The doctrinal view of slim state: Brazilian National Agency of Petroleum, Natural Gas and Biofuels multilevel governance

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Introduction

In the 1990s, Brazilian government carried-on an extensive privatization program under a public agenda for economic growth and social development. The predominant thesis was that State had been unable to cope with democratic needs and social demands. There was a strong belief that private organizations would increase economic dynamism under a doctrinal view of 'slim state'. But to attract private investments, legal and governance frames need to be put in place.

Under these circumstances, the government set up the strategy to establish independent regulatory agencies. Brazilian National Agency of Petroleum, Natural Gas and Biofuels (ANP) was created based on the assumption that a regulatory agency must enjoy decision-making autonomy. The agency must operate within a defined set of rules, laws, and a governance apparatus composed by many authors, both public and private, and society.

This article aims to explore the governance framework for petroleum and gas in Brazil. For a long time, the exploitation of such commodities was under the monopoly of a state-owned company, Petrobras, and was subjected to denationalization in the 1990s under an extensive economic reform. The regulatory agency, ANP, has been entitled to maintain control over the oil, gas and biofuels activities by means of regulatory and legal apparatus.

This article is organized as follows. First an introduction about governance and regulation is presented. Later, the article explores the regulatory framework and its main character, ANP, its functions, structures and goals. The article is subsequently completed by a discussion of the roles of State and society and the main problems of governance that might arise under the administration of ANP.

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1. Governance and regulation

The term "governance" is a very versatile one. It is applied in connection with several contemporary social sciences and has long become a major topic for investigation in many fields - e.g. economics, political science and geography. There are different perceptions of what defines governance and there is no sure formula for a successful one. It is used in many ways and has a variety of meanings.

In political science literature, especially associated with the science of public administration, much of what is meant has to do with effective and efficient management. According to Stoker (1998), governance might be understood as a set of institutions managed alongside government at local, regional, national and supranational levels. He adds that governance should be viewed as an "autonomous self-governing networks of actors" (p. 23). In this perspective, private and public institutions dynamically interact on a self-governing basis.

Another analysis is proposed by Jessop (1998). In his work, governance relates to any mode of co-ordination of interdependent activities. Among those modes, he points out three: the anarchy of exchange (i.e. market); organizational hierarchy (i.e. government); and self-organizing heterarchy (i.e. self-organization). According to the author, the latter includes self-organizing interpersonal networks, negotiated inter-organizational co-ordination, and decentered, context-mediated inter-systemic steering. He emphasizes that this form of governance involves the co-ordination of differentiated institutional orders or functional systems (such as the economic, political, legal, scientific, or educational systems), each of which with different goals and structures such that it is impossible to exercise effective overall control of its development from outside that system.

The concept of governance can be extended to means of how governments address the management and allocation of resources to respond to collective problems. It provides an analytical framework through which reality can be examined, a frame of reference for understanding processes of governing and resource allocation.

1.1. Regulation and Regulatory Governance

The Organisation for Economic Co-Operation and Development (OECD, 1993) define regulation "as the imposition of rules by government, backed by the use of penalties that are intended

specifically to modify the economic behaviour of individuals and firms in the private sector." (pp. 73-74). To this aim, various regulatory instruments and rules are applied: prices; rate of return; disclosure of information and ownership ceilings are frequently used.

In Brazil, the term 'regulation', in its equivalent in Portuguese '*regulação*', became a well-known expression in the 1990s. In this period, Brazilian government set-up regulatory agencies following examples coming from United States during the process of opening infrastructure to sector markets.

According to Hood et al. (2004) state that 'regulatory governance' is a set of mechanisms and structures that societies use to manage the economic behavior upon public organizations. In a broader context, regulation can be viewed as a system composed by independent regulatory counsels, economic and consumer agencies, public administration, private companies and civil participation. It is a governance scheme that aims to preserve the public interest and to promote economic growth under specific regulatory frameworks and legal apparatus.

2. Brazilian National Agency of Petroleum, Natural Gas and Biofuels (ANP): foundation and function

Back in the early 1990s, a broad-based economic reform set-up government agenda in Brazil. A large privatization program was taken up accompanied by the building-up of the first independent regulatory agencies. The predominant thesis was that State had been unable to cope with democratic needs and social demands, based on the doctrinal view of 'slim state'. There was a strong belief that private organizations would increase economic dynamism in the petroleum sector. But to attract private investments, legal and governance frameworks would have to be set-up.

In conjunction to privatization, it has been established a regulatory framework by setting the rules for the sector with defined functions, attributions and responsibilities. A legal framework and clear rules are fundamental to private investors in view of reducing uncertainties. Private participation in infrastructure and resources exploitation was perceived as critical to the privatization agenda. Indeed, foreign investors would not place large investments in assets with no clear legal and governance rules. Therefore, the creation of regulatory agencies became one of the central issues in the context of privatization reforms and address critical issues for investors.

In 1995, a Constitutional Amendment determined the end of Petrobras's oil monopoly in Brazil and opened the opportunity to the private-owned companies to explore oil in the country even though Petrobras maintained the monopoly over the exploration, exploitation, refining, maritime, and pipeline transportation of petroleum, oil and natural gas (Machado, 2010). In this context, the Brazilian National Agency of Petroleum, Natural Gas and Biofuels (ANP) was established in 1997 as the federal government agency responsible for the regulation of the oil sector. The institution is subject to a special autarchic regime, as a regulatory body for the oil, natural gas, by-products and biofuels industry, linked to the Ministry of Mines and Energy (National Agency of Petroleum, Gas and Biofuels, 2010). ANP has jurisdiction to authorize and control activities related to production, import, export, storage, distribution, sale and marketing of biofuels.

In Brazil, the role of regulatory agencies, as corporate entities under public law, involves supervising, regulating, rulemaking and implementing policies. ANP's regulatory responsibilities are stated by Law nº 9.748/97 as follow:

> "1. to implement an oil & gas national policy; 2. to control directly or via agreement all activities of the oil industry; 3. to promote bidding for oil fields, in order to consolidate the entry process of new companies; 4. to structure and to control royalties and other governmental participations; 5. to establish the criteria for transportation and commercialization of oil & gas; 6. to establish the regulation regarding the access to oil ducts; 7. to make sure that good practices are employed to promote the rational use of oil & gas and to protect the environment; 8. to support a data base and to diffuse geologic information; 9. to guarantee the offer of derivatives to all parts of the country; 10. to protect the consumers' interests related to price, quality and availability." (National Energy Policy Act, 1997)

In theory, ANP has both financial and decision-making autonomies. Its aim is to ensure the proper functioning of the market it regulates in close relationship to political and social institutions.

Two bodies exert external control over the agency: the General Audit Office (CGU) and the Federal Court of Accounts (TCU). CGU is in charge of defending the public patrimony and increasing administrative transparency. The TCU focuses on accountability, operational and patrimonial aspects of Federal administrative organs, including the regulatory agencies.

Other governmental agencies also play important support roles in the regulatory governance framework: i. Secretariat of Economic Law, responsible for competition disputes and control of the monopoly power; ii. Brazilian antitrust authority (Brazil Administrative Council for Economic Defense - CADE), in charge of conflicts related to infraction against the economic and trade order

and; iii. Consumer Defence Commission (PROCON), in charge of protecting consumers against unfair and fraudulent practices.

ANP is entitled to co-ordinate different stakeholders but stands as an independent regulatory agency from government and, by extension, from any Ministry. This enable ANP to enjoy political and decision-making independence and to take decisions based on technical rather than political criteria.

Even though the exchange of information with external actors is recognized as important form to gain legitimacy from society, Cunha, and Rodrigo (2012) point to the fact that the participation of society remains generally weak at ANP´s processes. Collective demands are usually raised by means of public consultation and notice-and-comment consultation techniques, under which a proposed rule is published and is open to comment by general public.

The privatization process carry-on in Brazil established a common governance structure among regulatory agencies. They have been created following an important assumption: the agencies should be independent administratively and technically form government. Private investors would operate in activities of the oil industry based on a normative framework of rules, which must provide a positive environment for investments in production and research activities.

ANP holds a central position in the governance structure, fostering the development of public strategies and, at the same time, regulating diverse interests from public and private stakeholders. It stands as an administrative and technical agency, independent from direct political control, that co-ordinates a broad-based economic spectrum of activities composed by multiple agents. Its legitimacy is grounded both in legal framework and technical competence to address disputes in an interdepend network environment.

A functional scale structure is applied to co-ordinate diverse authors with different knowledge, capabilities and goals. Conceived to regulate and control activities related to production, distribution and sale of biofuels, the governance must settle disputes between economic agents, consumers and government. In an environment of conflicting objectives different goals are to be addressed. To this aim, the internal regulation of ANP rules on procedures to settle conflicts and a Board Committee is regularly held by ANP with the presence of different agents to solve disputes.

The co-ordination of process among government agencies, private companies and society participation fosters an important mechanism of learning under regulatory governance. Decision

making demands a reference of perspectives and thoughts that should be raised and refined by extensive and on-going interactions among those different agents.

Among its main responsibilities, ANP is responsible for contracting and supervising commercial activities in the oil industry. The entry process of new company concessions is known as *bidding process*. ANP is responsible for drafting invitations for bid and for conducting the bidding process for exploration, development and production concessions. The agency also holds responsibility to executing the agreements which result from these processes and overseeing their performance.

Conflict resolution is also an important process topic. The Board Committee composed by all agencies and companies enrolled in disputes addresses issues and assumes the responsibility of a tribunal of conciliation and arbitration. ANP plays an important role in granting that good practices and fair competition are displayed, as well as procedures and practices comply with regulatory rules.

3. The role of State and Society

In governance, the concept of markets is applied in different visions. In contrast to the idea of markets as an efficient mechanism of resources and capital allocation, Pierre and Pieters (2000) introduces the concept of *governance as markets*. According to the author, "actors in markets (…) share a need for coordination in order to have some collective control over prices, foreign competition and production volumes" (p. 19). This vision highlights the idea of having markets controlled by legal and formal institutions in order to serve society, a different coordinating device than the concept of 'hidden hand' as an autonomous process of self-coordination.

The authors point to the fact that governance must be analysed in a dynamic perspective, how state and privates interact and co-ordinate in view of producing desired outcomes. They argue that a "state-centric model" (p. 23) remains the principal actor of collective interest and, therefore, plays a central role in governance even though a more decentralized management model becomes a political praxis in public services. State and society play complementary roles in the process of governance, having the latter a more influential position by imposing an agenda of needs, wants and demands. In the governance of markets, state assumes a steering and coordinating role, as long as society a derivational role, influencing and imposing its values and necessities.

In Parsons´ (1963) work, power is viewed as the "capacity to ensure that obligations are really binding, thus, if necessary, can be ´enforced` by negative sanctions" (p. 241). Nooteboom (2000) also defines power as "the ability to influence another's choices, either by affecting his choice

set, or his selection from the set" (p. 77). In a legitimized governance structure, we can contextualize two forms on which power is applied: i. *power to* – applied when authors have the power to set and change the rules of the games; ii. *power over* - refers to situations when authors have the power to conduct actions against the will of others (i.e. coercive power). S*ectoral governance*, as defined by Herithier and Lehmkuhl (2008), stands as "a policy formulation by private and/or public actors in delimited sectoral areas which takes place outside the main political legislative avenue of decision making" (p. 1). A thorough analysis of governance must consider the many forms of power-relations stated by the authors.

We can spot different relations among the agents enrolled in the case. State is represented by the regulatory agency, ANP, as well as by other state agencies that assume coercive and policymaking roles: i. Secretariat of Economic Law; ii. CADE and iii. PROCON. Those state agencies have the authority to set and change the legislation applied (i.e. *power to*), as well as exert sanctioning control over the companies that operate in the sector (i.e. *power over*). On the other hand, the companies that operate in the sector, for example Petrobras and private companies such as Shell, Total and Halliburton have an extensive competence in the field, i.e. *know how*, and through legal instruments, have the right to explore the market in view of granting economic benefits controlled by a strict regulatory apparatus.

In Herithier and Lehmkuhl (2008) work, the concept of *shadow of hierarchy* is used as a mode of analysis of legislative and presidency work in order to steer governmental action. S*hadow of hierarchy* can involve legislative threat or inducements. To enforce compliance, legislators can impose fines to enact adverse legislation.

In Brazil, state addresses the issue of governing petroleum and gas exploitation though a structure composed by autonomous agencies but also attached to a legal framework linked to the three instance that form Brazilian state: government (i.e. executive), House of Representatives and justice. This way, state would engage to look up for efficacy and policy performance under sectoral governance, under a regulated market with an active presence of state.

Finally, it is important to draw some comments about the role of society. Society stands as stakeholder with legitimate interest in the governance structure and process. After all, the regulated market focus on products and services that fulfil basic needs to population.

Society is directly enrolled in policy and notice-and-comment consultation. By means of these voluntary instruments, citizens can express ideas and opinions about projects and policies. Regulatory agencies could this way provide a more transparent and efficient decision making.

Moreover, society has the responsibility to elect politicians that ultimately would play a central role in ruling and steering strategies for regulatory governance.

Overall, even though public participation stands essentially as a consultation role, it is still essential to guarantee that regulatory agencies act in ways that benefit the public, rather than the sector it is supposed to be regulating.

4. Governance drawbacks

4.1. State intervention contradiction and state-agency interdependencies

Regulation Theory has emerged based on the assumption that the existence of market failure (i.e. imperfect competition) justifies state intervention. To apply this vision, agencies with technical expertise and autonomy would address market problems. By doing so, state would be willing to act in public interest. This argument highlights the vision of state in serving public interest by providing welfare market conditions through regulatory agencies.

In contrast, the Theory of Public Choice studies the application of economics concepts, principally those related to microeconomics theory, to the study of politics (Bell & Hindmoor, 2009). Theorists analyse how political biased behaviours could manipulate economic policies to obtain spurious objectives related to economic or political groups. According to Bell and Hindmoor (2009) in denouncing a 'romantic view' of politics in which politicians and public officials can simply be trusted to act in the public interest, public choice theorists have come to view any and every instance of state intervention as both harmful and motivated by considerations of electoral or bureaucratic self-interest.

These two theories raise different perspectives on common issues: how to control the problem of imperfect markets in view of stimulate competition and the welfare of public? To what extent state intervention must be done in order to avoid political manipulation?

To address these issues, state has come to apply an autonomous governance structure. Autonomy constitutes an axiom upon which regulatory institutes were established in Brazil. This is due, in large extent, to preserve decision-making autonomy and to reduce the risks of manipulation by the political sphere. The legal cornerstone explicitly states the autonomous structure for the

regulatory agencies as ANP. Its composition would, therefore, works autonomously from government, with in-depth expertise and credibility as authority regulators.

Nevertheless, it is important to call attention to the interdependencies between ANP, Government (i.e. Presidency), state agencies and legislative authority. On one hand, ANP deals with many issues that directly depends on Presidency and legislative, in particular: i. the appointment ANP´s board of directors is done by the president with the approval of the House of Representatives; ii. ANP´s financial budget is negotiated and controlled by Government; iii. accountability, operational and patrimonial aspects are controlled by state agencies (i.e. CGU and TCU). There are also common issues between ANP-government and ANP-legislative authority: i. institutional role in supervising, regulating, implementing policies, and using cohesive actions (i.e. *power-over* capacities that directly affect market behavior), ii. network relationships with industries and markets (i.e. knowledge of author behavior and characteristics - *know who*); iii. extensive knowledge and expertise in industry (i.e. *power-to* capabilities and competencies in reducing information asymmetry).

Despite its autonomy, the interdependency relations existing between government and ANP strengthens the legitimacy of the governance structure by providing framework in which expertise, autonomous decisions and clear governance rules are applied. The management of technical standards and quality norms applied to the sector are good examples of how technical expertise is required from ANP. Even though autonomy might prevail against external interference, Prado (2008) explains that political interest related to electoral cycle may "adversely affect the application of regulatory framework and the interpretation of statutes and contracts" (pp. 443-444). The argument behind this statement is related to the electoral cycle that could push self-interested politicians to manipulate the economy for short-term purposes, jeopardizing governance process with biased decision-making.

Even though there is no common formula to evaluate the degree of autonomy of ANP, Machado (2010) and Mueller (2006) propose an analysis composed by three characteristics: i. decision-making freedom; ii. financial autonomy and iii. technical specialization. Regarding decision-making, the board of director committee is designed to rule-on policies and decision that should be followed. ANP adopts a collegial decision-making process in which each director has an equal vote and the outcome depends on the majority vote. The board is composed by four directors and one general manager. An impartial and unbiased committee depends fundamentally on their representatives. Prado (2008) observes that, as other regulatory agencies, ANP was designed to have fixed term limits for commissioners. Holding a fixed tenure is a central guarantee of independence because if there are no restrictions on the dismissal of directors, it is unlikely that directors would contradict the entity with removal power.

At ANP, directors and the general manager have a term of four years. The fixed mandate thus prevents them from being influenced by political pressures. The president of Brazil is in charge of the nominations of the board representatives which should be also approved by the House of Representatives. According to Prado (2018), the lack of removal power is, therefore, viewed as an institutional independence mark: "if a President has this power, he can remove those who might make decisions that displease him. This possibility of dismissal can be an incentive for the directors of agencies to act in accordance with presidential preferences" (p. 467-468). In addition, the administrative board is composed by directors appointed during diverse presidential administrations. Consequently, their terms are not bonded to a presidency mandate, which foster a plural composition.

Another characteristic that should be considered is financial autonomy. The idea behind this topic is that if the President or the House of Representatives can control the agency´s budget, they would somehow control ANP´s work, jeopardizing its institutional autonomy. The budget must be freed from manipulation as it can undermine its financial stability. ANP´s revenues are mainly constituted by provisions allocated in the General Budget of the Union, proposed by the Presidency and approved annually by a legislative representative's commission. Additionally, alternative sources of funds are equally applied to reinforce financial autonomy as "funds derived from partnerships, contracts secured with entities, bodies and enterprises and fees, charges and fines provided for by the applicable law" (National Agency of Petroleum, Gas and Biofuels, 2010, p. 21).

Finally, ANP must hold a technical crew with extensive skills in the field to perform professional duties. For example, ANP is in charge of conducting technical evaluations of exploration and production of oil and fluid hydrocarbon plans, of defining technical requirements, assessing competitiveness of concessionaires and executing of investment projects. Expertise is, indeed, a major assumption to achieve regulatory duties and must be managed by ANP.

4.2. Information asymmetry and accountability

To better understand the context on which relations function between ANP and private companies (i.e. concessionaires), it is important to notice that governance works in an interdependent context. On one side, the regulatory agency ANP has, among other duties, the responsibility of supervising, regulating and rulemaking. On the other hand, companies that operate in the market are legally submitted to conditions, rules, and obligations stated in a so-called *Concession Contract*. An interdependent relation prevails between them, with responsibilities and duties

formally stated. Among other topics, the Concession Contract has clauses that defines clearly the rules both entities should comply with:

> "(…) follow-up and inspection procedures for exploration, development and production activities, and for contract audit; (…) obligation, by the concessionaire, to provide the ANP with reports, data and information regarding the activities developed; (…) applicable sanctions in the event of failure by the concessionaire, to comply with the contractual obligations; (…) rules on the resolution of disputes related to the contract and its performance, including conciliation and international arbitration" (National Agency of Petroleum, Gas and Biofuels, 2010, p. 31).

In regulatory theory, the relation between those two parties is commonly related to the *principal-agent theory* (PAT). According to Biela (2014), PAT refers to "the relation between a principal and an agent as a delegation of power from the principal to the agent. The delegation in turn implies the problem of adequate control mechanisms, since the principal has to assure the agent acts in his interest" (p. 10). Hérither and Lehmkhl (2008) add that "principal-agent theory is based on the assumption of actor´s bounded rationality and, as a consequence, incomplete contracts between principal and agents" (p. 4).

As mentioned, ANP and concessionaires have conflicting objectives: one party seeks to manage imperfect markets and preserve public interests, as the other, controlled by private capital, strives for financial interests. A situation of incomplete contract derives from these conflicting objectives and misaligns interests.

Principal-agent theory stands as a central problem of regulation theory. ANP assumes the role of principal and models the relation with the agent. On the other side, the agent is represented by private companies, or concessionaires. The principal authorizes the agent to act in the business market based on a contractual relationship. The relation can be understood as a delegation of power, from the principal to the agent since this one is responsible for acting on behalf of the principal, in this case, ANP. The assumption that goes behind this theory is that the principal cannot directly ensure the agent is acting in his (the principal's) best interests. The main problem is how to foster the correct alignment of interest between the principal and the agent.

The problem is addressed by tightly specified contracts, audits and by disciplinary measures. Nevertheless, important issues may flaw any alignment of interests. The main one regards *asymmetric information*, an effect of unbalanced information held among parties. Its origin derives from the delegation of the productive activities. Since concessionaires are directly involved in routines of production and trading, they are placed in an advantage position to understand markets and production costs. This situation might also foster the production of *tacit*

knowledge, i.e. "hidden mappings that cannot be specified" (Noteboom, 2000, p. 75). This imperfect communication may flaw ANP decision-making and affect concessionaires and the role market. For example: performance measurements are employed to control quality of products; cost of production data is applied to pricing decisions and consumer data defines demand curve. The fact is that private-owned companies are not willing to furnish ANP with information that would, somehow, go against their interest. This regulatory failure defects decision-making and must be addressed in different ways.

Various mechanisms are used to deal with asymmetry of information and alignment of interests, among them, *accountability*. Shapiro and Steinzor (2007) relate the concern of keeping track of agent behaviors as "*agency accountability*" (p.1742). Desai and Jarvis (2012) explain that "accountability is built on equitable participation and on transparency of information" (p. 109). This instrument helps to maintain control over the agents through regular and customized reports. It's the way knowledge is externalized. By doing so, ANP seeks transparency and data analytics for decision-making.

Accountability is part of the governance process and is mainly applied through routinization of structured (i.e. regular) and *add-hoc* reports: i. regular reports: dealing with data on production; cost-data; market data and commercial information. ii. *ad-hoc* reports are usually related to security issues; environmental events; exploration and development activities and communication of discovery of deposit of oil or natural gas. ANP applies a transparency guideline to concessionaires, to reinforce accountability as the main component of communication process.

In sum, accountability from ANP has to do with procedures of communication in regular and atypical basis. It provides measures for decision-making as well as an official source of information for the wider public and stakeholders (e.g. shareholders, and other state agencies enrolled in the governance structure). All the agents are, by means of the Concession Contract, obliged to comply with these procedures.

4.3. Cost of transaction and risk of capture

Beyond all the outcomes arise in a business-economic transaction, a special issue deserves attention. Coase (1937) explains that the costs of negotiating, specifying (i.e. measured) and enforcing agreements must also be considered in agencies transactions. He argues that inter-firm relations entail costs of transaction, like costs of contact, contract and control. In economics, this phenomenon is known as *Transaction-Costs Economics* (TCE). North (1994) states that

"Transaction costs are the costs of specifying what is being exchanged and of enforcing the consequent agreements" (p. 361).

Various problems of co-ordination are examined in TCE, among them a central concept is referred to *opportunism*. Opportunism is defined by Williamson (1979) as a "variety of self-interest seeking" (p. 234). Nooteboom (2000) adds that "TCE emphasizes opportunism, the monitoring of performance and sanctions by legal punishment or other penalties" (p. 81). He claims that a transaction based on legal coercion or self-interest is a non-trust relationship. TCE studies address forms of reducing the incentives to utilize opportunity in inter-firm relations.

In regulation theory, special attention is devoted to TCE. Initially, a core topic is related to *contracting*. The contract stands as the legal base to enforce norms, duties and routines. As mentioned in this article, ANP employs the Concession Contract to bonding its relations. Additionally, great concern relates to the extensive communication and knowledge exchange that tie ANP and concessionaire relationship.

Adams *et al* (2007) recognize in their work that misbehavior risks would occur where regulatory processes are performed. This phenomenon is related to agent behaviors. The misconducts regarding the principal´s interests are also related to *agency costs* and could lead to circumstances in which the regulatory agency would be influenced by regulated entities. This situation is referred to as *regulatory capture*.

Shapiro (2011) explains that "when we see an agency consistently adopting regulatory policies favored by regulated entities, both the political and normative dimensions of capture appear to be met. This situation therefore raises a presumption of capture (…)" (p. 105). In Adams *et al* (2007) work, regulatory capture occurs "when officials inappropriately identify with the interests of a client or industry" (p. 1).

We can claim that this problem can emerge based on the interdependent relationship that shaped ANP and concessionaire relations. This relationship implies coercive power (e.g. fines and penalties), operational and technical compliance auditing and judgment of the bidding process, situations that can lead to a danger of regulatory capture. In such cases, the close and regular relationship between the parties can lead to a risky situation of regulatory capture (Adams *et al*., 2007). In extreme situations, risks of corruption may even occur including the receipt of benefits or bribes.

To avoid the risk of regulatory capture, we may first consider the bodies that exert external control over the agency: the General Audit Office (CGU) and the Federal Court of Accounts (TCU).

Those two state agencies carry-on regular audits on ANP and have a role of monitoring the governance structure. In addition, accountability plays a major role providing transparency. Public participation on ANP consultations increase awareness of public-interest decisions. An ombudsman service must also be put in place to quest for complaints of inefficiency or violation of rights.

It is worth to say that there is no reference of any program of combating misbehaviours in the Legislation for Exploration and Production of Oil and Natural Gas.

5. Conclusions

The belief that private organizations would increase economic dynamism is firmly associated with the liberal agenda that swept out western countries in the 1980s. This trend played a substantial role in the political agenda in Brazil and is embodied by denationalizations and the creation of regulatory agencies.

ANP was established as a regulatory agency that seek to prmote economic dynamins in the petroleum industry. To attract private investments, legal and governance frameworks was put in place to control activities in the sector. It holds a central position in the governance structure, fostering the development of public strategies and, at the same time, regulating diverse interests from public and private stakeholders. It stands as an administrative and technical agency, independent from direct political control, that co-ordinates a broad-based economic spectrum of activities composed by multiple agents.

To preserve decision-making autonomy and to reduce the risks of manipulation by the political sphere, the legal cornerstone explicitly states the autonomous structure of the agency. Its composition must work autonomously from government, with in-depth expertise and credibility as authority regulators. Even though autonomy might prevail against external interference, political interest related to electoral cycle may affect its legitimacy, jeopardizing governance process with biased decision-making.

Financial autonomy is also a common issue for regulatory agencies in Brazil. ANP´s revenues are mainly constituted by provisions allocated in the General Budget of the Union, proposed by the Presidency and approved annually by a legislative representative's commission. External interferences in the agency´s budget could jeopardize its institutional autonomy.

Finally, the interdependent relationship that shaped ANP and concessionaire relations could lead to malfunctions and misbehaviors. The close and regular relationship between the parties can lead to regulatory capture and risks of corruption may even occur including the receipt of benefits or bribes. Regulatory capture in the petroleum industry deserves special attention considering corruption accounts in Petrobras and other public and private companies in Brazil.

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