

## TYOLOGY OF LEGAL RESEARCH METHODS IN NORMATIVE AND SOCIOLOGICAL THINKING

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<b>Keywords :</b>	Abstract. Legal Research Methods in understanding and exploring technical aspects of legal research in accordance with the peculiarities of legal science which has a dual paradigm, not only normative in character, but also with sociological empirical character. The research method used is descriptive analytical with a normative juridical approach through the literature and field research stages with data collection techniques through library research. Then the data were analyzed through a qualitative normative method without using numbers and mathematical formulas. Based on the results of the study, it shows that the dichotomy of the scientific paradigm of legal science has actually resulted in a lack of agreement among legal scientists regarding the legal research model that will be developed to answer various legal issues that arise in the life of the legal community. This dual legal scientific paradigm also ultimately creates confusion regarding the research model that will be developed when conducting legal research
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### 1. INTRODUCTION

In conducting a legal research can not be separated from the use of research methods, because any research must use a method to analyze the problems raised. Therefore, research is a scientific activity based on certain methods, systematics and thoughts that aim to study one or several certain legal phenomena, by analyzing them. Apart from that, an in-depth examination of the legal facts is also carried out to then seek a solution to the problems that arise in the phenomenon in question. In terms of research studies, legal science is not basically to verify or test hypotheses as social science research or natural science research does. The study method of legal science departs from the nature and character of legal science itself, has a distinctive character, namely its normative, practical, and prescriptive nature. Such character causes some people who do not understand the characteristics of legal science to begin to doubt the nature of legal scholarship. The doubt is because the study of legal science is more dogmatic than empirical.

The scientific method is a procedure in obtaining knowledge called science or in other words, science is knowledge obtained through the scientific method. Without the scientific method, a science is not actually a science, but a collection of knowledge about various phenomena without realizing the relationship between one symptom and another. Not all knowledge can be called science, because science is knowledge whose way of obtaining it must meet the conditions referred to in the scientific method. Therefore, research and the scientific method actually have a very close relationship, if not to say the same.

The scientific method cannot be separated from a process of exploring and seeking knowledge, but reminds us that not all examinations or investigations are considered scientific research, so that in order to be recognized as scientific research, the examination or investigation must go through a hypothetical-verification process. Therefore, to achieve a measure of objectivity, the research must be based on scientific principles, so that it can be called scientific research. Scientific research itself is interpreted by Sunarjati Hartono as "reasoning that follows a certain flow of thinking or logic and which combines the method of deduction (abstract) with the method of induction (empirical), because scientific research always demands empirical testing and proof of hypotheses or theories. -deductively structured theory".

Furthermore, "for legal scientists who hold that the science of law is normative in character, they

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are of the view that legal science is not an empirical science like the social sciences, because legal science is not a science that is qualified as a social science, let alone a humanities science.”. This opinion can be seen from Marzuki's opinion, which holds that "legal science is the study of law, legal science cannot be classified into social sciences whose field of study is empirical truth.”. Still according to Marzuki "the object of legal science is law". Law is one of the social norms in which it is full of values. Therefore, legal science cannot be classified as a social science, because social science is only concerned with empirical truth”.

Legal Research Methods in understanding and exploring technical aspects of legal research in accordance with the peculiarities of legal science which has a dual paradigm, not only normative in character, but also sociological empirical character. The dichotomy of the scientific paradigm of law in real terms has resulted in a lack of agreement among legal scientists regarding the legal research model that will be developed to answer various legal issues that arise in the life of the legal community. This dual legal scientific paradigm also ultimately creates confusion regarding the research model that will be developed when conducting legal research.

## **2. METHOD**

This study uses a normative juridical approach, namely by taking an inventory, reviewing and analyzing and understanding the law as a set of regulations or positive norms in the legal system that regulates human life. Specifications This research is a descriptive analytical research which is a research to describe the flow of scientific communication and analyze existing problems which will be presented descriptively. The type of data used is secondary data, including library materials related to research, secondary data covering primary legal materials, secondary legal materials and tertiary legal materials. Then the data collection was carried out through a literature study through a review of library materials related to the problems studied, then the data were analyzed in a normative qualitative manner.

## **3. RESULT AND DISCUSSION**

### **Conception of Thought in Legal Research Methods**

Following the tradition of *reine rechtslehre* or *rechts geleerdheid* or jurisprudence, Legal science as taught in law faculties in Indonesia is not actually a relative of science. Legal science in Indonesia is not traditionalized in the flow of science as legal science, even though this science does work with positive legal propositions, but what is meant by positive legal here is not the result of observations and/or measurements or the symptoms of the empirical world, but the results of positive judgments, both in abstracto and in concreto by certain competent authorities.

Legal science, in its meaning as *reine rechtslehre*, actually does not own (and feels no need to own) data that is owned as intellectual property is a treasure trove of propositions and/or premises, each of which through deductive syllogisms and induction syllogisms can produce conclusions, both practical and functions as a formal source of law (which in countries that adhere to civil law is compiled as jurisprudence and in countries that adhere to common law it is compiled in the form of judge made law), as well as theoretical and functions as a source of material law (in the form of principles).

In the *rechtslehre* tradition, law is seen more as an art of special thought intended to find rules that can be applied in concreto from within a system of positive rules that have been arranged logically, coherently in hierarchical levels (*stufen*), but isolated and isolated from the natural world of observation. Then develop the art of thinking according to teachings (knowledge) the law formerly known as *jurisch denken* is such as thinking according to the logic of the rules of the game of chess (*schaakdenken*) where the world of thinking according to this teaching is separate and exclusive, and therefore does not need to adhere to the principles of logic that govern the realm of reality (the natural logic).

Some traditions of *rechtslehre* or jurisprudence, the social sciences work in the tradition of thinking and using a scientific method (and therefore the social sciences from the beginning without hesitation called themselves social sciences. The difference between thinking and method in *rechtslehre* and social science does not actually lie in the syllogism -logic syllogism used In this connection, it should be noted that both of them, moreover developed in the common law system, actually use the

methods of deductive and inductive syllogisms. The basic difference seems to be sought not in the method, but in the basic assumptions about what postulates should be used as a starting point for that thinking.

In the teaching of law at the law faculties, the premises must be the result of the judgments of the competent authority and/or the derivatives that can be obtained from it (*ipso jure*). Meanwhile, in the study of social sciences at the social and political faculties, the premises must be the result of observations (which are maintained with accuracy, depth, and validity, with the help of recording or measuring instruments), and/or derivatives. -derivatives that can be drawn from it. From this explanation it turns out that Ajarah (law) and science (social) are two separate worlds. In the teachings of law there are no legal teachings that cannot be published just like that (*IPSO Facto*), whereas in the studies of social science will not and/or statements that may be judged to be correct (true), because of the demands of authority (*ipso jure*). This separation, indeed without being avoided as a result of the belief in the enactment of the method of methodDualismus. Studies in the world of secular modern Western thinking, which are faithfully adopted among Western intellectuals and their students who also feed evenly in the Third World countries (and no less than also in Indonesia). Penetia to the understanding of thinking of these methods (no longer wrong) the teachings of law and social science will continue to be co-axis, even though it is very close like oil and water.

Different perspectives will not only give birth to different epistemological concepts, but also different methods of thinking and research methods, perhaps even different perspectives like that will be able to give birth to different personalities, namely between juridical people who are generally It is easy to appear in different personality figures, namely between juridical who are generally easy to appear in the personality of a sensitive exponent and social scientists who are generally easy to appear in the personality of a narrator or genuine analyst who will tend to believe in and affirm certain behavioral models, and with a spirit of universalism that is high enough to force the world of everyday life to always adhere to the imperatives of these models. Meanwhile, a social analyst genuine people will tend to perceive patterns of behavior in everyday life as historical variables that are particularistic in nature, and therefore must be considered normal if they are also relative. Various concepts and various logical methods in legal studies in many literatures can have theological and philosophical concepts whose variations are called norms, whether they are norms that are identified with divine perfection that is good and beautiful or identical with the principle of justice that must be realized. In addition to these two concepts, a third concept emerges which defines law as the entire prescription of the law and which is actually a logical and not moral justification basis for every legal decision taken, but is often said to be the norm, even with qualifications as positive norm (a contradiction in terms).

This third concept is said to be a normative concept with their respective norms identified as divine ideas, whether in the form of moral principles of justice, and whether they are positive as statutory laws. normative research. Meanwhile, given that each norm always exists as part of a doctrinal system, namely the doctrine that provides the basis for the legitimacy or legality of every decision that is created logically to answer a case, any legal research that conceptualizes law as a norm will also be referred to as research. doctrinal.

In addition to these three concepts, the fourth and fifth concepts are concepts that are said to be legal concepts in behavioral terms, namely concepts that are constructed with empirical references. Here the law is not conceptualized as orders or rules, but as legalities that occur in the realm of experience and are observed in everyday life. Law is defined as an actor or interaction between humans that has actually been and/or which will potentially be patterned. Therefore, every behavior or action is a social reality that is observed in empirical sensory experience, so any research that conceptualizes law as interactive behavior can be referred to as social research on law.

Social research is research with the truth of findings that must be proven by empirical data. Social research does not start from ideal and basic norms or at the level of teaching. Even social research on a phenomenon called law must be said to be an empirical research that only wants to prove whether or not a legal event has occurred in the realm of human life. Legal research only wants to find and find what is said to be the factual truth and does not want to deal with the rightful justice. Social research does not want to link its activities with everything related to teachings or doctrines, so social studies of

law (which have been conceptualized as a pattern of behavior) is often called empirical research or non-doctrinal research.

Although it cannot be said to be exact, the dichotomous distinction into the two broad categories of legal research methods between the doctrinal and the non-doctrinal as stated above, is in line with the logical distinction that underlies the legal research.. In doctrinal legal research, formal logic with its deductive syllogism is the most commonly used. This is easy to understand, because it is only through deduction that people will be able to find the basic premises that will underlie the truth of a rule of law in concreto. In doctrinal research, those seeking answers to what the law is for a case are indeed on a mission to seek and find the basis for the legitimacy of a legal decision.

Meanwhile, in non-doctrinal legal studies, material logic with its inductive syllogism will be more commonly used. This is easy to understand, considering the fact that in this non-doctrinal research which has the character of social research, what is being sought is not the justification for a decision. Instead what is being sought is none other than a pattern of correlative or causal relationships between various phenomena which are manifested by the presence of law in the realm of reality as can be seen by the senses of observation.

Although basically the legal research methods can be generally divided into two categories, namely doctrinal and non-doctrinal, considering the actual diversity of concepts in methodology and in their implementation practices, in fact if one will observe more variations than those two alone. Described further in such a dichotomy, it also seems to show polarization of attitudes and alignments among juridical on the one hand and social scientists on the other in their relationship with government authorities. The jurists tend to be loyal to the central models and are generally willing and willing to accept (and perhaps even take sides) the presence of central authorities (even the authorities) who have assigned themselves to coercively engineer public order and peace. . In the concept of this group, what is called a social order is nothing but a normative pre-established order. Based on the description above, it is impossible for legal science to fully and consistently use approaches, perspectives, or approaches to the social sciences, unless the science of law is ready to be transformed into a branch of social science (with legal variables as its special object). ) or otherwise, the science of law is still displayed in its natural personality as jurisprudence or *rechtslehre*, but with a willingness to abandon its outdated determination and commitment as legal teachings pure, so that they can begin to change their form and personality as Pound introduced under the name of sociological jurisprudence.

### **The Development of Legal Theory Thinking in Normative and Sociological Typology**

The development of legal theory thinking in normative typology can be seen from natural law thinking as a concept that includes many theories in it. Various assumptions and opinions that are grouped into natural laws have emerged from time to time. Studying the history of natural law, it will examine the history of humans who struggle to find absolute justice in this world and their failures. At one time the laws of nature appear in force, at other times they are ignored, but what is certain is that the laws of nature never die. Natural law is a law whose norms come from God Almighty, from the universe, and from the human mind, therefore it is described as a law that applies eternally and universally.

This natural law has always been recognized throughout the centuries of human history, because it is a human effort to find the ideal law and justice. Therefore, Dias added that natural law is a method to criticize and condemn the existing law, procedure and practice. It is also a tool enhance justification, or legitimacy of the existing laws and future, it is a form of ideology (free translation: natural law is a method for criticizing the law that is currently in effect, criticizing legal procedures and practices. Besides that, it is also a tool to increase belief or justification or legitimacy of the law that is currently in force and so on).

As reflected above, natural law can be divided into natural law as method and natural law as substance. Natural law as a method is the oldest that can be recognized from ancient times to the beginning of the Middle Ages. Natural law focuses itself on trying to find methods that can be used to create rules that are able to deal with different circumstances. Thus, it does not contain its own norms but only tells about how to make good regulations, while natural law as a substance actually contains

norms. Through this assumption people can create a large number of regulations derived from several absolute principles commonly known as human rights. This second natural law is characteristic of the 17th and 18th centuries, but this second natural law received sharp criticism and suffered a setback, so it was replaced by legal positivism in the 19th century.

In addition to natural law thinking in the empirical-philosophical normative research typology, legal positivism was born as a critique of the natural law school, because according to legal positivism the natural law school is too idealistic by placing all its variants placing the legal ontology at a very abstract level. , so legal positivism refuses because it is not concrete. If the flow of natural law is busy with value validation issues (abstract), then legal positivism actually wants to reduce it to concrete problems. The weakness of the natural law school is its failure to develop a method for determining what is human nature and what its essential characteristics are. Each philosopher has his own view of morals, justice, and so on, so that according to the critique of legal positivism, natural law is ambiguous and fails to provide objective legal certainty. At this point, legal positivism's critique of the natural law school seems convincing. In order to guarantee legal certainty, legal positivism rests philosophy from its speculative work and identifies law with statutory regulations.. Only by identifying the laws and regulations, legal certainty will be obtained, because people know for sure what they can and cannot do. This thinking implies a sharp separation between law and morals. The law is obeyed not because it is considered good or fair, but because it has been determined by the rightful ruler.

The epistemology of legal positivism, which was originally critical of the flow of natural law, ended its criticality when it considered legal positivism to be the last and most absolute school of legal science. This attitude makes legal positivism close the door of criticism, so that the dialectic is considered to be over. This means that legal positivism is truly the "truth" of legal science and practice, which is final at the point of the line of legal positivism, so that they feel that there will be no new developments in the future. A monument that marks the end of dialectics in legal science and practice is codification. Legal positivism in its development was able to influence many countries to adopt a codification system. In countries that adhere to codification, the law is the only sure source of law.

If traced back, before the birth of legal positivism, a thought in legal science known as the doctrine of legism had developed. The flow of legism identifies law with law, or there is no law outside the law and the law is the only source of law. This legal thought developed since the Middle Ages and has influenced the development of law in various countries, including the Dutch East Indies. The influence of the flow of legism in the Dutch East Indies can be read in Article 15 of Algemene Bepalingen van Wetgeving (AB) which among other things reads (in Indonesian): "Except for deviations determined for Indonesians and those who are equated with Indonesians, then custom is not law unless the law dictates it".

In countries that adhere to codification, the source used by judges in carrying out their duties to adjudicate is positive law (law). In this sense, the task of the judge is not to create law (*rechtsvorming*) but to apply the law. Article 21 AB, states: "No judge on the basis of general regulations or determinations has the right to decide in cases that are subject to his decision". This means that the judge cannot placing oneself as a legislator, may not place oneself in its decision it's as if the legislators. The influence of legism is felt in the field of criminal law which was codified and applied by the Dutch in Indonesia on the principle of concordance. This is stipulated in Article 1 paragraph (1) of the Criminal Code which reads: "No action can be punished except on the basis of a law-enforced regulation which first existed from the act". Epistemologically, since the theory of separation of powers such as the *Trias Politica* theory emerged in the 17th century, judges have played a role in the judiciary. Baron de Montesquieu's version of the *Trias Politica* doctrine (1689-1755) requires the role of judges to be separate from those of the executive and legislative authorities. Montesquieu's words in *L'Esprit des lois*: Les judge de la nation ne sont que la bouche qui prononce les paroles de la lois; des entres inamines qui ne'em peuvent modere ni la force ni la rigueur (judges are but mouths that speak the words of the law; they are lifeless creatures who must not weaken the power and violence of the law).

In a sign like this, the judge is just like a mouthpiece or a trumpet of the law (*la baoche de la loi*). Thus, the judge is only the implementer of the law. Judges as mouthpieces of the law, the burden of judges is lightened, there is no need to consider the justice of the law itself, because judges limit

themselves to applying the law to the cases they face by using a closed logic system. With the deductive method, a closed logic system requires the formulation of the major premise as a determining factor. The major premise is built from positive norms in the statutory system and then juxtaposed with facts which are minor premises, it will produce an undeniable conclusion. Because deductive logic is very dependent on the formulation of the major premise, the formulation in the major premise can be ascertained how the judge's decision will be handed down. Adherents of legal positivism believe that if a closed logical system is followed, only one truth (objective) will be found. Because there is only a single truth, then the meaning of the law must also be mono-interpreted, especially the most likely to be done is a grammatical and authentic interpretation.

Although the syllogism is important and necessary, in practice legal reasoning is not as simple and linear as theorized. The rule of law which is seen as a major premise always requires interpretation in the context of concrete factual reality. In addition, the dynamics of life always raises new situations to which there are no explicit rules that can be directly applied. That is why, the rule of law always undergoes formation and re-formation (with interpretation). The major premise in the form of juridical facts, namely the facts of a case in legal matters, is also not just given, but must be perceived and qualified in the context of the relevant legal rules to then be selected and classified based on legal categories. So, juridical facts are not "raw materials", but facts that have been interpreted and evaluated.

In the map of positivism, the teaching that judges are only mouthpieces of the law and prohibited from creating laws, seen from the legal tradition that develops in the world is generally adopted in countries that adhere to the continental legal tradition (civil law). Legal experts from the continental tradition are basically in the mainstream of thought, that law as it is written in the book. In countries that are oriented towards continental traditions, judges in resolving cases must first look to the law rather than other sources of law.

Then the typology of normative research thought was also influenced by the Pure Theory of Law which was introduced by a prominent Austrian philosopher and legal expert named Hans Kelsen (1881-1973). Kelsen began his career as a legal theorist in the early 20th century. According to Kelsen, the legal philosophy that existed at that time was said to have been contaminated by political ideology and morality on the one hand, and had been reduced by science on the other. Kelsen found that these two reducers had weakened the law. Therefore, Kelsen proposes a pure form of legal theory that seeks to exclude reduced forms of law. This is to avoid a mix of methodologies from various disciplines which makes the methodology of legal science itself unclear.

This jurisprudence is characterized as a study of law, as an independent object, so that purity becomes the basic methodological principles of its philosophy. It should be noted that anti-reductionism is not only a methodology but also a substance. Kelsen believes that if law is to be considered as a normative practice, reductionist methodologies should be eliminated. However, this approach is not just a methodological problem.

In addition to the typology of normative legal thought in legal research, there is also the development of legal theory thinking in sociological typology, namely empirical legal sociology in which the orientation of this school collects its materials from an external perspective. That is, from a standpoint, observers who observe using quantitative methods try while registering material arrangements and from there draw conclusions about the relationship between legal rules and social reality. Eugen Ehrlich proposed the concept of "living law" as a code of conduct used by members of society in relation to one another. Furthermore, Ehrlich argues that living law cannot be found in formal legal materials, but outside it, namely in society. The power of law enforcement according to Ehrlich depends on the acceptance of society and each class of society creates its own living law. The ability of groups in society to create their own laws is not the same, so the community factor becomes very important to determine the effectiveness of the law in society.

In empirical legal sociology research, when trying to reduce the number of victims of traffic accidents by changing the maximum speed allowed in the freeway in a law. To be able to test the result of the maximum permissible speed change on the freeway by measuring compliance at the maximum speed before and after the change. Legal sociology research empirically notices that people obey the law and the number of victims of traffic accidents decreases. The results of this study lead to the

conclusion that there is a possibility that the amendment to the law will actually achieve its objectives. Empirical research in the field of sociology of law, thus provides an indication that the law is effective.

Then the development of legal theory thinking in sociological typology, namely the sociology of contemplative law which places itself in a different perspective. For him, an external perspective is unacceptable with respect to the object he is studying. To be able to say meaningfully about society and to know both the legal rules that function in it. This causes the external perspective for the research cannot be used, because it has to work from an internal point of view, namely the perspective of the participants who are speaking. According to J.J.H. Bruggink, the Contemplative Sociologists further questioned the purity of the results of empirical research. Empirical research must be familiar with the material to be studied which has brought itself to a certain alignment. This causes the results of their research are also not really pure and objective. From this point, it is clear that the background of Contemplative Sociology is not positivistic because its perspective lies close to that of philosophy.

#### 4. CONCLUSION

Normative legal research methods or doctrinal legal research or library research are only aimed at written regulations, so this research is very closely related to libraries because it will require secondary data. In normative legal research, written law is studied from various aspects, such as aspects of theory, philosophy, comparison, structure/composition, consistency, general explanations and explanations for each article, formality and binding power of a law and the language used is legal language, while the empirical legal research method is a legal research method that functions to see the law in a real sense and examines how the law works in the community. Because this research examines people in life relationships in society, the empirical legal research method can be said to be sociological legal research. This is what causes the characteristic that legal science is normative in character, not empirical science as in the social sciences, because legal science is not a science that is qualified as a social science, let alone a humanities science. Such an opinion seems to be seen, that legal science is the study of law, legal science cannot be classified into social science whose field of study is empirical truth, because the object of legal science is law. Law is one of the social norms in which it is full of values. Therefore, legal science cannot be classified as a social science, because social science is only concerned with empirical truth.

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