

Legal Research of Doctrinal and Non-Doctrinal

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Abstract-- This paper discussed doctrinal and non-doctrinal legal research to show researchers how to write with understanding regarding the advantages, disadvantages, and the comparisons between doctrinal and non-doctrinal legal research. Thus, the combination of methodologies, i.e., a mixed method using ideological, social, and legal, can work together to achieve a better understanding of the law.

Keywords-- *Research Methodology; Legal Research; Doctrinal; Non-doctrinal*

I. INTRODUCTION

This paper will discuss doctrinal and non-doctrinal legal research to inform researchers how to write with understanding regarding the advantages, disadvantages, and the comparisons between doctrinal and non-doctrinal legal research. It is imperative that legal academic researchers working within the context of advanced research understand how to explain and justify the process of conducting a "dogmatic search." The word dogmatic comes from the Latin word, "dogmaticus," which means to have very strong beliefs or opinions about a topic and assert those beliefs. Thus, researchers need to be able to interpret methodology in similar terms to those used by other disciplines. The word doctrinal is derived from the word "doctrine," which is Latin for the word "doctrina," which means education, knowledge or learning.

II. METHODOLOGY OF DOCTRINAL RESEARCH

Doctrinal or library-based research is the most common methodology employed by those undertaking research in law. Doctrinal research asks, what is the law in a particular case. It is concerned with the analysis of the legal doctrine and how it was developed and applied. As is well known, this is purely theoretical research that consists of either simple research aimed at finding a specific statement of the law, or it is legal analysis with more complex logic and depth. In short, it is library-based research that seeks to find the "one right answer" to certain legal issues or questions. Thus, the aim of this type of methodology is to make specific inquiries in order to identify specific pieces of information. For example, an investigation can be conducted to find specific legislation that monitors occurrences of child abuse in a particular jurisdiction. All inquiries will have specific answers to specific questions that can be easily found and verified, and these are the keys to is doctrinal or library-based research. These steps include analysis of legal issues in order to determine the need for further research. This stage often involves a great deal of background reading on a subject using sources such as dictionaries, encyclopedias, major textbooks, treatises, and journals that are accompanied by footnotes. These sources provide Definitions of Terms that help the researcher understand and summarize the legal principles involved in the field of law under study.

III. NORMATIVE CHARACTER OF DOCTRINAL RESEARCH

The normative character of doctrinal research in particular contexts, is concerned with the discovery and development of legal doctrines and research, for publication in textbooks and

journals that take the form of asking the question, "What is the law?" This level of research is different from the area of environmental research done by experimental investigators. This is perhaps more apparent in comparison with research in the natural sciences, which usually seeks to explain natural phenomena through the study of causal relationships between variables. Epistemologically, this is clearly different from the qualitative interpretative required by doctrinal research. Although the interpretive nature of the process bears a superficial resemblance to the tradition of understanding the social sciences, there are fundamental differences in cognitive reality between ideological analysis and all the methods of scientific research. Scientific research, both in the natural and social sciences, depends on a set of empirical data, either as a basis for these theories, or as a means to test them. Therefore, in both cases, the validity of research findings must be determined through the empirical investigation process. In contrast, the validity of the results of the empirical research in the jurisprudential world are not affected. Legal rules are normative in character because they dictate how we should behave as individuals. They make no attempt to either explain, predict, or even understand human behavior, just to describe it. In short, doctrinal research is not therefore research about law at all. In asking "What is the law?" it takes the internal cognitive approach oriented to the aim of the study. For this reason, it is sometimes described as research in the field of law. The normative character of the law also means that idiosyncratic health research should inevitably develop a consensus within the legal community, rather than appealing to any external reality.

IV. MERITS OF DOCTRINAL RESEARCH

There are many advantages associated with library-based research methodology. Firstly, it is often traditionally taught that legal research methods should be conducted in the early stages of legal training. As a result, most legal scholars will focus on the techniques used at the time, to initiate graduate research. In addition, for new graduate students, there will be no shortage of experts capable of providing training on ideological research. Secondly, because of the proliferation of law schools and law firms, research conducted under this design is likely to be of more acceptable character in the presence of legal research. Doctrinal research still represents a "base" in the legal community and most universities demand an even higher degree of work based on this ideological framework. For practical purposes, idiosyncratic research methodology is required. The busy practitioner tends to be concerned with the law "as it is" and rarely has the time to consider research that does not fit within that paradigm and timeframe. Moreover, because of its focus on the sources of jurisprudence, established research is more manageable and results more predictable. For the postgraduate studies researcher, this may help with meeting deadlines and contain surprises.

V. DEMERITS OF DOCTRINAL RESEARCH

Several criticisms may be leveled against doctrinal or library-based methodology. For example, it is highly theoretical and

technical, uncritical, conservative, trivial and without due consideration of the social, economic and political importance of the legal process. Second, it must be noted that ideological research is very narrow and restricts the choice and range of topics, which increasingly withdrew the legal profession in the greater social context. This context includes legal and social theory, and other methodologies based in the natural and social sciences. In the study of law, the context in which it operates and how the law links to this context, jurisprudential methodology does not provide an appropriate framework to address issues that arise. It assumes that the law exists in a doctrinal objective vacuum rather than within the social framework or context. Third, it is sometimes described as trivial dogmatic research because it is often done without due consideration of social, economic, and the political importance of the legal process. As mentioned above, the law does not operate in a vacuum. It works within the community and impacts on the community. There is, therefore, scope to adopt and adapt to other methodologies used in other subjects, in order to have the functions of the law look its most luminous. For example, there is room for further research on increasing the efficiency of legal institutions such as the courts. It is clear from the above criticisms, that lawyers may need more research skills in sectarian-based libraries, in order to make their research more important to the wider world. One of the methodologies that can be used in this regard is the social and legal method.

VI. NON-DOCTRINAL RESEARCH

Non-doctrinal research, also known as social-legal research, is research that employs methods taken from other disciplines to generate empirical data that answers research questions. It can be a problem, policy, or a reform of the existing law. A legal non-doctrinal finding can be qualitative or quantitative, and a dogmatic non-doctrinal finding can be part of a large-scale project. The non-doctrinal approach allows the researcher to conduct research that analyses the law from the perspective of other science disciplines, and to employ those disciplines in drafting the law. For example, in the behavioral sciences, there is a standard form of consumer contract that contributes to the study of psychological phenomena:

1. The tendency of consumers not to read the standard form contract,
2. The inability of consumers to evaluate the terms of the contract correctly once they do read. And
3. The ability of sellers to deal with consumers. Because it uses non-sectarian legal experimental data, it provides vital insights about the law in context, ie how the law works out in the real world. Legal research is experimental and valuable in detecting and explaining practices and procedures in legal and regulatory systems. It is also valuable in the settling disputes, and impacts the legal phenomena of social institutions and businesses. Similarly, experimental legal research in economics applies legal analysis, statistical inference, and economic modeling, to the core areas of national and international law, such as tort, property, contracts, criminal law, law enforcement and litigation. Earlier research can be used to analyse the economics of legal negligence theory.

CONCLUSION

In conclusion, we can say that it is easy to target a specific methodology and identify its strengths and weaknesses. However, it must be noted that doctrinal and non-doctrinal legal research are the ultimate way to find the answers that have

been raised in the context of attempts to understand the emerging issues in the framework of the law. There is no hierarchy between methodologies and they are all of equal importance for the development and understanding of the law. What is crucial is that researchers must try and equip themselves with the necessary skills to enable them to comfortably meet their research objectives. Undoubtedly, a well-versed scholar will be aware of the advantages and disadvantages of any particular methodology, and will work to obtain the benefits that result from a better quality of work. Often, the combination of methodologies, i.e., a mixed method using ideological, social, and legal, can work together to achieve a better understanding of the law. Thus, postgraduate scholars would do well to equip themselves by using alternative research methodologies.

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