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Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object

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Abstract

Legal research is either normative or empirical. The results of normative law research are prescriptive in nature: the norms provide a prescription as to how one should behave in accordance with the norms. Normative legal research involves the study of the law as an object and removes any non-legal material from the scope of this research. In contrast, empirical legal research focuses on the application of laws in society. This research paper analyses this dichotomy between normative and empirical research and assesses its relevance and usefulness in legal research.

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Keywords: research; normative research; empirical legal research;law; study

1.Introduction

The practice of law is a dichotomy in conducting legal research as research in the study of normative and sociological research in the study. Normative legal research in the study is based on the understanding that science is the science that is legal prescriptive and applied, jurisprudence is always related to what should be or what it should be, methods and procedures of research in natural sciences and social sciences cannot be applied in legal studies. On the other hand, there are research studies that examine the law in law as a legal phenomenon, this study has the objective to study (assess) the law of the state of society. There are sociological studies in this realm Sociological Jurisprudence, Socio Legal Studies that look at factors to assess the importance of the social reality of law, but research in this study remains a legal research. Such legal study intends to explain, criticize and then construct a new

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provision or construct theory. The research in this study uses social theories in order to explain the reality of society which is an important factor in assessing the law. Urgency of this research is the dichotomy legal research that occurred during the time one study in a normative perspective is always right and the other studies in a sociological perspective is not considered a legal research that will result in a blurring of the purpose of the law to provide benefits to life. Specific purpose of this study was to find a proper method in order to assess and understand the law. The findings were targeted in this study is in stage I will find a good rationale dogmatic aspects of the law, legal theory, philosophy of law as well as from the aspect of social theories of the kind of research that exist in assessing the law as an object of study.

2. The Type of Legal Researches in Studying Law .

Research or in English is called the research is a quest. Through the research, people are searching something new, such as the truth or true knowledge, which can be used to answer a question or to solve a problem (Soetandyo Wignyosoebroto, 2002). Research is used to get true answer or a correct answer to a problem, so we need a proper understanding of research methods. Understanding of correct and accurate research methods will enable to control the research process from the beginning to the extent of drawing conclusions, so the search for the true answer research purposes will be able to be objective. Legal research models that exist today are distinguished by normative legal research and legal research or empirical sociology. Distinction from the standpoint of the research objectives of the law itself. Normative legal research includes: The study of the principles of the law, the systematic study of law, research on the level of synchronization law, the legal history research, law of comparative research. While the sociological or empirical legal research consists of: the study of legal identification (unwritten) and the study of the effectiveness of the law. The normative legal research often leaves a positive normative level to reach the level of doctrine (or teaching of law). While empirical research often find symbolic domains is behind names that include it. Mention of doctrinal research and non-doctrinal research will in fact constitute a social research that will be felt more appropriate legal. Doctrinal research and non-doctrinal research is another name of normative research and empirical research in the study of law that had been there. Soetandyo Wignjosoebroto (2002) distinguishes the study of law is based on the law in the concrete abstract concept consisting of: Legal science that examines the law in the most abstract concept is as good of an idea or value (on good ethical and aesthetically beauty) is divine, and that is because it is very normative, manifests as a pre-established teleological God "s order is final, which is manifested in the form of an orderly universe, which also became the object of study of the natural sciences nature (natural science) is called and more identified with the name of legal philosophy, Legal science that examines the law in a more concrete concept as the principles of justice as developed by the flow of natural law believe the norms that are recognized as a universal higher order or Grund norm, the science of law is referred to as positive jurisprudence, which is reviewing the law in the concept as a prescription authoritative positive, and is presented as a legal statute or what Austin called the command of the sovereign, Jurisprudence is said as judicial study that examines the behavior or the court of law in the concept as decisions of the judge (the judge made laws, laws in concreto) who will assess how far judges make decisions based on the provisions of the law , Legal science says law is influenced by social factors, which spawned new flows were very critical of the legal assessment pure legisme wing. They are called by the sociological jurisprudence, the functional jurisprudence, and lately the critical legal studies and feminist jurisprudence, Legal science studies law as it is and the workings of society, which in the United States known as the law and society and that in the UK is commonly known by the name of law in the society. The description above can be assessed that all division are sourced from legal research distinction normative or doctrinal and empirical legal research or non-doctrinal. Jurisprudence has characteristics that are prescriptive science and applied. This means that the characteristics of the science of law is always related to what should or what should it. As science is studying the law prescriptive legal purposes, the values of justice, the validity of the rule of law, legal concepts and legal norms. As an applied science of jurisprudence, it is set the standard procedure, provisions and the signs in implementing the rule of law. This means studying law must learn its norms. Legal norms are something that is essential in the science of law. The scientific method called logico-hipotico verificative applies only to the descriptive nature of science is in order to explain the causal relationship between the two terms, while the characteristics of the science of law is prescriptive Thus, methods and procedures of research in natural sciences and social sciences cannot be applied in the science of law (Peter Mahmud Marzuki, 2005). This study did not think the law as an autonomous reality,

objective, neutral, impartial and it can be generalized. This study aims to continuously build, reconstruct law that can elevate human dignity (Esmi Warrasih, 2007). Such research is not boxing field of social sciences and jurisprudence, both of which are a unity. If the laws are drafted in such a sociological research methods will be used. Jurisprudence in the realm of sociological studies or empirical laws or non-doctrinal conceptualized not just as a rule and structure alone. Law in the sense as the structure and regulation is only one of the three phenomena that are all worth it and very real. First there are the forces of social and legal which in a certain way and is pushed into the legal form. Second, there are the law itself, the structure and rules. Thirdly there is the impact of the law on behavior of the outside world. Where did the laws come from and what they cause, namely the first and third sections are essential in social studies law. The legal system is composed of the real elements of the legal system, namely, the structure, the substance (the rules) and legal culture of society (Lawrence M. Friedman, 2009). Meuwissen said that the law is not a neutral phenomenon that is solely the result of free human inventions, remain in a very tightly interwoven with issues of development society. On the one hand, the law can be explained with the help of social factors: on the other side of the symptoms can be explained to community with legal assistance .The dichotomy that occurred in the study of law as is the case today impacts that are not well, and is not relevant to state that one particular study is the most beneficial and other studies in legal research are useless .The practice of law during this research is a dichotomy in conducting legal research as research in the study of normative and empirical research in the study. Normative legal research in the study is based on the understanding that science is the science that law is prescriptive and applied, jurisprudence always related to what should be or what it should be, methods and procedures of research in natural sciences and social sciences cannot be applied in Legal studies. On the other hand there are research studies that examine the law in law as a legal phenomenon, this study has the objective to study (assess) the law of the state of society. Socio Legal Studies that look at factors to assess the importance of the social reality of law, but research in this study remains a legal research. Such legal study intends to explain, criticize and then construct a new provision or construct theory. The research in this study use social theories in order to explain the reality of society. It is an important factor in assessing the law. The normative legal research leaves a positive normative level to reach level-the level of doctrine (or teaching of law). While empirical research finds symbolic domains behind nomos that involve it. Doctrinal research and non-doctrinal research will be felt more appropriate legal research. Doctrinal research and non-doctrinal research is another name of normative research and empirical research in the study of law that had been there.

2.1. Rationale Normative Legal Research in Reviewing the Law as an Object of Study

Normative legal research is a process to find a legal rules, legal principles, and doctrines of the law to address the legal issues at hand. Results of the study of law are the argument, theory, or the new concept as a prescription in solving the problems faced problems (Peter Mahmud Marzuki, 2005). Soetandyo Wignjosoebroto (2009), said that the legal research doctrinal (thus termed Soetandyo normative legal research) is a research on laws drafted and developed on the basis of the doctrine adopted by the developers. The doctrinal legal research finds the correct answers in the proof of truth is sought or of the legal prescriptions written in the books of the law or the book or books religion (depending on her faith), following the doctrine .The aim of the study is to provide a normative legal prescriptions that what should be in accordance with the jurisprudence that has characters as a science that is prescriptive and applied. As science is prescriptive then the science of law study legal purposes, the values of justice, the validity of the rule of law, legal concepts, and legal norms. As an applied science law sets the standard procedures, rules, guidelines in implementing the rule of law (Peter Mahmud, 2007). Normative research has purposes to study law as an object of study is saying false and true based on legal norms. Prioritizing attainment of the objectives of law for legal certainty characterizes. Normative legal research is a common type of research conducted in the developing of jurisprudence that the west is often called Dogmatic Law. Mochtar Kusumaatmaja and Koesnoe call it the science of Positive Law. Philip Hadjon calls Positive Legal Studies. Philip Hadjon calls Dogmatic jurisprudence. H.Ph. Visser 't Hooft calls science Practical Law (Bernard Arief Sidharta, 2009) . Legal studies included in the group nomological practical sciences. Practical intelligence is the science that learns how to find directly and offer alternative dispute to concrete problems. As Practical sciences, legal sciences including nomological kind of science that science that seeks to find the relationship between two things or more based on the

principle of imputation (linking liability / obligation) to specify what should happen or be subject to specific legal obligations in certain concrete situations, in connection with the acts or events or certain circumstances, although in reality what is supposed to happen by itself was not necessarily the case, the implementation and compliance can be enforced by public authorities. The method is called the normative method by Soetandyo Wignyo Soebroto. He called doctrinal method. There is also a mention of dogmatic methods. Dogmatic method is a method that relies on rules that require that compliance can be enforced by state power (normative). This means that the main source of law is the norm. Legal science is the science of law, the object of legal research is the norm of law itself. Dogmatic law aims to describe, analyze, and interpret and asses the law itself (Teguh Prasetyo, 2007). Therefore the study of law in the dogmatic aspect of the law should be aimed to describe, analyze, systemize, read and assess the law itself, so that the object of legal research normative or doctrinal is a rule of law itself. Human behavior is not an object of research the law itself.

2.2.Rationale Normative Legal Theory Research for The Law as an Object of Study.

Rationale normative legal research in studying law as an object of study of the theoretical aspects of the law do by looking at the development of concepts of existing law that essentially saw the object assessment norm of law is the law itself. The science of law is one of the social norms of the value-laden., the legal system was conceptualized as a collection of positive norms in public life. The aim of law as object study is finding out the legal principles that should apply and should not apply sourced from their specific values. This means that the law is seen as implementation values. Values are difficult to apply in the empirical level. The values are subjective and cannot ever be regarded as an object of empirical sciences research. It doesn't mean the law cannot be used as empirical studies. Law can raise as empirical science studies but its purpose is certainly not to reach that goal. The progress of the natural sciences in the 19th century is giving major influence on the development of the social sciences, where to get the status of scientific, social sciences, economics and so on were developed by following the methods and procedures in natural sciences. Most legal scholars are also encouraged by the progress of the natural sciences (science and technology) and want to make the science of law as a method. According to the doctrine of legal positivism, the law must be cleared from the elements illogical as moral. Legal science is as natural science is neutral, free of value. Legal positivism is the doctrine that animates saintification? this modern law. Positivism doctrine rooted in the teachings of thought John Austin, Hans Kelsen and HLA Hart is Hans Kelsen argued teachings pure legal theory. This theory seeks to explain what is legal and what he was, not how he should be there. He is the science of law (jurisprudence) is not legal politics. This theory is called pure legal theory because it simply explains the law to clean up the object explanation of everything that is not relevant to the legal .The goal is to clean the jurisprudence of foreign elements. Methodological foundation of law is the basis to think that the right to think about concept normative law research method that examines the law as an object of study. Study on legal norms has aim to overlook other norms. The goal is not to ignore or deny the connection, but it wanted to avoid the confusion of the various disciplines of different methodologies that obscure the essence of the science of law and negate the limits set by nature to her subject matter. Hans Kelsen is one that can be classified as an expert in legal positivism which identifies law with legislation. Only then, the rule of law will be obtained because people know exactly what is allowed and what not to do, this idea provides separation between law and morals. The law is not obeyed good or fair but because it has been established by legitimate authority. Hans Kelsen (2007) said as adherents understand positivism underlying normative legal research that makes the rule of law as an object of study is neutral, objective and impartial and free from values that are characteristic of positivism. Legal objectives are achieved in the normative legal research is legal certainty. The rationale of both aspects of dogmatic law, legal theory, legal philosophy normative law research that examines the law as the object of the study is that the characteristics of jurisprudence as a science it is prescriptive. This research is called normative legal research. The method is called normative method, the method dogmatic or doctrinal methods. Therefore, this study tries to clear elements of other elements that are not associated with the law is not to ignore or deny its relevance, but to avoid mixing various disciplines of different methods.

2.3.Rationale Empirical Legal Research in Reviewing the Law as an Object of Study

Normative legal research that examines the law as an object of study is influenced positivism previously described as the science of jurisprudence is neutral and value-free law that wanted to purify science from non-legal factors result in a complex legal problems seen in mechanical and deterministic. It consequence is power law will be weakened by the rapid development of society. It is expressed positivism instituted a doctrine of the unity of science (unified science). This doctrine states that the natural sciences and social sciences should be under the umbrella of positivism paradigm. The doctrine of the unity of science includes criteria for science as follows:

- Non grades researchers should or observer must be free from the interests, values, and emotions in observing objective knowledge.
- Science should use empirical verification method
- Reality is reduced to facts that can be observed (Donny Gahral Ardian , 2005). There are several implications if the research or study law as an object of study was dominated by a particular paradigm (in this case understood positivism in normative studies in law), namely:
- Opinions of legal positivism said that the same law with the law contains a lot of criticism as, among others, put forward by the school of history, which was pioneered by FC.Von Savigny that every peoplehas character and spirit of nationality (volkgeist) because it is the law of a nation is not necessarily suitable for other nations.
- The law is not created yet discovered. Next sociological yurisprudence schools are pioneered by Eugen Ehrlicht and Roscou Pound. They say that a good law is the law of life in society. Oliver Wendel Holmes represents understand legal realism says that the life of the law has not been logic, it has been experience. Realism legal notice in the concrete law judge's decision, and not when still a law. Associated with the study of law as an object of study paradigm of positivism, the criticism is the study of normative legal input as an object of study is influenced by the understanding of legal positivism which identifies law with the law to overlook other factors beyond the law is not enough to provide benefits for the development of the law as a science as well as for purposes of benefit to people who are shaping the law itself.
- Reductionism provides that legal positivism will result in the law. Law will be reduced to minor aspects, the legal consequences will be understood as something that is not intact. As Santos said reductionism is not easy to do in the social sciences, in the absence of legal theory to explain social reality. Science social science is highly dependent on social system and culture so that it can be understood. Sciences are basically free from values such as the natural sciences (FX Adjie Samekto, 2009).
- Legal studies included in the group practical nomological sciences. Practical science is the science that learn how to find directly and offer dispute alternative to concrete problems. As a practical science, the science of law including the type of science nomological the science that seeks to find the relationship between two things or more based on the principle of imputation (i.e. linking liability / obligation) to specify what should happen or be subject to specific legal obligations in certain concrete situations, in connection with the acts or events or certain circumstances, although in reality what is supposed to happen by itself was not necessarily the case, the implementation and compliance can be enforced by public authorities. From the philosophical aspect of the nature of law as a practical science, nomological, and autoratif requires an approach from various thoughts and paradigms not only one paradigm . Law as a practical science requires input from the factual reality of the community. Otherwise, the existence of legal science is on contrary to the essence of the existence of the law itself.
- Normative research method previously described is a method that relies on that compliance can imposition by using state power (normative) take part in the world imperatives (das sollen), and its products norms .

World das sollen it is the product of a dialectical process between the world das sein (social reality and the natural world) that interact with the world das sollen (cultural values, religious and fundamental humanity) whose products are directed back to set the world who have to bring it up das sein. That is the world in which doctrinal or normative methods are world-das sein sollen. Therefore, to achieve its goals then it must accommodate the normative method how the empirical method (method of socio-legal and others) into the activities. This means that that the empirical legal research is still reviewing the law regard to non-legal facts that are useful for the law to achieve the aim of achieving the benefits to society. Such legal study intends to explain, criticize and then construct a new provision or construct theory. The research in this study use social theories in order to explain the reality of society is an important factor in assessing the law.The rationale of both aspects of dogmatic law, legal theory, legal philosophy empirical law research that examines the law as an object of study, namely that it is in fact a normative legal research housed within the existing paradigm of positivism in studying law as an object of study contains many flaws because of its neutral, objective, value-free will lead to an understanding of law be incomplete. Law is only intended to ensure certainty and predictability. On the other hand das sollen world it is the product of a dialectical process between the world days sein (social reality and the natural world) that interact with the world das sollen. It must consider how to work the empirical method. In other words empirical legal research see the importance of considering the social reality in reviewing the law along the goal is still to criticise, advise, provide a change to the legal norms remains an object of study for the law.In other words, an empirical legal research sees the importance of considering the social reality in studying law. As said by Gustaf Radbrucht that the purpose of the law is to the rule of law, justice and expediency. The three objectives of this law will not be achieved if the law as an object of study is done only with the normative study.

3. Conclusion

From the above description above can be concluded that there are two types of studies to examine the law as an object of legal studies ie normative legal research / doctrinal and empirical / non-doctrinal. The development of the legal concept of diversity will affect the methods used to assess the law itself. The rationale of both aspects of dogmatic law, legal theory, legal philosophy normative law research that examines the law as the object of the study is that the characteristics of jurisprudence as a science it is prescriptive so that the purpose of the study to examine the law as an object of study is to provide a prescription what should be in accordance with the law so that the object of the research is the norm of law. This research is called normative legal research. The method is called normative method, the method dogmatic or doctrinal methods. Therefore, this study tries to clear elements of other elements that are not associated with the law is not to ignore or deny its relevance, but to avoid mixing various disciplines of different methods. The rationale of both aspects of dogmatic law, legal theory, legal philosophy empirical law research that examines the law as an object of study, namely that it is in fact a normative legal research housed within the existing paradigm of positivism in studying law as an object of study contains many flaws because of that is neutral and objective law , value-free will lead to an understanding of law be incomplete. Law is only intended to ensure certainty and predictable. The other hand. it is a world das sollen product's dialectical process between das sein (social reality and the natural world) that interact with the world das sollen. In other words empirical legal research see the importance of considering the social reality in reviewing the law along the goal is still to criticize, advise, provide a change to the legal norms remains an object of study for the law.

Suggestion

There are two types of existing legal studies to examine legal, normative legal research / doctrinal and empirical legal research / non-doctrinal. Each has basic idea of how the law will be constructed. It is not in place for scientists and practitioners and other legal observers to make dichotomy of two types of research as the study of law as an object of study .

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