

Research on the Legal Status of the People's Bank of China From the Perspective of Independence

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Abstract: The issue of the legal status and independence of central banks has been a hot and controversial topic in the three centuries of their development. The development of the legal status of the central bank has shown a tendency to be constantly integrated with the state power, while at the same time exhibiting a process of pursuing the strengthening of independence. The legal status of China's central bank, the People's Bank of China (PBC), has not been clearly defined either at the legal level or in academic circles. However, it remains to be examined and studied whether enhancing the independence of the PBC is conducive to the sustainable development of China's economy, the stability of the financial environment, and the effective implementation of monetary policy. Therefore, this paper will start from the current situation of the independence of the PBC, point out the shortcomings of the legal status of the central banks in China and put forward some feasible suggestions for the development of independence.

Keywords: Central Bank Independence; Legal Status of the People's Bank of China; Policies and Future Prospects

1. Theoretical Analysis of the Legal Status of Central Banks

1.1 Research on the Legal Status of Central Banks

1.1.1 Concept of the Legal Status of the Central Banks

The central bank is the leading financial institution in the country and an important tool for state intervention and regulation of national economic development. It is responsible for the formulation and implementation of national monetary and credit policies, has sole authority to issue currency, and exercises financial supervision. In performing its banking functions as the bank of the state and the bank of the banks, it has custody of deposits of government and public institutions as well as financial institutions as both its main liability business and its main source of funds.

The central bank is the "bank of issue", the monopoly of currency issuance, and the only currency issuing institution authorized by a country or a monetary union. The unified currency issuance and circulation is the guarantee of normal and orderly circulation and stability of currency value. When the world entered the twentieth century, the disintegration of the gold standard system, so that the circulation of national currencies are transformed into the circulation of dishonored paper money. The dishonored paper money also became the new pure sense of the national credit money. In the case of credit money circulation, countries around the world need an institution responsible for maintaining the normal and orderly circulation of national currency and stabilizing the value of the currency. Therefore, the central bank becomes a monopoly of currency issuance based on national credit with the authorization of the state, issuing money and unifying currency in accordance with the objective needs of economic development and the requirements of currency circulation and its management, and regulating the money supply to maintain the stability of the currency.

The central bank is the "government's bank", which provides services to the government and is a specialized agency of the government for the management of state finance. The central bank is responsible for the management of state revenues and expenditures, the collection, division and retention of state budget revenues, the disbursement of fiscal expenditures, and the reflection of budget execution to the fiscal authorities, all of which are carried out in accordance with the state and government budgetary requirements. In addition, the central bank also acts as an agent for the

government in issuing bonds, financing the government, participating in international financial activities on behalf of the government, coordinating and negotiating financial affairs, and actively promoting cooperation and development in the international financial field.

The legal status of a central bank refers to the powers and obligations of the central bank in the system of state institutions, as defined by the state through legislation. The legal status of a country's central bank is judged primarily in terms of its relationship with Congress, the government, and the treasury. In general, the greater the central bank's independence from government influence, the greater its ability to choose policy objectives independently, and the greater its control over policy instruments, the greater its independence from politics.

1.1.2 Development Trend of the Legal Status of Central Banks

The development of the central bank over the past three hundred years has shown that the state's control over the central bank has been increasing, while the central bank has not given up the pursuit and efforts to strengthen its independence in order to prevent excessive government intervention. The development of the legal status of central banks has shown a tendency to move closer to the path of integration with state power, while at the same time it has shown a process of increasing pursuit and strengthening of independence.

1. The Trend of Increased State Control Over the Central Bank

After the Great Depression of the 1930s, the theory of state intervention began to prevail in most countries of the world, and in the face of the trend toward nationalization, both in terms of capital structure and in terms of the nature of institutions, the early privately owned central banks could not continue to adapt to the needs of the government, and the early central banks' functions were in trouble. Capitalist countries, led by the United States and Europe, gradually implemented nationalization policies and established central banks with state ownership of capital and direct state supervision and intervention, based on the experience of the old-style central banks, financed by the government[1].

2. The Tendency of Central Banks to Pursue a Greater Degree of Independence

In the early 1970s, the "Keynesianism" of excessive state intervention in the economy was no longer adopted by various countries, the Bretton Woods system, centered on the U.S. dollar, collapsed, and a system of dishonored credit money was established. Reserve Bank of New Zealand Act 1989 laid the legal foundation for the independence of the New Zealand central bank; the Bank of France Act 1993 transformed the Bank of France from a merely monetary policy implementation bank to an institution with the power to make monetary policy decisions and greatly enhanced its independence; according to the Bank of Japan Act 1997, the Policy Committee of the Bank of Japan no longer received instructions from the government and had the authority to independently determine official interest rates and other financial regulation. With the establishment of the European Central Bank, the most independent bank in the world, this trend reached a new height, not only independent of the governments of the member states, but also not subject to the EU Council, the highest authority of the EU[2]

1.2 Study of Central Bank Independence

1.2.1 The Basic Meaning of Central Bank Independence

Defining the concept of central bank independence is actually a rather complex and opinionated issue.

Capie and Goodhart define central bank independence as "the unconditional power of a central bank to maintain or change the current monetary policy without receiving instructions from the government or consulting with the government."

For its part, the International Monetary Fund argues that "central bank independence is the absence of government intervention in the announcement of inflation rates, exchange rates, or monetary policy objectives and in determining the level of money supply and interest rates based on

its own operations, the existence of open and transparent procedures for resolving conflicts with the government, and the managerial and financial independence of the central bank. "

The New Palgrave A Dictionary of Economics also explains central bank independence accordingly: "Central bank independence refers to the freedom or autonomy of monetary policy-makers from direct political or governmental influence in the formulation and implementation of monetary policy"[3].

Therefore, the basic meaning of central bank independence can be summarized as the central bank's exercise of monetary issuance power in accordance with the law and its autonomy in the formulation and implementation of monetary policy functions.

1.2.2 Overview of the Independence of Foreign Central Banks

1. Central Banks with Greater Independence

Central banks with greater independence, such as the Federal Reserve in the United States, are directly responsible to Congress and independently formulate monetary policy and take corresponding measures. The government has no right to stop or delay the implementation of the central bank's resolutions. If the central bank is in conflict with the government, the two sides should negotiate a settlement. In terms of organizational independence, central banks are directly accountable to Congress, but they are not controlled by Congress except for legislation and reporting. In terms of financial independence, such central banks are fully financially independent, and all expenses, including salaries and office expenses of directors and other employees, are met on their own, without relying on financial allocations. In terms of functional independence, the central bank has independent monetary policy decision-making authority, and the government has no right to interfere with or supervise the central bank's monetary policy decisions.

2. Central Banks with Moderate Independence

Central banks with moderate independence are subordinate to the government treasury by law. As a result, the government can issue instructions to the central bank, supervise its business activities, and appoint and remove its senior management. In practice, this type of central bank maintains a high degree of independence. The central banks of the United Kingdom, Japan, Canada, Norway and other countries belong to this category.

The Bank of Japan Law, as amended in 1997, stipulates that the Bank of Japan is responsible for maintaining price stability, promoting the healthy development of the national economy, ensuring the smooth and balanced operation of the settlement system, and thus ensuring the stability of the financial system, and retaining part of the independence of the central bank, mainly in terms of organizational independence, the Bank of Japan is not part of the government, and is a special legal person in terms of legal status. In terms of organizational independence, the Bank of Japan is not part of the government and has a special legal status, directly accountable to the Diet. In terms of functional independence, the new law stipulates that "the Bank of Japan's autonomy to conduct monetary and financial regulation must be respected. However, in terms of financial independence, the new law stipulates that the Ministry of Finance is required to approve only those funds that do not pose an obstacle to the implementation of monetary policy; when the Bank of Japan's budget report is not approved, the Ministry of Finance must notify the Bank of Japan of the reasons for the failure; and the Bank of Japan may present its views on the budget report to the Minister of Finance and, if necessary, may publicly release such views. These three safeguards limit the Bank of Japan's independence in making decisions regarding the financial budget to a certain extent.[2] These three safeguards limit to some extent the Bank of Japan's independence in making decisions on the financial budget.

3. Central Banks with Weak Independence

Central banks with weak independence receive instructions from the government. The monetary policy formulated and measures taken are subject to government approval, and the government has the right to stop and delay the implementation of central bank resolutions. Most developing countries' central banks, such as the People's Bank of China, fall into this category. A specific analysis of the independence of such banks is presented in the next chapter.

2. Analysis of the Status Quo of the Legal Status of the People's Bank of China

2.1 History of the Legal Status of the People's Bank of China and the Legislative Process

The People's Bank of China (PBC), the central bank of China, was established on December 1, 1948, and for a long time had the dual nature of a central bank and an ordinary commercial bank, and was subordinate to the Ministry of Finance, adapting to the highly centralized planned economic system practiced in China at that time. After the reform and opening up, China carried out a series of reforms based on the experience of the legal system of foreign central banks, and promulgated the Decision on the Specialized Exercise of Central Banking Functions by the People's Bank of China in September 1983, stipulating that the People's Bank of China no longer handles financial services for enterprises and individuals, and exclusively performs central banking functions. In January 1986, the Provisional Regulations on Banking Administration of the People's Republic of China were promulgated, establishing the People's Bank of China as a state organ under the leadership of the State Council to manage the nation's financial affairs, independent of finance, economic planning and authorities, and local governments. In March 1995, the Law of the People's Republic of China on the People's Bank of China was promulgated, clarifying the legal status of the People's Bank of China as a central bank and enhancing its independent legal status in terms of monetary functions. On December 27, 2003, the Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the People's Bank of China was adopted by the Standing Committee of the Tenth National People's Congress of the People's Republic of China at its sixth meeting on February 1, 2004, enabling the People's Bank of China to focus on the formulation and implementation of monetary policy and preventing it from dilemma when there are conflicting objectives of monetary policy and banking supervision. (Fujian) On October 23, 2020, the People's Bank of China issued a public consultation notice on the People's Bank of China Law of the People's Republic of China (Draft Revision for Comments).

2.2 The Independence of the People's Bank of China Embodied in the Law of the People's Republic of China on the People's Bank of China

Article 2 of the Law of the People's Republic of China on the People's Bank of China states, "The People's Bank of China is the central bank of the People's Republic of China. Under the leadership of the State Council, the People's Bank of China formulates and implements monetary policy, prevents and resolves financial risks, and maintains financial stability." It is clear that the Law of the People's Republic of China on the People's Bank of China is the central bank of China and is subordinate to the State Council, the legal status of a subordinate functionary of the central government. The People's Bank of China has dual attributes, on the one hand, the People's Bank of China manages the financial administration as a manager and intervenes in the national economy; on the other hand, the People's Bank of China is a special financial institution that oversees the national financial industry and performs the operational functions of the central bank as a bank[4].

Article 7 provides that "The People's Bank of China shall, under the leadership of the State Council, implement monetary policies, perform its functions and carry out its business operations independently according to law and be free from intervention by local governments, government departments at various levels, public organizations or individuals." It is clear that the People's Bank of China is a functional department of the State Council with a relatively independent status and a certain degree of organizational and functional independence in the formulation and implementation of monetary policy.

In terms of functional independence, unlike the more independent central banks in other countries, the People's Bank of China is not completely independent of the government, and although it is a less independent central bank, it is also different from the central banks in Italy and other countries, which are completely under the leadership of the government and carry out the function of formulating monetary policy under the unified leadership of the government, completely

losing its independence. This situation determines the legal status of the People's Bank of China as "independent but not independent".

Article 6 provides that "The People's Bank of China shall submit to the Standing Committee of the National People's Congress work reports concerning matters of monetary policies and the operations of the banking industry." It is clear that the work of the CPB should be supervised by the highest authority, however, this is only indirect supervision and guidance, and the Standing Committee of the National People's Congress does not directly control the performance of the monetary functions of the central bank. To a certain extent, it also limits the State Council's intervention in the PBC and helps maintain the PBC's independence and legal status.

Articles 29 and 30 of the People's Bank of China Law stipulate that "The People's Bank of China may not make an overdraft for the government, and may not directly subscribe or underwrite State bonds or other government bonds", and that "The People's Bank of China may not provide loans to the local governments or government departments at various levels, to non-banking institutions, other units or individuals, with the exception of the specific non-banking institutions as decided by the State Council." Explicitly prohibit or restrict the People's Bank of China to finance financial departments, local governments and financial institutions, to a certain extent to maintain the functional independence and economic independence of the People's Bank of China. At the same time, it also reflects the legal status of the People's Bank of China as independent from other government departments and local governments.

2.3 Existing Problems of the Legal Status of the People's Bank of China

The most important existing dilemma of the legal status of the People's Bank of China is the problem of lack of independence. The independence of the central bank can be measured by the following four criteria: functional independence, organizational independence, personnel independence, and economic independence.

2.3.1 Lack of Functional Independence

The perfect functional independence of a central bank depends on its ability to formulate and implement monetary policy and to counteract fiscal overdrafts and other unjustified financing needs[7]. The lack of functional independence of the PBC can be seen in its lack of autonomy in monetary policy decisions and the lack of strong laws to protect against unreasonable financing needs. The People's Bank of China is subordinate to the State Council, and its major decisions are made and implemented under the leadership of the State Council, such as monetary policy, which must be approved by the Premier of the State Council before implementation. There is a clear negative correlation between the independence of the central bank and inflation, i.e. the stronger the independence of the central bank, the lower the inflation rate, and the weaker the independence, the higher the inflation rate. Excessive pressure and control by the central government will result in an excessive money supply and therefore will have a huge impact on the monetary stability of the country. The monetary policy formulated by the PBC should be compatible with the macroeconomic objectives of the central government and cannot independently decide the monetary policy orientation, resulting in frequent missing of the best time to issue monetary policy.

2.3.2 Lack of Organizational and Personnel Independence

The lack of organizational and personnel independence of the central bank is mainly reflected in the high or low legal status of the central bank and the scientific nature of the organizational guarantee. The People's Bank of China is under the leadership and control of the State Council and is in the legal status of a subordinate functionary of the central government, and therefore cannot independently implement monetary policy. The selection of the PBC Governor is based on the nomination of the Premier of the State Council and decided by the NPC and its Standing Committee, a subordinate relationship that is not conducive to the PBC's task of stabilizing the value of the currency and thus promoting economic development. At the same time, the Law of the People's Republic of China on the People's Bank of China does not specify the term of office and the reasons

for removal of the PBC's president and vice president, while the State Council may change leaders at will due to political factors, which provides a legal loophole for the State Council to interfere with the implementation of the PBC's functions. Although the management of the organization's personnel may allow the government's will to play its proper role as soon as possible, it is not necessarily conducive to the stable progress and sustainable development of our economy.

2.3.3 Lack of Economic Independence

The lack of economic independence of the central bank is mainly reflected in whether it has specific and complete legal safeguards for the use of funds. Although the People's Bank of China has established an independent financial and budgetary management system, it is widely subject to economic constraints and lacks a specific system to manage the government's financial overdraft and purchase of government bonds, as well as a corresponding system and legal procedures to attribute responsibility for violations. The existing relatively independent legal status due to the lack of relevant supporting legal measures to safeguard the system is null and void, and can not play a deterrent effect on violators. In practice, the fiscal deficit caused by excessive government intervention is solved by the People's Bank of China's overdraft, and the lack of economic independence of the central bank will continue to intensify such problems, which will do no good but harm to promote China's economic development and stabilize the value of the currency.

3. Suggested Measures to Improve the Legal Status of the People's Bank of China

A central bank with relatively strong independence is conducive to maintaining the stability of the currency value, thus providing a stable macroeconomic environment for sustained and rapid economic development. However, a weakly independent central bank, subject to excessive government intervention, will inevitably lead to domestic inflation. In today's China, the phenomenon of currency over-issuance and significantly higher inflation rate is appearing more and more frequently, and the disadvantages of this phenomenon are also tangibly and invisibly affecting the domestic economy, virtual prosperity cannot really achieve China's economic growth goals, the growing gap between the rich and the poor will continue to intensify the conflict, and social needs will not be met for a long time.

The monetary policy objectives in practice obviously deviate from the monetary policy objectives at the legislative level. Under the guidance of the State Council, the monetary policy objectives set by the People's Bank of China are naturally close to the guidance of the State Council, and the statutory monetary policy objective of currency stability is not effectively implemented in practice[5].

The People's Bank of China is in a special position in the financial system and the national economy, assuming the special function of formulating and implementing monetary policy. To truly play the role of a central bank, the People's Bank of China must be given a certain degree of independence.

3.1 The Legal Status of the People's Bank of China Should Be Re-recognized by the Constitution.

The legal status of the PBC is defined in the Law of the People's Republic of China on the People's Bank of China as a central bank that formulates and executes monetary policy under the leadership of the State Council. The PBC is a constituent agency of the State Council, and as such it is inevitably subject to excessive interference by the State Council and the formulation of important policy objectives is necessarily under the coordination of the State Council.

Compared with other government departments, the People's Bank of China does have a certain degree of independence and a higher legal status. However, the existing constitution of China does not provide for the People's Bank of China, and the absence of the People's Bank of China in the

constitution is indeed a legislative defect. The most realistic and direct way for the PBC to be included in the Constitution is, of course, to amend the Constitution to include the president of the PBC in Article 86 of the Constitution. Obviously, it is unrealistic to make a separate amendment to the Constitution in order to redefine the legal status of the People's Bank of China[7].

In order to make the People's Bank of China gain a more independent legal status, the legal status of the People's Bank of China should be constitutionally redefined, changing the present situation that the People's Bank of China is responsible to and under the leadership of the State Council, making the People's Bank of China a new independent subject, legislatively changing its subordinate relationship with the State Council, making the People's Bank of China a central state institution, as the main department exercising the macro-control power of the state. It can also be placed alongside the State Council and the Central Military Commission, and be elected by the National People's Congress and its Standing Committee, responsible to it and under its supervision, so as to strengthen the independence of the People's Bank of China and thus enhance its legal status. Although this idea is idealistic, it is certainly the highest pursuit and ultimate destination of the People's Bank of China.

3.2 Establish a Personnel Appointment and Removal System to Enhance the Independence of the People's Bank of China, and Improve the Personnel Appointment and Removal Procedures.

The power to nominate and appoint and remove the governor and vice governor of the PBC should be transferred to the highest authority to avoid excessive intervention by the State Council in the PBC's arrangements for updating important personnel and to control the procedures for updating personnel appointments and removals, thereby achieving the goal of strengthening the independence of the PBC in personnel arrangements. The Constitution or other laws concerning the PBC should clearly stipulate the appointment period, removal matters, and legal responsibilities of the PBC governor and vice governor. There is no law in China that clearly stipulates the term of office of the governor and vice governor of the central bank. In practice, the term of office of the governor of the People's Bank of China generally follows that of the central government, which is one term of five years, usually two terms, or ten years. Extending the term of office of the governor, avoiding overlap between the term of the governor and the term of the head of government, and replacing members on a rotating basis would not only strengthen the stability and continuity of monetary policy implementation, but also reduce the central government's direct control over important personnel of the PBC. The constitution or other laws can also re-establish the removal system of the PBC governor, clearly stipulating the removal of the governor in the form of articles, and not removing the governor arbitrarily without violating the stipulated matters, so as to circumvent the central government's arbitrary replacement of the main head of the PBC for no reason and disrupt the monetary policy.

3.3 Enhance the Transparency of the PBC's Monetary Policy, and Establish an Information Disclosure System.

The PBC should make specific information about the formulated monetary policy available to the public to improve the credibility and transparency of the central bank's monetary policy, thereby achieving a reduction in excessive intervention in monetary policy by other policies. The financial data disclosed by the PBC to the public should be more timely, accurate and complete to promote public awareness of important monetary policies, properly guide the public in forecasting and analysis, and gain public support for the PBC's monetary policies. Establishing an information disclosure system is vital to ensure that every financial market participant has the right to know about the publicly announced policy changes[8].

4. Conclusion

The People's Bank of China, as the leading financial institution in the country, is an important tool for the state to intervene and regulate the development of the national economy, and it plays an important role in stabilizing the monetary and financial markets in China. In order to evaluate the legal status of the PBC, it is necessary to start with the independence of the central bank. The importance of the central bank's independence and the lessons learned since the issuance of the RMB determine the necessity of strengthening the legal status of the PBC, so it is necessary to strengthen the reform of the PBC's legal status.

As a matter of fact, due to China's specific circumstances, it is not realistic to implement a model of a more independent central bank exactly like that of the United States and other countries, and China has made some efforts to enhance the independence of the PBC to a certain extent. Scholars who oppose increasing the independence of the PBC argue that the central bank is in a parallel state with the government, which will reduce the efficiency of communication and is not conducive to coordinating and promoting policy reforms, and they argue that the PBC needs to cooperate with all ministries, but they do not deny that there are inevitable negative implications in this situation. However, we have to remember that any choice of independence by the PBC will come at a cost, and the key is whether inflation can be effectively controlled[10]. I believe that the Central Bank of China will be able to take more into account the key indicator of currency stability to ensure a flexible and effective monetary policy, and that the state will have a corresponding answer in terms of constitutional or specific legal amendments.

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