LEGAL RESEARCH AND LEGAL REASONING

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1. What is Research?

Research is a word in Indonesian which is a translation of the word research. This translation is deemed inappropriate, because research should be a search for new knowledge to solve problems faced by humans in their lives (Soetandyo Wignjoe Soebroto, 2013).

In academic language, in Indonesia nowadays research is a knowledge that remains to be sought how to solve the new problems that arise as a result of the change. In English, it is called the know how. This so-called the-know-how must be preceded by the search for knowledge of "what causes what" first. This is called knowledge of causality or knowledge of causality, which in English is called the-know-how.

The previous research to gain knowledge of causality - which is often called "explanative research" - must be considered important, because people will not be able to solve a problem (which in research is said to be a result of events and is called "variable X") if people do not know in advance what is the cause of the problem (called “variable Y).

'Research' is a word that is often associated with the Tri Dharma of Higher Education and is always associated with scientific activities. Through research people look for new findings that are rational for a question or solve a problem. By discovering new true knowledge, based on methods that are adhered to in a disciplined manner, people will try to dispel their ignorance and answer the anxiety that has existed for so long. Research which is a search effort is not only a physical activity but also a mental activity, namely reasoning.

Three tasks of the higher education:

- Transmission of Culture
- The Teaching of Profession
- Scientific Research and The Training of New Scientists.
- Tridharma Higher Education

2. What is Legal Research?

There are various types of law

- Law is a shared science (Rechts Is Mede Wetenschap) and is a field of study in various disciplines.
- Law of Empirical Sciences (sociology of law, legal anthropology, legal history, legal psychology, etc.)
- Normative Law

Empirical Law

- View the law as a fact that can be constated and free of value.
- The “ex post” dimension provides a meaningful explanation of legal phenomena (interpreted factually) future reflections only have a limited meaning.
- Question: what is the meaning of empirical jurisprudence which for legal practice has no benefit?

Science of law as a normative science

- Normative law is the science of the rules of science about norms (norms). It has a special character (sui generis). Exercising influence normalizes. Not all norms in society are legal norms.
- The juridical accent lies in the “ex ante” dimension.
- A critical assessment of the content of law lies in the distinctive nature of the law. This cannot be done through empirical science.
- Empirical science does not discuss an essential dimension of law. (Joni Ibrahim, 2010).

Several approaches are known in legal research. Among others are the Legislative Approach (statute approach), analytical approach (analytical approach), conceptual approach (conceptual approach), comparative approach (comparative approach), historical approach (historical approach), philosophical approach (philosophical approach), case approach (case approach) (Campbell and Glasson).

The science of law – which in English is called jurisprudence – is a branch of human intellectual activity which is concerned with the object of its work in the form of norms. Norms, whose rationalization will be in the form of teachings or doctrines called teachings (or what in Dutch or German called leer or Lehre), are not the work of other branches of human intellectual activity

that are included in the number "science" (or in English it is called science, and which is translated in Malaysia – and more recently in Indonesia – with the word 'science') (Soetandyo Wignjoe Soebroto, 2013). Therefore, discussing legal research methodologies and methods will never lead to scientific research models known as the scientific method. 'Norma' and 'doctrine on which it is justified' are imperative sentences, which therefore always imply a command to do or not to do. That is also the explanation why the so-called 'norms' – and no doubt also 'legal norms' – will always be in the form of a decision that begins with a choice or partisanship which in English is called a judgment. Norms are not facts of events, but rather a form of human decision or a group of people to take sides when they have to respond to a fact that is perceived as a problem. A norm is something that is a clear statement of partisanship and does not require further explanation. A norm is – it says in English – something given , and therefore basically no longer needs an explanation of the real reason.

It is said that research is essentially in an effort to seek and find true knowledge in order to solve problems in life, both with regard to physical safety and with regard to mental welfare. The search for knowledge like that is not a search for any search, but a search that must be carried out through a special procedure, a procedure called a research method with rules that are strictly controlled by logic, discipline and ethics. A lot of knowledge that has been proven true can be found and obtained by humans through what is called 'scientific research' - which in English is termed scientific research.

Basically a right legal decision is a decision that uses the right logic and legal argumentation and is based on authoritative sources of the law. In other words, legal reasoning becomes a critical touchstone, in terms of Legal Science to examine all juridical activities and products produced by legal bearers. Because the intuition of a legal bearer has been built gradually through legal education and a series of experiences.

In academic activities, legal reasoning is one of the main elements that must be understood by a legal scientist. That is why legal reasoning is often said to be the heart of the law. Without an understanding of legal reasoning, a legal scientist will lose his way, and even find it difficult to systematize legal materials that are the topic of discussion, and affect the scientific quality of conclusions on legal decisions made. The chess of the judiciary and independent legal professions, such as notaries, and lecturers in Law (lecturers), also carry out their juridical activities based on reasoning which in Legal Science is one of the scientific activities that occupies the main place.

3. Steps in Legal Research

There are several steps in legal research, including:

a. Identify and analyze the significant facts
b. Formulate the legal issue to be researched
c. Research the issue presented
d. Updates

(Note: Quotes from Myrom Jacob Stein, Roy Merezky, Donald J. Dunn, 1994)

In carrying out these steps of course related to the truth to be achieved. In normative legal research there are several truths to be achieved, namely:

a. Correspondence theory of truth means that truth is the compatibility between decisions or propositions with the world of reality (adequatio intelectus et rei, compatibility between thoughts and objects)
b. Coherence theory of truth means that a decision is true if it is derived in an appropriate way from the point of departure of the decision system or proposition (truth in theory is the same as certainty).
c. Pragmatic truth theory means that a decision or proposition in theory is true if the decision or proposition fulfills its function (what is good in a way of belief).

There are 3 layers of law, namely Dogmatic Law, Legal Theory, and Philosophy of Law. The dogmatic function of law is to explain, analyze, systematize and interpret applicable laws. The scientific activity required is to understand the concepts with the background of the underlying legal principles. The object of Dogmatic Law is positive national law, consisting of norms (normalizing dimensions). Legal Theory field of scientific study is the analysis of legal materials, methods and ideological criticism of the law. Legal theory is characterized by its interdisciplinary character. The object is a general phenomenon in positive law. Its juridical activities are legal dogmatics, law formation and law discovery. Legal theory has two dimensions, namely the practical dimension and the empirical dimension. Then Philosophy of Law is an intellectual theoretical reflection to find the essence of legal principles that are born from a rule of law. The object is the foundation and limits of the rule of law, and on what basis the law can be judged for its fairness

Law is governmental – Four Style of Social Control

	Penal	***Compensatory***	***Therapeutic***	***Conciliatory***
Standard	***Prohibition***	***Obligatory***	***Normality***	***Harmony***
Problem Initation	***Guilt***	***Debt***	***Need***	***Conflict***
of Case	***Group***	***Victim***	***Deviant***	***Disputants***
Identity of deviant	***Offender***	***Debtor***	***Victim***	***Disputant***
Solution	***punishment***	***payment***	***Help***	***Resolution***

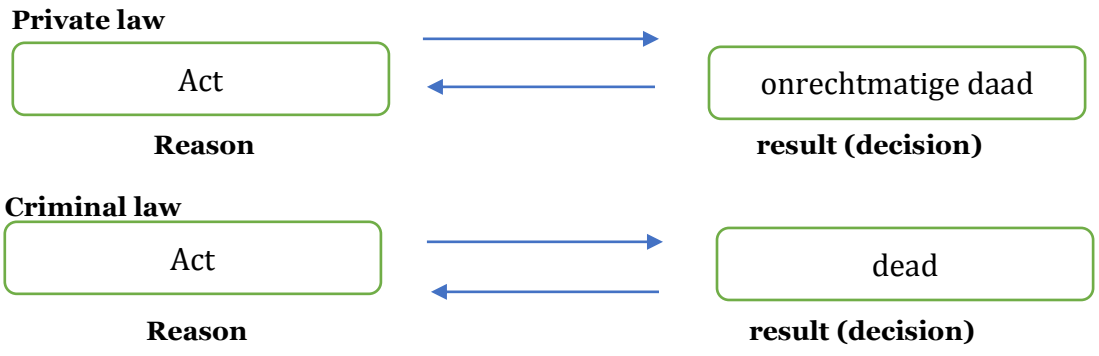
4. The function of these three layers of law on the science of law

The three layers of law must ultimately be directed at legal practice which involves two main aspects, namely the formation of law and the application of law. The application of law is legal interpretation (interpreting the meaning of positive law), legal vacuum (Leemten in Het Recht), Antinomy (conflict of legal norms), and vague norms (Vage Normen).

Logic is the study that directs the main attention to setting criteria for evaluating a true argument, and therefore logic studies the methods and principles used to distinguish straight reasoning and illogical reasoning. Logic is only concerned with the logical importance (consequential relationship) that exists between the conclusion and its premises. So logic is related to thinking activities, but not just thinking as it is human rational nature itself, but straight thinking, namely discussing the way of thinking on the basis of standards or laws of thought so as to prevent people from mistakes and misguided thinking Therefore, logic is also called science, because it is a collection of knowledge that is systematically arranged and based on laws and principles that must be obeyed so that people can think correctly, regularly, and straightly. Such a way of thinking must be practiced all the time so that it can become skilled. It can be concluded that there are at least four most basic uses of logic: first, to help everyone who studies logic to think rationally, critically, straightly, precisely, orderly, methodically, and logic to think rationally, critically, straightly, precisely, orderly. , methodical and coherent ; secondly improve the ability to think abstractly, carefully, and objectively; third, increase intelligence and improve the ability to think sharply and independently; Fourth, increase the love of truth in order to avoid mistakes and misguidance. It is understandable why in the world of science, studying logic is a must, because a science without logic, as Aristotle said that logic is a tool (masterkey) to reach the truth, for all science.

Legal logic is logic that is applied in law. Hans Kelsen asserts that legal logic is common logic which is applied to the descriptive propositions of science. Law, in exactly the same way as it applies – as far as logic is applicable here – to the prescriptive norms of law. On the other hand J.W. Harris confirmed what Kant had said earlier about general logic and special logic. The difference in the use of logic is caused by its application in a particular case.

Indonesian jurists want to raise the level of legal scholarship by trying to emulate legal science through sociological studies, and this has resulted in confusion in the development of legal science. The formulation of the problem, how, to what extent, seems difficult to accept in normative legal research. Likewise, data sources, population, sampling also have empirical meaning, therefore normative legal research only recognizes primary material (laws), secondary legal materials (opinions/writing publicity) and tertiary legal materials (dictionaries)



- ***Conditio Sine Quanon theory***
- ***Causa Proxima theory***
- **The reason for generalizing**
- **Ekuivalensi theory**
- ***Adequat theory***

5. Deductive and inductive reasoning in legal research

Inductive syllogism as an explanative syllogism:
Structure and Function.

It has been stated that deductive reasoning is a reasoning process that departs from a general statement sentence to arrive at a conclusion that will be able to answer a question (Sukardijo, 1994). By induction we elevate the individual (certain) to the level of the universal (Alex Lanur, 1983). The syllogism also functions as a process of proving the truth of an opinion – a thesis or a hypothesis – regarding a particular problem. Two examples of deductive syllogisms can be given below. The first relates to the logical reasoning of ordinary people, while the second is more concerned with the reasoning of a professional in the field of law. The first syllogism reads as follows:

All living humans will eventually die;
I am a living man;
So I'm going to die someday.
The second syllogism reads as follows:
Whoever takes the property of another person unlawfully will be sentenced to imprisonment for theft for a maximum of 5 years;
The thief takes other people's property against the right;
Then the thief will be sentenced to imprisonment for theft of a maximum of 5 years.

Like the deductive syllogism, the induction syllogism also has three propositional structures, namely two antecedent propositions called premises and one consequent proposition called conclusion or conclusion. However, in contrast to the deductive syllogism, the induction syllogism moves in a line of reasoning that starts from two premises, each of which proposes specific terms (singular from the sensory world) to arrive at a conclusion proposition that is more general. Here's an example:
Known: A, B, C, D, E, F are people who distribute drugs;
It is known that: A, B, C, D, E, F are people subject to the death penalty;
It is concluded (remembering the experiences of some of the people whose names are mentioned above): all people who distribute drugs are more likely (will) also be subject to the death penalty.

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