, but the judicial organs still think that Wang Mou also reached the circumstances of seriousness of the standard, obviously There is injustice.

Although the first five criteria are quantitative, they are too specific and mechanical, and although the Judicial Interpretation also requires the basic-level courts to consider the subjective and objective reasons for the perpetrator to carry out the act of helping and the individual's circumstances and other factors in handling the case, the criteria are too specific, and most of the basic-level case handlers use this criterion to make mechanical judgements on cases in order to avoid unnecessary trouble and risk.

For example, in the "Liu Mou help letter case" (See Liaoning Province Fuxin Intermediate People's Court Criminal Judgement (2021) Liao 09 Criminal Final 28.), Liu Mou in the friend's request, in the name of the individual opened a bank card and the card will be handed over to the friend to use, during which did not receive any remuneration. But did not expect friends with the card has committed fraud seven, but the cumulative amount is not high, only more than 30,000 yuan. From the point of view of the circumstances, Liu's behaviour should not constitute "aggravating circumstances", but the court, based on the first article of the adjudication standard, "to provide assistance to more than three objects", still considered that Liu constituted aggravating circumstances.

#### **4. Substantive Limitation of The Offence of Favouring A Letter**

From the above analysis, it is clear that the current expansion of the offence of helping a trusted person is due to the judicial expansion of "knowledge", the judicial expansion of "assistance" and the judicial expansion of "aggravating circumstances". Therefore, in order to substantively limit the offence of criminal favouritism, it is necessary to start from these three aspects and to propose specific countermeasures.

##### **4.1. Substantive limitation of the application of subjective knowledge in the offence of helping a letter**

Whether the parties to the illegal nature of their own behaviour is to judge the most important predecessor to the establishment of the crime of helping the letter of the most important link, in practice, should strictly implement the principle of modesty of the criminal law, the substantive limitations on it. Many scholars believe that knowledge should be excluded from the presumption of knowledge, which will be limited to "clear knowledge", this paper believes that such a method in practice does not have any operability, and overkill suspicion, in the current situation, or should be in the presumption of knowledge on the basis of the presumption of knowledge of the objective elements of the presumption of knowledge to be further clarified.

With regard to article 11 of the Judicial Interpretation of the Offence of Helping the Faithful, which serves as the basis for the determination of "knowledge", the first thing to do is to remove

the underlining clause; if the judicial authorities believe that the first six articles cannot summarise all the circumstances of knowledge, they may list them again, but all the listings must be a complete listing, not a listing plus underlining clauses, so that the room for expansion of interpretation by the grass-roots courts can be completely eliminated. This will completely eliminate any room for the courts to expand their interpretations.

On the other hand, the other six articles should be further clarified. For example, in the case of article 3, where the transaction price or method is clearly abnormal, what kind of transaction price is clearly unreasonable and what kind of transaction method is clearly abnormal should be explained in detail, so as to avoid subjective speculation on the part of the grass-roots caseworkers. Another example is Article 4, which states that the provision of programmes, tools or other technical support specifically designed for use in the commission of criminal offences, what constitutes a programme or tool specifically designed for use in the commission of criminal offences should be clearly defined, and whether some general-purpose technologies, such as wall-flipping software, are specialised tools, should also be clarified.

#### **4.2. Substantive limitation of the act of assistance**

Whether or not the person concerned has committed an act of assistance and to whom the act of assistance has been committed is the objective basis for determining whether the offence of helping a person to commit an act of trust is established or not.

From the above analysis, it can be seen that in the current judicial practice, the main basis for determining whether the parties have committed the act of helping is Article 25 of the Anti-Telecommunications Network Fraud Law. There are two problems in this article, one is equipped with undercover provisions, and the second is the definition of helping behaviour is too abstract and professional, therefore, it is imperative that firstly, the undercover provisions are removed, and secondly, various helping behaviours should be interpreted in a generalised way, for example, helping others to launder money through virtual currency transactions and other ways and providing payment and settlement services for two articles, which involves financial knowledge, and the majority of the case officers are non-financial professionals, so For what is money-laundering, what is payment and settlement and do not understand; and the provision of network resources, network promotion, network technology and other services also has a strong professional, non-Internet technicians may not be able to understand, and therefore the need to introduce judicial interpretations or other documents to be more intuitive and popular interpretation.

Whether or not it constitutes the act of assistance referred to in the offence of helping to send a letter also involves the object to be helped, and it can be seen through the interpretation of the text that the object of assistance in the offence of helping to send a letter can only be the person who has specifically implemented the crime of committing an information network crime. Although the chain of information network crime is very long, the links and members involved in the concrete implementation of the crime are very limited, and the members of other links are, at best, helpers at different levels, which, if not restricted, will lead to the definition of the offence of helping behaviour being distorted from helping "the person who really commits the information network crime" to helping "the person who helps to commit the crime". "help to implement the crime of the person", and the current judicial trial precisely such a trend, and therefore should help the act of help limited to the help of the main offender, only to help the qualification of the act of help and the qualification of the object to be helped closely together, in order to truly achieve the "help" substantive limitations. Only by closely combining the qualification of the act of helping and the qualification of the object being helped can the substantive limitation of "help" be truly achieved.



### 4.3. Substantive limitation of "aggravating circumstances"

"Seriousness of the circumstances" is the main criterion for distinguishing between crimes and non-crimes. Even if the person concerned is aware that the act is illegal and has also carried out the act of assisting the perpetrator of the information network crime, if it does not constitute seriousness of the circumstances, it is, at most, an administrative offence, and the administrative penalty can be imposed by the Administrative Penalty Law, and there is no need to use the criminal law to regulate the person concerned.

As can be seen from the preceding analysis, the main criterion for determining the seriousness of the circumstances in current judicial practice is article 12 of the Judicial Interpretation of the Offence of Helping a Letter. However, there are two main problems with this article: firstly, there is an underpinning clause and an uncertainty clause, and secondly, the relevant provisions are too mechanical.

In order to change this phenomenon, the first step is to remove the underpinning provisions. From the above analysis, it can be seen that in the three aspects of knowledge, assistance and circumstances of the offence of helping the letter, the relevant judicial interpretations have all been equipped with the underpinning provisions. Touting provisions of the judicial interpretation of the power disguised as devolved to the local, is a typical lazy thinking and blame behaviour, will lead to judicial uncertainty, for the justice of the impact is great, so in the three countermeasures, this paper puts forward the must delete touting provisions of the proposal.

Secondly, uncertainty should be removed. Article 12, paragraph 6, provides that "the crime committed by the person being assisted causes serious consequences" shall be deemed to be aggravated, firstly, what is to cause serious consequences, the current laws and regulations are not clearly stipulated, depending on the direct judgement of the case handler, and secondly, it is difficult to judge what is the causal relationship between the person's helping behaviour and the serious consequences, and lastly, whether the crime committed by the person being assisted will cause serious consequences, the person concerned cannot predict. The establishment of this article will only further lead to the expansion of the interpretation, and for the above three reasons, it is recommended that this provision be deleted.

Lastly, the mechanical provisions are optimised. The first five provisions of Article 12 of the Judicial Interpretation of the offence of helping the letter of the first five provisions have adopted quantitative techniques, using the amount or number of times to measure the seriousness of the circumstances, the advantage is that it is easier to operate in judicial practice, the person's behaviour in the number or number of times to meet one of the criteria can be considered "serious circumstances", but the disadvantage is that it is easy to fall into the misunderstanding of the mechanisation, and therefore need to be The first five indicators of Article 12 of the Judicial Interpretation of the crime of helping the letter for further refinement, indicating a variety of exceptions to the cause of the offence, rather than simply provide for "one of the following acts, can be established" and simple, in this regard, some local judicial authorities have made a useful exploration. For example, the Chongqing judicial department stipulates that the parties to determine the number of times and the amount of helpers must be predicated on the predecessor offence to meet the criminal law prosecution standard (Article 13 of the Chongqing Higher People's Court's Minutes of the Conference on the Application of Laws in Handling Cases of Telecommunication Network Fraud and its Associated Crimes stipulates that the provision of assistance for the commission of a crime means that the upstream crime has reached the standard of criminal law recourse, and that it can be regarded as a crime. If the predicate offence is a telecommunication network fraud offence, it means the use of telecommunication network technical means to commit fraud, and the value of the fraudulent public or private property is more than three thousand yuan), for example, although

the parties to more than three objects to provide help, but the object of the offence are not helped to reach the statutory prosecution standard. This is a useful limitation on the constituent elements and their burden of proof, so that, within the framework of the principle of the law of criminal justice and the criminal standard of proof, the offence of telecommunication network fraud can be "hit accurately and practically", a practice that deserves to be studied and learnt from by judicial organs at all levels.

Article 13 of the Minutes of the Conference on the Application of Laws in Handling Cases of Telecommunication Network Fraud and its Associated Crimes, issued by the Chongqing Higher People's Court and other departments, stipulates that "the provision of assistance in committing a crime means that the predecessor crime meets the criminal law prosecution standard and can be considered a crime. If the predicate offence is telecommunication network fraud, it refers to the use of telecommunication network technical means to commit fraud, and the value of the fraudulent public or private property is more than 3,000 yuan".

## 5. Conclusions

The rapid development of the information network has facilitated certain criminal activities to a certain extent while promoting the development of production, the convenience of life and social progress. In order to strengthen the fight against various types of information network crimes and to safeguard the legitimate rights and interests of the people, the State has established the offence of "helping the letter", with the aim of achieving the root causes of various types of information network crimes. From the viewpoint of practical effect, since the birth of the offence, it has indeed made an important contribution to the fight against all kinds of information network crimes. However, it is undeniable that there is also a serious tendency for the offence to be applied in an expansive manner. If the judicial application of the offence of helping the letter is allowed to expand excessively, not only will it be impossible to achieve the goal of precise governance, contrary to the legislative intent, affecting the people's sense of fairness and justice in the administration of justice, but also impede the healthy development of the information industry and the Internet industry, and will have a negative impact on the scientific and technological innovation of the State and the smooth and healthy development of the economy.

To address this problem, this paper finds through textual analysis and jurisprudence combing that the crime of aiding and abetting the trust will appear the trend of judicial expansion, mainly because of the current judicial interpretation of the crime involves the "knowledge", "help" and "seriousness" three key concepts are not clear enough. The three key concepts of "knowledge", "assistance" and "aggravating circumstances" are not explained clearly enough. Based on these three problems, this paper puts forward targeted suggestions for improvement, with a view to providing certain reference and reference for the precise and effective functioning of the offence of helping others.

## References

- [1] Liu Yanhong, "Trend of Judicial Expansion and Substantial Limitation of the Offence of Helping Criminal Activities on Information Networks", in *China Law Review*, No. 3, 2023.
- [2] Sun Hang, "The volume of cases involving information network crimes is rising year by year, with fraud accounting for the highest proportion", in *People's Court Daily*, 2 August 2022, p. 1.
- [3] Zhou Youyong, "The Logic of the Rule of Law in Promoting the Modernisation of National Governance", in *Law and Business Studies*, No. 4, 2020.

- [4] Qi Wenyuan: "The Application and Reflection on the Criminal Policy of Fighting Early and Small Crimes in the Context of "Fewer Arrests, More Careful Prosecutions and More Careful Detentions" - Taking the Governance of Cybercrime as a Perspective", in Politics and Law Forum, No. 2, 2022.
- [5] Ji Yang, "Simplification of Proof of the Offence of Helping Criminal Activities on Information Networks and its Limitations", in Law Review, No. 4, 2022.
- [6] Wang Xin, "The Meaning and Determination of "Knowledge" in China's Criminal Law -- An Analysis Based on Criminal Legislation and Judicial Interpretation", in Legal System and Social Development, No. 1, 2013.
- [7] Hao Chuan and Feng Gang, "Knowing" in the crime of helping information network criminal activities should include "perhaps knowing", in Procuratorate Daily, 23 September 2020, p. 3.
- [8] Zhou Zhenjie and Zhao Chunyang, "Empirical Study on the Offence of Helping Criminal Activities on Information Networks - Taking 1081 Judgements as a Sample", in Law Application, No. 6, 2022.
- [9] Yu Haisong, Twenty Lectures on Cybercrime, Law Press 2018, p. 100.
- [10] Chen Xingliang, "Criminal Law Response to Cybercrime", in China Law Review, No. 1, 2020.
- [11] Richard Zhang, "On the Offence of Helping Information Network Criminal Activities", in Politics and Law, No. 2, 2016.
- [12] Lusheng Wang, "Endogenous Conflict between Blockchain and Personal Information Protection Legal Norms and Its Reconciliation," in Law Forum, No. 3, 2022.