

# Approaches in Legal Research (A Introduction about Study Analysis Western Law and Islamic Law)

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**Abstract.** Study this is about methodology deep approach legal research that is being studied in perspective law west and Islamic law. In study title this writer use method descriptive qualitative. As for the type's approaches in legal research among others: historical approach, case approach, analytical approach, philosophical approach, comparative approach and statutory approach. *The output* of legal research is provisions in the form of instructions, recommendations, or suggestions. As an applied science, the instructions produced must be applicable in the midst of social life (applicable), not something that is imaginary and wishful thinking. From research this It is hoped that researchers capable use approaches the according to the type of data needed in a series of research activities , with see the reality of people's lives as an element of the substance of legal research . Researchers too \_ expected capable to choose an approach that is appropriate to the research object, while to solve a legal issue can be through legal research with certain approaches as a basis for constructing appropriate arguments.

**Keywords:** Approach in Study Law, Western Law, Islamic Law

## 1 Introduction

In a study, including legal research, in principle, there is a reason to hunt for scientific truth which is believed to be contained in every symptom and event. The research activity has the aim of forming, developing, or at least updating *knowledge*. With the aim of such research, the chain of knowledge will not be broken because it is continuously updated according to the context of the needs of the community who have a *changeable character*, which can change according to the rhythm of changes in place and time. Meanwhile, science itself has three important elements that are mutually binding, namely substance, information, and methodology (Abu Yazid, 2009 ). On this basis, the research framework actually follows the structure of science so that it can form scientific truths that can be accounted for academically.

Substance as the first element of science in research work is often referred to as a research problem. Determination of the research problem begins with the occurrence of academic problems that underlie why a research is worth doing. From academic anxiety which is usually stated in the background of the problem, it then flows and becomes the focus of research in which research problems are formulated. Then the formulation of this problem is equipped with

the direction and purpose of the research so that it cannot be separated from its orbital point. As for information as the second element of science, we can interpret it as a frame of mind in analyzing research problems. That is, *the* researcher's framework is automatically transformed into information in analyzing the problems that have been formulated in the focus of previous research. Therefore, in research work, it is necessary to present the theoretical basis as well as the results of previous studies so that this kind of information will serve as a *guideline* for researchers in analyzing research data.

Meanwhile, methodology as the third element of science is nothing but a series of research work. Some say that methodology is the science of research methods. Others have a more practical interpretation that methodology is a collection of methods used, starting from the preliminary study stage, determining data sources, collecting data, organizing data and analyzing data. The research method was chosen according to the characteristics of the substance and information elements.

Therefore, it is not surprising that in a large group of research we find many varieties and types. The variety of this research starts from a very abstract philosophical character to types of research methods that are very applicable and ready to be used as practical guides. As for legal research, the data needed is in the form of social phenomena that occur in the community. Therefore, legal research can be classified into social science research. In fact, the empiricism side of legal science actually has developed so far.

*The output* of legal research is provisions in the form of instructions, recommendations or suggestions. As an applied science, the instructions that must be produced from legal research must be applicable in the midst of community life. In other words, the instructions and suggestions that are the provisions are not in the form of something imaginary and wishful thinking far high in the clouds. On the other hand, it must be applicable according to the empirical character of legal science.

## 2 Method

Writing this use method descriptive qualitative manifold study in the form of studies library, that is gather information or creation write related scientific \_ with approach in study law that is bibliography. Study this done with combine among study descriptive and qualitative. Study this also presenting data without existence manipulation as well as treatment addition other. I Made Winarta explain that method analysis descriptive qualitative is method that contains the process of analysis , depiction as well as summary on various conditions taken \_ from gathering information coming from results Interview or observation directly on the field to current problem \_ researched (I Made Winartha , 2006). Meanwhile, Sugiyono define study qualitative descriptive as a method research using \_ philosophy post positivism as where is the base Thing the generally used for to do study on condition objective with the researcher on duty Becomes instrument key (Sugiyono, 2008).

This study aims so that readers can better understand the approach in comprehensive legal research, so that in the future it is hoped that readers will have stronger motivation and deep insight to be able to conduct Islamic law research with various methods and concepts and be able to apply them in their research properly and effectively. Correct.

### 3 Result and Discussion

#### 3.1 Historical Approach (*Historical Approach*)

This approach is carried out within the framework of understanding the philosophy of the rule of law from time to time, as well as understanding the changes and developments in the philosophy that underlies the rule of law. This approach is carried out by examining the background and development of the regulations regarding the legal issues faced.

In Western legal research, the historical approach is carried out within the framework of tracking the history of legal institutions from time to time. This approach is very helpful for researchers to understand the philosophy of the rule of law that developed in history. In addition, through this approach, researchers can also understand the changes and developments in the philosophy that underlies the rule of law (Peter Mahmud Marzuki, 2007).

As a form of elaboration of the theory of *asbab al-nuzul* and *asbab al-wurud* then a maxim appears which reads:

ال سبب لا اللفظ

Meaning: *What becomes the guideline in legal provisions is the specificity of the birth of the text, not the generality of the text's editorial.*

This rule places the historical context above the generality and universality of the editorial text which has a legal dimension. In this context, the historical approach in legal research has relevance. However, this does not mean that this theory is spared from criticism from jurist experts in the history of Islamic legal thought. Because, with this rule, the existence of a text practically cannot reproduce the meaning for other legal cases. Therefore, the majority of Islamic jurists criticize this rule and then they raise another rule as an antithesis, namely:

ال اللفظ لا السبب

Meaning: *What is the guideline in the legal provisions is the generality of the editorial text, not the specificity of the reason for the descent of the text.*

This second rule clearly places the universality of the text in a very central position in overcoming the context of the reality of society with its various changes. On the other hand, the context of the historical text of human experience by this rule is placed in the position of the serpent particle. Yes n g very inferior.

#### 3.2 Case Approach

This approach is carried out by examining cases related to the legal issues at hand. The cases studied are cases that have obtained court decisions with permanent legal force. The main thing that is studied in each of these decisions is the judge's consideration to arrive at a decision so that it can be used as an argument in solving the legal issues faced. If loosened up again, approach case really \_ no limited on mechanism *qiyas*. On the other hand, with refers to on theory *maqashid al - shari'ah* approach case can done with look for thread red Among every incident the law that happened with objective general Islamic law is enforced, namely *lijalb al -rnashalih wa dar'i al -mafasid* (for bring benefit and avoided from damage). With pattern as this so every case the law that emerges in society could traced provision the law with refers to on arguments *kulli* (macro and abstract) in Islamic teachings, no limited on argument *juz'i* (micro and detail) as in practice *qiya*.

#### 3.3 Analytical Approach

The main purpose of the analysis of legal materials is to know the meanings contained by the terms used in the laws and regulations conceptually, as well as to know their application in

practice and legal decisions. This was done through two examinations. *First*, the researcher tries to get a new meaning contained in the relevant legal rules. *Second*, examine these legal terms in practice through analysis of legal decisions (Johnny Ibrahim, 2006). Basically, this approach is to analyze the notion of law, legal principles, legal rules, legal systems, and various juridical concepts. For example, juridical concepts regarding legal subjects, legal objects, property rights, marriages, agreements, engagements, employment relationships, buying and selling, achievements, defaults, unlawful acts, offenses, and so on (Johnny Ibrahim, 2006).

In fact, the text is not born in an empty space. Therefore, it is necessary to always analyze the meaning and content of the law. Texts always appear as social contexts continue to develop. Of course, the text in this case has a broad meaning regarding the text that is integrated with the context of the historical experience of mankind. The integration of this text and context needs to be analyzed because in fact God's law was not born except for the context of the welfare and benefit of mankind throughout its history.

### 3.4 Philosophical Approach

The task of philosophy, as Socrates said, is not to answer the questions asked, but to question the answers given. Therefore, explanations in philosophy include ontological teachings (teachings about nature), axiology (teachings about values), epistemological teachings (teachings about knowledge), and theological teachings (teachings about goals) to clarify in depth as far as possible by the achievement of human knowledge. The study of philosophy begins with the attitude of scientists who are humble, dare to self-correct, be honest in providing a justification for the answer to the question whether the science currently mastered has covered all existing knowledge, at what limits did science begin and at what limits it stopped, and what are the advantages and disadvantages of knowledge (Johnny Ibrahim, 2007).

In the Islamic perspective, the philosophical approach is highly appreciated so that one of the popular themes in legal studies is the *wisdom of al-tasyri' wa falsafatuhu* (wisdom and philosophy of the formation of Islamic law). In addition, there are a number of rules that lead to the philosophical aspects of the formation of Islamic law. This is like the rules of Islamic law as follows:

a) لا لار  
*Meaning: it is not permissible to cause harm and repay something with harm.*

This rule has its origins in the text of the hadith which was later adopted as a general rule (*al-qa'idah al-kubra*) in Islamic law. When the philosophy of Islamic law is always oriented to the principle of benefit and benefit, then this rule is made.

b) ال لب التيسير  
*Meaning: narrowness can bring relief.*

This rule is also built on the philosophy of the formation of Islamic law. When the dictums of Islamic law always pay attention and provide a way out when humans are in conditions of narrowness and difficulty, this legal rule is made. This rule philosophically also refers to a number of revelation texts that are oriented towards flexibility and comfort in an effort to enforce the rules of law.

### 3.5 Comparative Approach

This approach is done by comparing legal regulations or court decisions in a country with legal regulations in other countries (can be 1 or more countries), but must be about the same thing. Comparisons are made to obtain similarities and differences between the legal regulations/court decisions. The comparative approach in legal science is considered important because as a normative science it does not allow an experiment to be carried out as is usually

done in empirical science. The comparative approach is one of the methods used in normative research to compare one legal institution (*legal institutions*). From one legal system with other legal institutions (which are more or less the same as the legal system).

In addition to referring to the explicit validation of the text of revelation, comparing legal opinions with the *tarjih mechanism must also consider the implicit kulli* proposition in the form of general principles. In this context, several measuring tools that must be considered are the extent to which the legal opinion is more reflective of grace, provides easy access, is more in line with the social context, and is more aware of the objectives of Islamic law, namely to spread benefit and suppress damage.

### **3.6 Legislative Approach (*Statute Approach*)**

This approach is carried out by reviewing all laws and regulations related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and the Law, or between one law and another, and so on. A normative research must of course use a statutory approach, because what will be studied are various legal rules which are the focus as well as the central theme of a research. For this reason, researchers must see the law as a closed system that has the following properties.

In Islamic law, research has the aim of finding prescriptions (*istinbath*) and at the same time applying them in society (*tathbiq*). The purpose of implementing the law in society is in dire need of legislation (*taqnin*) so that the legal products found are not just wishful thinking in the clouds. With this objective, a statutory approach is absolutely necessary in legal research work.

With a statutory approach, it is hoped that legal products will not only be built for empty spaces. On the other hand, he appears to solve problems as a product of legislation in a particular country's legislation. By transforming into positive law, the purpose of *tathbiq* can be realized to the fullest. However, the purpose of legislation is not the only one idealized in Islamic law. In the general order of society, Islamic law is also expected to be applied through a high level of legal awareness.

## **4 Conclusion**

From description above, author could interesting conclusion that *o the output* of legal research is the provisions in the form of instructions, recommendations or suggestions. As an applied science, the instructions produced must be applicable in the midst of social life (*applicable*), not something that is imaginary and wishful thinking. A researcher sued capable use approaches the according to the type of data needed in a series of research activities , with see the reality of people's lives as an element of the substance of legal research . Researchers too required capable to choose an approach that is appropriate to the research object, while to solve a legal issue can be through legal research with certain approaches as a basis for constructing appropriate arguments.

As for the scientific truth, not the same as absolute truth which only belongs to God. Scientific truth refers to the process rather than the product. That is, a truth can be called scientific if the search process is carried out in a programmed, directed and systemized manner. As for the product, scientific truth is actually *relative* or relative, so it needs to be developed further with different research areas. Therefore, at the level of legal research, the theoretical

findings produced qualitatively need to be followed up with quantitative research so that the legal theory can be retested for validity.

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