

INTELLECTUAL AND FORMAL STANDARDS
OF SCIENTIFIC LEGAL RESEARCH AND WRITING
Contribution to the course *Methodology of Legal Research and Legal Writing*

§ 2 Intellectual standards of scientific legal research and writing

- Note: The intellectual standards derive directly from the idea and the inherent laws of scientific research. Some standards, in particular those of intellectual thoroughness, are different for the *different types of scientific work*: a student's course paper, an article in a scientific journal, or a bachelor thesis, master thesis, doctoral thesis or habilitation thesis. Most standards, however, apply to any kind of scientific legal research.

I. Standards of intellectual authenticity and originality

1) *Intellectual honesty*

- the main idea: no copying or leaning on without quoting!
 - a) No presentation of information gathered by other authors as the result of one's own work
 - in particular: the duty to *indicate* if and to what extend one's own compilation of relevant jurisprudence is based on *preparatory works of other authors*
 - b) No presentation of other authors' reasoning as one's own thoughts
 - the duty to inform about the reasoning of other authors and to indicate precisely, to what extent one is following it
 - c) No quoting without own reading
 - a standard difficult to comply with in Southeast Asia because the relevant literature is usually not available
 - if possible, use online publications, contact the author directly or ask friends studying abroad to help you to get copies of important contributions unavailable in your country
 - d) No hiding of inconvenient theories or positions
 - a widespread but very serious violation of scientific fairness
 - *all* positions have to be presented, even if they are not "political correct", collide with religious or moral views in your country or are difficult to present or discuss
 - a big problem for doctoral students: famous fundamental works in their field of law, which they cannot pass by without an in-depth discussion, which causes a considerable workload
 - example: *Robert Alexy, Theorie der Grundrechte*, 1986 resp. *A Theory of Constitutional Rights*, 2002 (in general fundamental rights doctrine)

2) *Intellectual independence*

- a) Independent dealing with scientific literature and jurisprudence
 - not just reporting but *analysing, classifying, categorizing, contextualising, assessing and evaluating* the relevant literature and jurisprudence
 - more difficult in the limited volume of a course paper or short article than in a bachelor, master or doctoral thesis
- b) Independent reasoning
 - aa) Developing one's own reasoning without regard to "authorities"
 - references to "authorities" cannot substitute one's own reasoning!

- bb) In particular: not following court decisions without own reasoning
 - except in common law countries, a court decision is an opinion about but not a source of law
 - usually not a problem in Indonesia
- cc) Considering, integrating and modifying but not just copying the arguments of others
 - usually, they will not fit into one's own reasoning without adaptation or contextualisation

3) *The need for a scientific added value*

a) General remarks

- no successful scientific work without new scientific findings
- science is more than a new compilation of existing knowledge
- the scientific added value will vary strongly according to the type of the scientific work
 - student papers are often too short to provide a real scientific added value but must at least simulate it using scientific methodology
- examples for a scientific added value (e.g. in master or doctoral theses):
 - scientifically based solutions for practical problems
 - new theories providing for a better (deeper, more consistent etc.) understanding of a field of law, in particular introduction of new legal notions, concepts or principles
 - proposals for improvements (in theory or practice) making use of foreign innovations well-adapted to the specific features of the national law
 - proposals for a "cleaning up" in a field of law (elimination of inconsistencies, paradoxes, unsuitable elements imported from foreign law etc.)
 - critical inventory of the existing knowledge, its limits and deficits, and of the state of science (currents, developments, deficits, inconsistencies etc.)
 - in Indonesia also evidence of the (non-) existence of norms of customary law [hukum adat]
 - specific added values under complementary approaches
 - e.g. findings on the economic impact of certain legal norms (under the approach of the economic analysis of law)
 - e.g. law-related empirical results (under the socio-legal approach)

II. In particular: the fight against plagiarism

- plagiarism a serious threat to the integrity and, thus, credibility of science
- definition: plagiarism is the presentation of another author's findings, thoughts, ideas or formulations as one's own original work
 - short extracts from other sources (e.g. a certain formulation, a part of a sentence or one or two sentences) are admissible if the source and the original author is clearly and precisely specified
 - series of short extracts are principally also admissible but each extract must be documented separately
 - long extracts from other sources are generally inadmissible, even if documented (no plagiarism in the strict sense but also no independent own work); exception: if the compilation of the various extracts represents itself a scientific work (example: casebooks with numerous large but well-documented and -systematised extracts from jurisprudence and scientific texts)
- spectacular cases and the *rigorous fight against plagiarism in Germany*
 - the revocation of the doctoral degrees of two Federal Ministers and a German Member of the European Parliament for plagiarism in the early 2010s: the GUTTENBERG CASE, SCHAVAN CASE, KOCH-MEHRIN CASE
 - the revocation of the doctoral degree of a Federal Minister and future head of the Land Berlin in 2021: the GIFFEY CASE
 - the plagiarist hunters of the initiative VRONIPLAG - solely in the service of integrity of science?
 - the Joint Position Paper "Good academic practice in the context of theses submitted for a degree" of three leading German academic organisations of 2012¹
- plagiarism can be detected easily by special anti-plagiarism software but also by simply entering text excerpts as strings into internet search machines
 - signs of plagiarism: incoherent terminology, style of citing or style of writing

¹ *Deutscher Hochschulverband* (German Association of University Professors and Lecturers); *Allgemeiner Fakultätentag* (Combined Faculties Association); *Fakultätentag* (Faculties Association), Good academic practice in the context of theses submitted for a degree, 09.07.2012, www.hochschulverband.de (at "Presse", "Resolutionen). See also, for up-to-date standards, *Harvard University, Avoiding Plagiarism*, <https://usingsources.fas.harvard.edu/avoiding-plagiarism> (with some exaggerations), *Purdue University Global, A Guide to Plagiarism and Paraphrasing*, 2020, www.purdueglobal.edu/blog/online-learning/plagiarism-and-paraphrasing.

- special problem: *plagiarism and the use of artificial intelligence* in scientific work
 - it is *legitimate* to use specialised artificial intelligence as an *auxiliary tool* for scientific research, e.g. to identify quickly and thoroughly all existing scientific literature or relevant jurisprudence on a topic, but the results must be verified by the user and the use of ai must be disclosed and documented
 - the user cannot be credited for the results achieved by the artificial intelligence but for his approach to use it if it has led to better results
 - the use of comprehensive artificial intelligence like *ChatGPT*, which conceives and formulates entire papers or parts of them, is strictly inadmissible, since the work or the parts of it would not be the achievement of the user but of the ai; it does not make a difference whether the plagiarist "copies & pastes" from the work of a human being or machine.

III. Standards of intellectual accuracy, consistency and precision

1) *Accurate information based on references*

- an essential requirement often ignored in Southeast Asia, the disregard of which deprives the text of its scientific quality
- **every single information** in the whole text **which is not evident (obvious)² must be backed by a reference which allows to verify it**
- this requires usually at least one or two references in every paragraph
- often it will be necessary to cite several reliable sources to back one's information
 - the writing of one scholar does not yet stand for the dominating position in scholarly doctrine
 - a single court judgment does not necessarily stand for a well-established jurisprudence
 - dissenting minority opinions need to be cited too

2) *Logically and dogmatically consistent structure*

- a) The importance of the structure for the quality of a scientific work
 - the *structure reflects the ability to think correctly and precisely* - and therefore the intellectual capacity of the author
 - a convincing, consistent structure allows an easy access to the reasoning of the author and may even conceal shortcomings in the argumentation; a defective structure leads a skilled reader directly to the weak points
 - the quality of a scientific paper or thesis is often already evident in its outline
 - the necessity of a detailed structuring
- b) The standards of a logically consistent structure
 - no dealing with sub-subjects at the same level as the main subject
 - no introduction of a new subordinated level within the structure if there are not two or more subordinate points
 - identify any remarks outside the line of thoughts as "excursus"
- c) The standards of a dogmatically consistent structure
 - the whole structure must be in line with the dogmatic structure of the relevant field or sub-field of law (as it is understood by the author)
- d) Standards for correct headlines (titles) within a consistent structure
 - precise reflection of the content in the correct dogmatic context
 - systematic coherence; in particular: *homogeneity of headlines at the same level*
 - headlines must make the line of thoughts transparent, allow easy orientation of the reader and prevent misunderstandings

² E.g. common scientific knowledge which is not anymore scientifically disputed - you do not need to prove that the Earth is round and more than 4 billion years old or that the coronavirus can cause a deadly disease...

3) Intellectual coherence

- a) Use of a coherent terminology
 - the same terms for the same content throughout the work
 - a consistent system of terms that fit together logically and dogmatically
- b) Coherent use of legal methods
- c) Coherence and consistency of the developed theories and positions
 - no combination of incompatible elements adopted from theories of different authors

IV. In particular: precise and logical reasoning in accordance with the legal methodology

- see on legal methodology **Diagram 1**
- *legal reasoning, not political, moralising or religious reasoning*
 - political reasoning only admissible in the field of legal politics and if clearly marked as such
 - moral and religious considerations generally irrelevant in law (→ no confusing of law and "ethics")
 - exception: if legal concepts clearly refer to them (e.g. "religious values" in art. 28J(2) Indones. Constit. 1945) or, in a limited way, as secondary considerations to elucidate backgrounds
- *applying legal methodology, not the methodology of other scientific disciplines*
 - no experiment-based research as in natural sciences
 - no economic research (except under the complementary side approach of economic analysis of law)
 - no empirical research (except in the side discipline of legal sociology and under the complementary side approach of socio-legal research)
- transparent reasoning *disclosing* which *legal method* is applied in which context with which results
 - indicating at which points the conclusion could have been different
 - indicating subjective elements in the reasoning (which are unavoidable but must be disclosed)
- discussing and justifying the method if it is not generally acknowledged in legal science or not generally acknowledged in the relevant context
 - in particular if following the side approaches of economic analysis of law or socio-legal research
 - *no justifying for following classical legal methodology* (in Indonesia called "normative approach")!
- precise and differentiated reasoning
- no reasoning contravening the laws of logic (→ absolutely inadmissible in any scientific work!)
 - a widespread mistake: presenting logically possible as logically compelling conclusions

V. Standards of intellectual thoroughness

1) Comprehensive consideration and appreciation of relevant jurisprudence and literature

- in a course paper: of the most relevant jurisprudence and literature
- in a scientific article or other short contribution: of all important jurisprudence and literature
 - in particular of the newest jurisprudence and literature (check before submitting your article!)
- in a doctoral thesis: of *all* relevant jurisprudence and literature
 - *every single publication* which directly concerns the subject must be consulted and mentioned
 - every idea in the relevant publications which concerns the subject must be taken into consideration and related to one's own reasoning
 - all *fundamental theories* on basics or backgrounds which have an impact on the subject must be presented and discussed in the given context
 - for this reason, the careful determination (and limitation) of the subject is crucial
- in developing countries: also of *foreign legal literature* if it directly concerns the subject, is fundamental or important and the presented arguments can be effective in the own legal system too
- not only of articles but also of textbooks, commentaries, handbooks and anthologies, which still form the most important source of legal science
- if possible, not only of publications in English, since the quality of the legal discussion in other languages (e.g. French, German, Spanish) is often higher

2) *Comprehensive discussion of all relevant aspects and arguments*

a) Comprehensive discussion of all relevant aspects

- the need for a *multi-perspective approach*: one of the most common deficiencies in legal publications is a one-sided, too narrow perspective...
- comprehensive discussion of *all* relevant aspects mentioned in jurisprudence or literature (even if published in another language than English)
- consideration of old and new aspects (including the possible impact of new legislation)
- the quantity of aspects to be considered varies according to the type of scientific work and the limitation of the subject
- consideration of all aspects with all their connections at the same time (→ the need for a *well-balanced approach*, in particular in a doctoral thesis)

b) Comprehensive discussion of all relevant arguments

- arguments which are difficult to rebut must not simply be ignored...
- arguments which appear immoral or politically incorrect must still be refuted...

3) *Getting to the bottom of the questions (only in a doctoral or habilitation thesis)*

- thorough thinking without limits...
- in particular: foreseeing (and considering or even discussing in advance) any possible objections and counterarguments to one's own reasoning
- also considering all *possible consequences* of a proposed solution in advance (and checking compatibility with *ethical standards*)

VI. In particular: How to find all relevant literature

1) *Access through references in specialised literature*

- in articles in law journals, working papers, contributions in conference proceedings, monographies
- milestone articles may be available in the *scientific web repositories* ([JSTOR](#), [ResearchGate](#), [SSRN](#))

2) *Access through references in general literature on the relevant field of law*

- in textbooks, commentaries, works of reference, specialised encyclopaedias, handbooks, expert websites etc.

3) *Access through information on legal literature in the internet*

- see for more details **Diagram 2**

a) Online catalogues of legal literature for sale

- in particular *Amazon* (search the different catalogues for the different countries)

b) Online catalogues and databases of libraries

- in particular comprehensive *national libraries* with a large stock of domestic and foreign legal literature
 - [Library of Congress](#) (Washington D.C.)
 - [Bibliothèque nationale de France / National Library of France](#) (Paris)
 - [Deutsche Nationalbibliothek / German National Library](#) (Berlin, Frankfurt, Leipzig)
 - [British Library](#) (London)
- in particular *research libraries with a focus on comparative and international law*
 - [Max Planck Institute for Comparative and International Private Law](#) (Hamburg)
 - [Max Planck Institute for the Study of Crime, Security and Law](#) (Freiburg)
 - [Max Planck Institute for Comparative Public Law and International Law](#) (Heidelberg)
 - [Max Planck Institute for Social Law and Social Policy](#) (Munich)
 - [Max Planck Institute for Legal History and Legal Theory](#) (Frankfurt)

c) Metacatalogues (integrated search in various library catalogues)

- Karlsruhe Virtual Catalog (KVK, Univ. of Karlsruhe) - integrated search in all important German, Austrian and Suisse catalogues and in the most important library catalogues throughout the world
- Library Hub Discover (Jisc) - integrated search in the catalogues of UK and Irish libraries

d) Specialised databases

- commercial databases (access via the Law Library)
- GlobaLex (NYU) - database on international, comparative and foreign Law
- CommonLII (Commonwealth Legal Information Institute) - database on law in common law countries
- Electronic Research Guide (ERG, ASIL) - database on international law
- research guides of American libraries (e.g. of the Library of Congress on Foreign, Comparative and Intern. Law)

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