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Implementation approach in legal research

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ABSTRACT

The use of a research approach in legal research will determine the results. There are three categories of approaches in legal research. The normative approach is the most widely used. This research aims to examine how the approach should be implemented in legal research. This research uses a conceptual approach which is still within the scope of the normative approach. Research data was collected by searching articles published in 23 law journals. The results of this research show that the approach to legal research is the use of perspective in discussing legal issues. There are three legal research approaches, namely normative, empirical, and philosophical approaches with all their variants. The normative approach reviews legal problems from a positive law perspective. The empirical approach examines legal problems as a cultural reality. A philosophical approach examines legal problems from an ideal perspective. The approach to legal research should be applied according to the type of research, research data, and level of research. The normative approach is the most widely used. This is because law is mostly understood as a set of rules. Sequentially, of the 256 articles studied, 70% of legal research used a "normative approach", 19% empirical, and 11% philosophical.

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1. INTRODUCTION

The use of approaches in legal research will determine the results of research in discussing a legal problem. Broadly speaking, there are three legal approaches, namely the normative approach, the empirical approach, and the philosophical approach with all its variants. The normative approach is more widely used than other approaches. Based on research conducted on 23 law journals in Indonesia by examining 256 articles published in 2022-2023, the majority use a normative approach. Empirical and philosophical approaches are used less. This shows that legal researchers in Indonesia are more concerned with legal and regulatory material.

The research approach will answer the phenomenon being studied by legal norms, whether the norms in the form of orders or prohibitions are by legal principles or not. Not only by legal regulations, but even the ideal side of the law in the future is by the variant approach used [1]. Researchers need to distinguish between different techniques to address the difficulties being discussed effectively. Occasionally, there is a discrepancy in deciding the appropriate problem-solving strategy and the depth of investigation required. Mistakes in choosing an approach can be fatal, or at least the research results are difficult to justify scientifically [2].

The researcher's selected strategy will determine the academic acceptance or continuation of the research. Legal research efforts are tailored to current legal events and supported by legal principles [3]. Legal research is conducted to resolve legal issues through the description, study, and identification of various types of legal rules to generate new rules. The outcomes of legal research may serve as a point of reference during the formulation and implementation of laws and the development of legal rules [4].

The choice of approach should be adjusted to the type of research and research data because the level of research will be known. There are three levels of research in legal research, namely descriptive law, law study, and law analysis. Descriptive law is the lowest level of research because researchers will only present as much data as possible or in as much detail as possible. At the legal level of study, researchers must find the weaknesses and strengths of the legal cases being studied. Meanwhile, at the law analysis level, researchers must find the weaknesses and strengths of legal cases and must also be able to provide solutions for the future.

Legal research activities, like research in general, are activities aimed at answering problems. As required, legal research is conducted by academicians and specialists to scientifically examine a particular issue. Additionally, the purpose of research activities is to methodologically construct a phenomenon, which necessitates the use of suitable techniques.

Additionally, consistency and adherence to principles are critical. As a scientific endeavor, research is founded upon a set of methodologies, systems, and ways of reasoning that are utilized to investigate one or more phenomena. When the subject matter pertains to the law, research endeavors aim to delineate, investigate, or scrutinize indications of legal complications. As a result, a detailed legal fact examination will be carried out comparable and dissimilarities exist in terms of methodology when compared to other research subjects.

Legal research is a process of finding coherent truth. In addition, legal research is a know-how activity, not just knowledge. As a know-how activity, legal research is useful for solving the issues faced. Researchers must also have the ability to identify legal problems, carry out legal reasoning, analyze problems, and provide solutions to the problems being studied. A researcher will use the approach that is considered most appropriate to his research.

2. RESEARCH METHOD

This research is a type of library research. Library research is research that relies on reviewing books, literature, notes, and various reports related to the problem you want to solve [5]. This investigation exclusively utilizes “secondary data” in the form of documents, particularly legal periodicals, classifying it as a form of library research. The methodology employed in this study is a conceptual approach that remains consistent with the “normative approach” [6]. The conceptual approach is grounded in expert opinion and doctrinal perspectives. This study employs a conceptual framework as it investigates the perspectives that emerge in the realm of research methodologies. These are "secondary data" components. The term "secondary data" refers to information that has been supplied by third parties, typically in the form of documents, and was not acquired directly. This research uses “secondary data” because it only consists of written documents [6]. The data collection technique is carried out through online searches by collecting and mapping articles published in legal journals. There are 23 law journals with a total of 256 articles published in 2023. The journals consist of journals indexed by Sinta 1 and Sinta 2. The data analysis method used is “content analysis.” “Content analysis” is the process of revealing symbolic codes concealed within research data. Scholars expose the significance encoded within the legal documents that are consulted as references [7]. This research uses content analysis because of the large amount of data collected, the researcher only uses keywords in each document that has been obtained.

3. RESULTS AND DISCUSSION

3.1. Approaches in legal research

The approach in legal research denotes the evaluation of a phenomenon as a problem in legal research through the lens of perspective. This means that a legal perspective is utilized as a standard against which problems are evaluated. In a broad sense, a research approach comprises an entire procedure or endeavor undertaken to evaluate a problem. In more precise terms, a research approach pertains to a particular standpoint through which one evaluates research problems [8].

The approaches that can be used in legal research are broadly divided into three approaches with all their variants. These three approaches are the normative approach, the empirical approach, and the philosophical approach. The choice of one of the approaches used will reflect the level and objectives of the research. These approaches can be seen in Table 1.

Table 1. Three approaches to legal research

No.	Approach name	Perspective
1	Normative	Problems are seen from a positive legal perspective
2	Empirical	Problems are seen as a socio-cultural reality
3	Philosophical	Problems seen from the ideal side

In legal research, the normative approach entails examining or assessing legal issues through the lens of legal formality or norms. The permissibility of an action is determined by a formal legal review, which is conducted by relevant statutory regulations or positive law. Normative refers to all obligatory doctrines contained in statutory regulations [9]. The normative approach can include five approaches, namely.

First, a research approach known as the "statute approach" involves a comprehensive examination of the laws and regulations that pertain to the specific legal matter under investigation. Scholars will endeavor to ascertain the legal ratio and ontological foundation that gave rise to the law to comprehend its substance and determine whether solen and sein conflict. Moreover, scholars will have the capacity to ascertain whether the newly enacted legislation and regulations encompass the requisite provisions for the current predicament, or conversely [10].

Second, the "case approach" refers to a methodology that analyses cases that are relevant to the legal issues at hand. The case under consideration has evolved into a court decision characterized by lasting impact or interaction. The rationale employed by the judge to reach a conclusion, or ratio decidendi, constitutes the central focus of the case approach [10].

Third, the "historical approach" contemplates the evolution of regulations pertaining to the issues at hand and investigates the context in which the subject matter is situated. Researchers require historical studies in order to uncover the philosophical underpinnings and thought processes that contributed to the subject under investigation. Legal research employing a historical methodology becomes necessary when the investigator deems the philosophical revelations and thought processes of the subject under investigation to be pertinent to the current situation [11].

Fourth, the "comparative approach" refers to a methodology that involves contrasting the legal systems of different countries or legal disciplines. Academic researchers have the ability to conduct comparisons between regulations, decisions, or even within the same country regarding the same case. A comparative approach to legal research aims to identify similarities and distinctions. In addition, this distinction addresses the contradiction between the stipulations of the legislation and the philosophical foundation from which it originated [12].

Fifth, the "conceptual approach" refers to a method that examines legal matters through the lens of evolving legal science doctrine and perspectives. Researchers employing a conceptual approach will generate ideas from which they will derive legal understanding, legal concepts, and legal principles pertinent to the case under investigation, drawing on the perspectives of established legal experts as well as their own. The comprehension that arises will serve as a foundation for scholars to construct legal arguments, enabling them to resolve the legal matters under investigation [13]. To be clearer about the five variants of the normative approach in legal research can be seen in Table 2.

Table 2. Normative approach in legal research

No.	Approach	Focus approach
1	Statutory approach	Study regulation legislation
2	Case approach	Issue actual law or case
3	Historical approach	Background-arranged regulation legislation or background event
4	Comparative approach	Compare regulation legislation, good internally and externally with regulation legislation in other countries
5	Conceptual approach	Doctrine, discourse, concept, or idea moderate law develop

Meanwhile, in legal research, the "empirical approach" is one that examines or perspectives legal issues through the lens of cultural reality. As opposed to the "normative approach," which examines a legal phenomenon in a legal-formal manner reducing it to "permissible or not," this approach considers human behavior in society as an empirical fact [14]. The "empirical approach" possesses a non-doctrinal nature due to the fact that it involves field research. As a social actuality, academics will acquire factual information from societal order. The research findings will not establish the correctness or incorrectness of the investigated phenomenon in accordance with statutory regulations or particular viewpoints. The empirical approach may comprise at least three of the following methods.

First, the "sociological approach" refers to a method of examining the condition of society that provides a framework or depiction of interrelated social phenomena [15]. An approach that can be employed to investigate legal practices originating from religion or tradition is sociology. Due to the fact that religious law and tradition influence the manner in which social issues are carried out.

Second, the "phenomenological approach" refers to a methodology that examines and comprehends human life experiences through the lens of religious traditions or teachings. In order for phenomenological research to yield valuable and high-quality outcomes, it is imperative that due consideration be given to the surrounding characteristics [16]. The phenomenological approach seeks to comprehend the significance of events and their connection to individuals within particular contexts by referencing reality.

Third, the "anthropological approach" is a holistic methodology that encompasses the investigation of diverse human species and facets of the human condition [17]. The approach utilized is holistic in nature. The issues under investigation are situated within the framework of the entirety of societal culture.

These three variants are most widely written about and discussed in research methods. The use of sociological, phenomenological, and anthropological approaches is ideally based on the focus of the study in the research. Apart from that, these three approaches can be said to be quite objective approaches compared to other approaches, for example, political and economic approaches [18]. To be clearer regarding the empirical approach in legal research can be seen in Table 3.

Table 3. Empirical approach in legal research

No.	Approach	Focus approach
1	Sociological approach	Circumstances public along with structure social
2	Phenomenological approach	Experience life background society-religious doctrine or culture
3	Anthropological approach	Aspects experience man with its culture
4	Other approach	In accordance with aspects that will researched

In legal research, the "philosophical approach" entails examining or evaluating issues through an idealistic lens that seeks to elucidate the fundamental character, essence, or wisdom of the subject matter underlying the formal object of law. An investigation employing a "philosophical approach" seeks to elucidate the underlying causes of a given phenomenon [18]. In an applied sense, a philosophical approach is one whose investigation centers on the moral and conceptual dimensions of justice and how to perceive the law as an assemblage of abstract notions.

A "philosophical approach" is adopted when the investigator regards the investigated phenomenon or problem as an idealized reality that warrants deliberation in the development of legal frameworks. The examined legal phenomenon is regarded as an ideal law of the future (*ius constituendum*) [19]. A "philosophical perspective" is applied to legal issues in an effort to provide solutions and problem-solving strategies through the application of critical-analytic and speculative-analysis techniques [19].

The ideal "philosophical approach" would enable provisions containing doctrine to be thoroughly comprehended and examined, thereby revealing their essence [20]. Scholars will not become ensnared in formalistic experiences, wherein the law is devoid of significance or appears hollow. The "philosophical approach" to the study of law holds a significant position [21].

An individual will have the capacity to perceive and comprehend the wisdom and teachings contained within an object by employing a "philosophical approach" to it [22]. In this manner, the application of the law imparts significance. As one delves deeper into the "philosophical" significance of a statute, their disposition, admiration, and capacity to bond will all grow [23].

There have been no studies of variants in philosophical approaches in legal research. However, if we look closely at research that uses a philosophical approach, it is more about the interpretation of the text about the context [24]. Interpretation of a text that is linked to the context in which the text was created is commonly referred to as a hermeneutical approach [25].

Hermeneutics is a scientific discipline that studies how to interpret [26]. The word hermeneutics comes from the Greek "hermeneutic" which means to interpret. The hermeneutic approach discusses the relationship patterns between texts, text makers, and readers. Hermeneutics is a discussion of the rules or methods used to interpret or interpret a text to obtain a correct understanding [5].

Irrespective of the methodology employed, even a "philosophical approach" will prevent scientists from becoming entangled in formalistic laws [27]. Furthermore, adopting a "philosophical approach" does not entail rejecting or diminishing formal legal systems. Philosophy investigates the esoteric interior aspects, whereas form is concerned with the exoteric outer aspects [25].

3.2. Implementation approach in legal research

Approaches to legal research can be applied according to the type of research, study focus, research data, and research level [28]. Theoretically, if the type of research includes library research, then a more appropriate approach is a normative approach or a philosophical approach. The data used is "secondary data". Meanwhile, if the type of research includes field research, it would be more appropriate to use an empirical approach with all its variants [29].

The use of the ideal approach is also visible at the research level. The normative approach is more appropriate for the level of descriptive legal research and legal review [30]. Research with a philosophical approach is more appropriate for the legal research level of analysis. Meanwhile, research using an empirical approach with primary data is more appropriate for descriptive legal research and legal review levels [31]. Table 4 regarding the theoretical application of the approach in legal research.

Table 4. Application of approaches in legal research

No.	Approach	Types of research	Study focus	Research data	Research level
1	Normative	Literature	Normative, normative empirical (applied)	Secondary	Legal descriptive and legal review
2	Philosophical	Literature	Normative, normative empirical (applied)	Secondary	Legal analysis
3	Empirical	Field	Normative, empirical (applied) empirical	Primary	Legal descriptive

In addition, the approach to legal research depends on the problem and objectives. If the research problems and objectives include elements of ideal law or the legal concepts of *ius constituendum* and *ius constitutum*, then the study approach is normative juridical, deductive logic [32]. If legal elements or concepts are included in behavioral patterns and social meanings, then the study approach is empirical with inductive logic. The empirical approach uses social science theories, concepts, and methods to study various socio-legal problems [33]. A philosophical approach in research when examining legal problems from an ideal perspective for the future. Researchers will create a future legal construction or *Ius Contituendum*, namely the dream law (future) [34]. The paradigm used by researchers is constructivism by idealizing future legal buildings. Meanwhile, at the implementation level, researchers explored legal journals in Indonesia by taking a sample of 23 journals with a writing sample of 256 articles. The journals that the author used as samples are shown in Table 5.

Table 5. Researched law journals

No.	Journal name	Sinta	Sample article
1	Lex scientia law review: UNNES	1	16
2	Al-Ihkam: jurnal hukum dan pranata sosial	1	12
3	AHKAM: jurnal ilmu syariah	1	12
4	Journal of indonesian legal studies	1	20
5	Indonesian journal of international law	1	6
6	Padjajaran jurnal ilmu hukum (journal of law)	1	14
7	Sriwijaya law review (SLR)	1	22
8	Lentera hukum	1	10
9	Brawijaya law journal	1	11
10	Jurnal dinamika hukum	2	8
11	International journal of law reconstruction	2	11
12	Indonesia law review	2	6
13	Kanun	2	7
14	Fiat justisia: jurnal ilmu hukum	2	6
15	Jurnal hukum: ius quia iustum	2	10
16	Jurnal pembaharuan hukum	2	5
17	Pandecta: research law journal	2	15
18	Law reform	2	5
19	Yustisia	2	6
20	Jurnal IUS kajian hukum dan keadilan	2	13
21	Udayana journal of law and culture	2	6
22	Bina hukum lingkungan	2	7
23	Pena justisia: media komunikasi dan kajian hukum	2	28
	Amount		256

As a result of searching the journals above, it was found that the normative approach was most widely used. This is of course natural because in the legal science discourse, law is mostly understood as a set of rules. The identification of law as a rule that has an imperative nature most colors the flow of academic thought and at the level of legal application.

Legal research with a normative approach is a process of discovering legal rules, legal principles, and legal doctrines to answer the legal issues faced. Researchers do not need to formulate hypotheses but only formulate problems that are assumptions. Apart from that, researchers also do not need to identify the independent variable and the dependent variable. In more detail, the dominance of the normative approach in legal research which is more widely used can be seen in Table 6.

Table 6. Application of three approaches in legal research

No.	Approach study	Number of articles	Percentage (%)
1	Normative	179	70
2	Empirical	49	19
3	Philosophical	28	11
	Amount	256	100

If detailed, the normative approach in legal research is dominated by the conceptual approach, then the legislative approach. The conceptual approach is more widely used because research generally, even though the object is legislation, researchers will provide ideas for the future. More detail about the variants of using a normative approach in legal research can be seen in Table 7.

Table 7. Implementation of the "normative approach" in legal research

No.	Approach normative	Number of articles	Percentage (%)
1	Conceptual approach	59	33
2	Statutory approach	40	22
3	Comparative approach	36	20
4	Case Approach	27	15
5	Historical approach	17	10
	Amount	179	100

Research that uses an empirical approach is in second place, namely 49 articles or 19%. An empirical approach is used by researchers for research that uses primary data from the field. Generally, research that uses an empirical approach examines law in practice in society, or certain objects, whether the object is positive law at the implementation level or unwritten law in the form of order in society. In detail, the use of an empirical approach in research can be seen in Table 8.

Table 8. Implementation of the empirical approach in legal research

No.	Approach empirical	Number of articles	Percentage (%)
1	Sociological approach	22	45
2	Anthropological approach	16	33
3	Phenomenological approach	5	10
4	Another approach	6	12
	Amount	49	100

Meanwhile, the "philosophical approach" is rarely used by researchers. At least from the journals and articles sampled, of the 256 articles, there were only 28 articles or 11%. This conclusion is based on data that there is still little research that examines law from its ideal future perspective or ius constituent, which means the law that is envisioned.

Two terms are often used in studying law in the context of current law and ideally in the future, namely *ius constitutum* and *ius constituendum*. Jus constitutum is a law that is formed and applies in a state society at a certain time or is commonly called positive law [35]. Meanwhile, *ius constituendum* is a law that is aspired to in the social life of the country but has not yet been formed into law or other provisions [36].

The current *ius constitutum* was previously (in the past) the *ius constituendum*. If the *ius constituendum* has legal force, then the *ius constituendum* has historical value. *Ius constituendum* changes to *ius constitutum* by; First, replacing the law with a new law (the new law was originally a draft *ius constituendum*). Second, changes to existing laws by including new elements (the new elements were initially

in the form of its constituent). Third, interpretation of statutory regulations. The current interpretation may not be the same as the interpretation in the past. Interpretation today used to be *ius constituendum*. Fourth, the development of doctrine or opinions of leading legal scholars in the field of legal theory.

The difference between *ius constitutum* and *ius constituendum* is an abstraction of the fact that everything is a developmental process. A symptom that exists now will disappear in the future because it is replaced by a symptom that was originally intended [37]. Ideally, legal researchers would use a more philosophical approach in legal research so that the research they carry out at least has ideas for the future, even if it is limited to an academic level [38].

4. CONCLUSION

Based on the discussion above, it can be concluded that the approach to legal research is the use of perspective in discussing legal issues. There are three approaches to legal research, namely the normative approach, the empirical approach, and the philosophical approach. The normative approach reviews legal issues from a legal-formal or normative angle which boils down to whether or not it is permissible based on positive law. There are five types of normative approaches, namely statute approach, case approach, historical approach, comparative approach, and conceptual approach. The empirical approach is an approach that reviews legal issues as cultural realities or empirical facts of human behavior in society. Three types of empirical approaches are often used, namely the sociological approach, the phenomenological approach, and the anthropological approach. A philosophical approach is an approach that reviews problems from an ideal perspective to explain the essence, nature, or wisdom behind formal legal objects. Research with a philosophical approach is an attempt to explain what is behind something that appears. There have been no studies of variants in philosophical approaches in legal research. However, the interpretation of the text is more related to the context which is commonly referred to as a hermeneutical approach. Approaches to legal research can be applied according to the type of research, study focus, research data, and research level. Research with the type of library research, normative and philosophical approaches is appropriate to use because the data is "secondary data". This type of field research that uses primary data is more appropriate using an empirical approach of all kinds. The normative approach is more appropriate for the level of descriptive legal research and legal review. Research with a philosophical approach is more appropriate for the legal research level of analysis. Meanwhile, research using an empirical approach with primary data is more appropriate for descriptive legal research and legal review levels. Based on a search of legal journals in Indonesia, taking a sample of 23 journals and 256 articles, it was found that the normative approach was the most widely used. This is of course natural because law is mostly understood as a set of rules. Sequentially, of the 256 articles, research using a normative approach was 179 articles or 70%. The empirical approach is 49 articles or 19%. Philosophical approaches amounted to 28 articles or 11%. The use of the normative approach is dominated by the conceptual approach with 59 articles or 33%. Statute approach as many as 40 articles or 22%. Followed by the comparative approach with 36 articles or 20%. The case approaches 27 articles or 15%. Historical approach 17 articles or 10%. Research that uses an empirical approach is in second place, namely 49 articles or 19%. Using a more detailed empirical approach is a sociological approach in 22 articles or 45%. The anthropological approach was 16 articles or 33%. Followed by a phenomenological approach, 5 articles or 10%. The remaining approaches are rarely used, namely 6 articles or 12%. Meanwhile, the philosophical approach is rarely used. Based on the articles used as samples, of the 256 articles there were only 28 articles or 11%.

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