

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 extent 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 2012<sup>1</sup>
- plagiarism can be detected easily by entering text excerpts as strings into internet search machines
  - signs of plagiarism: incoherent terminology, style of citing or style of writing

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<sup>1</sup> *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](http://www.hochschulverband.de) (at "Presse", "Resolutionen). See also, for up-to-date standards, *Harvard University, Avoiding Plagiarism*, <https://usingources.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](http://www.purdueglobal.edu/blog/online-learning/plagiarism-and-paraphrasing).

### 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)<sup>2</sup> 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

#### 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

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<sup>2</sup> 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...

#### 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)
    - [GlobalLex](#) (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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