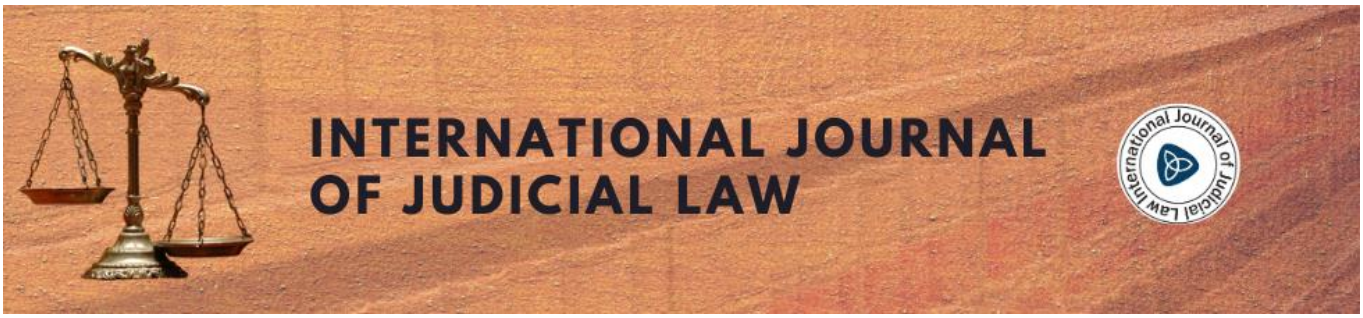




Problem Identification in Legal Research: The Key to Effective Legal Reform

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Abstract

This study investigates Problem Identification in Legal Research: The Key to Effective Legal Reform. The study focused on the nature of problem identification in legal research process and scope; understand the term legal reform, challenges and consequences of legal reform. To achieve the objectives, a systematic literature review was conducted. This involves extensive review of existing literature using textbook, books, journals and the internet. A documentary analysis was employed. The result shows that, the identification of a legal problem is pivotal in legal research. Legal research is carried out to resolve legal problem which is a key to legal reforms. Identifying legal problems incorrectly may lead to failure of establishing legal argument consequently, the problem will be unresolved. The legal problem is created by two relational propositions which include causal and functional relations. Carrying out legal research, the researcher needs legal research materials which may be primary and secondary legal materials. In conducting legal research, five types of approaches may be used. These include statute approach, case approach, historical approach, comparative approach and conceptual approach. More so, Legal research is applied research whose result is prescription in the form of legal opinion and recommendation which can leads to legal reform. Legal research is more than doctrinal research. Doctrinal research is only the study on reading and analyzing the primary materials and secondary materials. Legal research is carried out to resolve legal problems which lead to legal change. The function of research is to find the truth. Therefore, it discovers the coherence truth which is a key to legal reform. Furthermore, legal reform encompasses a comprehensive and systematic process of reassessment, review, and improvement of the legal framework within a society. It aims to address deficiencies, adapt to societal changes, and enhance the legal system's effectiveness, efficiency, and fairness. Its scope covers substantive laws, procedural norms, legal institutions, and legal enforcement mechanisms. Legal changes involve transforming legal norms, principles, and practices within society. Legal reform sheds light on the role of political institutions and actors in shaping reform initiatives. It highlights the significance of political stability, ideological perspectives, and the presence of political will in determining the feasibility and success of legal changes.

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Keywords: Legal Research, Problem Identification, Legal Reform, Legal Change, Legal Framework

Introduction

Legal reform plays a crucial role in shaping society and ensuring the effective functioning of legal systems. As society evolves and faces new challenges, there arises a need for legal changes to address emerging issues, improve access to justice, and uphold the rule of law. Legal reform encompasses a wide range of measures aimed at amending existing laws. Also, it seeks to introduce

new legislation and transform legal institutions to align them with society's evolving needs and values (Pomaza-Ponomarenko *et al.*, 2023)^[17]. Outdated, inefficient, or unjust legal systems can hinder social progress and economic development. Therefore, the significance of legal reform lies in its potential to create a fair and efficient legal framework that protects individual rights, promotes social justice, and facilitates economic growth. By studying legal reform processes and their impact on society, using legal research, insights into the mechanisms through which legal changes occur and their implications for various stakeholders can be understood ((Pomaza-Ponomarenko *et al.*, 2023)^[17].

The Nature of Law and Society are requires to change according to the circumstance, but most important things that Law can change the social relations as well as Society. The law has to be reformed according to the need of society and community. Similarly, there are many problems in the society and these problems will never end (Rattan, 2016). The Law reform is the process of examining existing laws and advocating and implementing changes in a legal system, usually with the aim of enhancing justice or efficiency (Doctrinal-Research, 2017). In this contemporary world, legal research has undergone a tremendous change on the path of better understanding of the role of the law in society. It also need to emphasis on repeal of outdated legislation and other codification of Legislation. Law reform is become more complex and unworkable some reshaping of areas of law especially in the common law. It also devising of new legislative and regulatory framework designed to meet new challenges facing in society especially those arising for scientific and technological development (Rattan, 2016). Thus, this study is examined Problem Identification in Legal Research: The Key to Effective Legal Reform. The specific objectives are:

- To understand the nature of problem identification in legal research.
- To examine legal research, including its definition, process, scope and conceptualisation.
- To understand the term legal reform, scope, and conceptualization.
- To discuss the impact of legal reform.

Legal Problem and Problem Identification

Legal problem is pivotal in legal research just as problems in other research. Legal research is carried out to resolve legal problem. Identifying legal problems incorrectly may lead to failure of establishing legal argument applied to the legal problem and, consequently, the problem will be unresolved. Supporting this, Marzuki (2022)^[12] argue that in a trial, if a plaintiff fails to establish legal argument as a basis of the subject matter of the lawsuit, the petition may be dismissed. Likewise, a public prosecutor who could not establish legal argument to prove what the defendant has committed may cause the defendant to be found not guilty. The failure of identifying legal problem, therefore, may make inaccurate judgment, which may produce injustice.

Legal problems arise out of two relational propositions. The relationship may be causal, functional, or the relationship by which the latter proposition confirms the meaning of the first proposition. Identification of the kind of relationship is necessary for the purpose of conducting legal research (Marzuki, 2022)^[12]. The relationship by which one proposition confirms the meaning of another proposition

becomes a legal problem when there is a provision that should be interpreted in such a way that is applicable to a case.

Problem identification in legal research is the process of finding and defining a specific legal gap, conflict, or ambiguity in statutes, case law, or societal practices that requires a structured investigation. It forms the foundation of any accurate legal analysis, ensuring the researcher addresses a true issue rather than a broad, vague topic.

Steps to identify a problem include: select a broad area, review materials, spot conflict point, narrow the focus, draft the statement by writing a concise problem statement highlighting the current standard, the gap, and the resulting impact. These steps are known as legal research process.

Legal Research

Legal research is a know-how aspect of jurisprudence to resolve legal problems. A legal problem is not social problem (Marzuki, 2022)^[12]. In agreement, Vijay (2017)^[20] posit that the word "Research" means an intensive research with a view to become certain and to investigate thoroughly. Research is main roots to find the appropriate solution to problems of a society. It is directly proportional to the development and development is directly proportional to the reformation of society (Rattan, 2016). Researchers find out the need of law reform towards social development, and thereto, research is one of the important tools for law reform and changing the pattern of the society.

Legal research is carried out to discover coherence truth and settle legal problems. Legal research is more than doctrinal research as supposed by Hutchinson. Resolving legal problems does not only deal with reading and analysing primary and secondary materials. It needs skill to identify legal problems, ability to conduct legal reasoning, and capability of analysing the legal problems at hand. Not only is legal research to find rules for or apply rules to problems but it is also to establish new argument and to find new legal principle for settling the problems equitably.

The output of legal research is prescription in the form of legal recommendation. It should be clearly identified that the subject matter of the research is a legal issue or a legal problem. The output of legal research may be a reference for decision makers concerning law (Marzuki, 2022)^[12].

Legal research that undertake the law reforms are broadly classified into two categories which include doctrinal legal researches and socio-legal research (Vijay, 2017)^[20]. The doctrinal legal researches are important element to identify the various problems of the society. It is very helpful to improve the social relations as well as society while reform law towards the social development. Therefore, legal research scholars and academic lawyers use the doctrinal research method in pursuit of law reform (Vijay, 2017)^[20].

The Function of Legal Research

The function of research is to find the truth (Nova, 1998)^[15]. As stated by St. Thomas Aquinas, a 13th century philosopher and theologian, "Truth is the correspondence between what is said and what is in the mind". He further showed that truth is something obtained through experience (Ibid, 176-177). Legal research is to find the coherence truth and the truth is found to resolve legal problems.

Legal problems may be the conformity between legal rules and principle, the consistency between legal rules and other legal rules, and the compliance of human conducts with laws.

Legal rules should not contradict legal principle. In case of conflict between legal rules and legal principle, the legal principle shall prevail. Legal rules should be in harmony with other legal rules. Otherwise, there may be legal uncertainty because it is possible that two contradictory provisions are applied to a case and, if it happens, the question is which provision shall prevail. It is also possible that there may be overlapping between provisions if there is no interweaving of different rules concerning the same case. Then, human conduct should comply with the law. In this case, the notion of law is not only legal rules or statutory provisions but also best practices in society and legal principle (Marzuki, 2022) ^[12].

The Characteristic of Legal Research

According to Morris L Cohen, legal research is the process of finding the law that governs activities in human society (Morris, 1992). Through research, law practitioners (lawyers) find necessary resources to predict what shall be done by court, for which they can take certain actions (Morris, 1992). Applying law to a certain situation needs skill in legal analysis. A lawyer is skillful in analysing factual situation and applying laws and regulations or established legal doctrines. The doctrines may, however, contradict each other. The lawyer, therefore, consider carefully which doctrine is relevant to a specific case. The ability to make a choice of the doctrines to be applied aptly to a case indicates the capacity of the lawyer (Marzuki, 2022) ^[12]. The result of legal research for both practical purpose and academic activity is prescription in the form of legal opinion and recommendation.

Since jurisprudence is a prescriptive science instead of descriptive science, legal research carried out either by lawyers or legal scholars does not begin with hypothesis. As a result, the terms qualitative and quantitative research are not terminologies for legal research. It is possible, however, in establishing argument by induction based on a fact. The fact in legal research is not data for verifying hypothesis. On the contrary, fact in legal research is the subject matter to be researched. It should be identified whether the fact is just a fact or legal fact (Marzuki, 2022) ^[12].

Doctrinal Legal Research Method

The term “doctrine” was derived from Latin which means instruction, knowledge or learning (<http://www.studymode.com>). The doctrinal legal research is research into legal concept and principle of all types of case, statutes and rules” (supra 5). The doctrinal research is concerned with analysis of the legal doctrine and how it has been developed and applied (supra Note 2) and these types of research is known “as pure theoretical research (supra Note 2 at 148).

The stability and certainty of law are desirable goals and social value to be followed which make the doctrinal research a primary concern to a legal researcher (Jain, 1975) ^[7]. According to Myneni (2014) ^[14], doctrinal research involves analysis of case law, arranging, ordering and systematising legal propositions and study of legal institution through legal reasoning or rational deduction. It also provides the systematic exposition of the rules which are governing in a particular legal category. Perhaps, the doctrinal research also predicts future development and explains the areas of the difficulty.

The doctrinal research, thus involves systematic analysis of

statutory provision and of legal principle involves therein, or derived there from, and logical and rational ordering of the legal propositions and principles (supra Note 8). It also said that doctrinal research is basically are research into law. Mostly the researchers also give the more emphasis on substantive law rules, doctrines, concept and judicial pronouncements; however the doctrinal research based on the legal proposition and judicial pronouncement of the appellants’ courts and other conventional legal material such as parliamentary debates, revealing the legislative intent, policy and history of the rule or doctrine (supra Note 11).

The doctrinal research methodology does not make use of qualitative and quantitative legal research tools because it give a broader perspective to the dimension of law while linking to the society which after all law are regulates. Many researchers were observed that the Law remain as a social phenomenon.

Therefore, the legal research has traditionally been concerned with the development of legal doctrine. Such as the laws, a regulation, ruling and law case has been used in the research. The doctrinal research has been associated with diverse activities for codification and law reporting etc. However, the doctrinal research has also play very important role in the research development and functioning of legal systems because it has produced much research of outstanding quality (Vijay, 2017) ^[20].

Source and Characteristics of Doctrinal Research

The doctrinal legal research means the research into law and legal concepts and it is also based on the theoretical and pure in the nature. The doctrinal legal research is closely linked with the doctrine of precedent. The term of doctrine means the synthesis of various rules, principles, norms, interpretive. The ordinarily conventional legal source is used in doctrinal research, researchers take in secondary data relevant to proposition from the following sources like statutes or enactment, report committees, legal history and judgment, among others. Most of the doctrinal research sources are text books, periodicals, and commentaries but they are not possess as much authority as the original sources like enactment and case published by authorized publisher (Vijay, 2017) ^[20].

The doctrinal legal research method involves an analysis of legal propositions or legal concept is the main base of the studies. These types of research used “the reports of appellate courts and conventional legal theory” as sources of data. However, the legal propositions from enactments, administrative rules and regulation, cases law of courts etc can be a part of doctrinal legal research. The legal concepts and principles of all types’ cases, statute and rules are used in the doctrinal legal research. Most of the cases the reaches scholar, lawyers and law teachers are focuses on the legal data gathered from case laws, legislation, law journal and article, law reforms reports, parliamentary materials, policy documents, relevant text law books etc

Legal Research Materials

In answering legal problem, there should be legal research materials. The legal research material may be primary legal materials and secondary legal materials. The primary legal materials are authoritative materials, which are laws and regulations, case law, and treatise on law making, while, the secondary legal materials are all publications concerning law other than official treatise and practices accepted as laws.

Publications concerning law include law textbooks, law journals, and commentaries on court landmark decisions. In addition, if necessary, non-legal materials may be used as complementary to research. In using laws and regulations as legal research materials, it should be borne in mind the preferential principles of laws, consistency between the laws and regulations, and the coherence of laws to legal principle. Regarding consistency between laws and regulations, the legal researcher should discern whether they are overlapping or conflicting each other. In some cases, it is possible that statutory provision does not cohere with legal principle. In such a case, the legal researcher determines that the statutory provision is invalid due to not cohering the legal principle. In some other case, the idea behind a statutory provision is unclear. Faced with such a provision, the legal researcher should refer to the treatise of law making. Doing it that way, the researcher may find the idea and the purpose of laying down the provision. The next primary legal material referred to by the legal researcher is case law concerning legal problem at hand.

Regarding the authoritativeness of judicial decision, Paul Scholten pointed out that there should be a relationship between reasoning and the decision (Paul, 1974) ^[16]. According to Scholten, the basic idea of division of legislative power and judicial power with the last resort of appeal is nothing but to make case law authoritative (ibid). Non-legal material may also support legal research for academic purpose. There are also some other research materials in the forms of interview and expert deposition. In interview, it is recommended that the interviewer, who is the researcher, prepare structured questions about legal problems he puts forward. If the interviewee gives legal opinion in writing on the questions, the legal opinion becomes a secondary legal material. Likewise, expert deposition may serve to be the secondary legal material because it is noted and recorded.

In legal research, there are five types of approaches. Employing the approaches, the researcher will obtain information about the legal problem to be answered from many aspects. The approaches are statute approach, case approach, historical approach, comparative approach, and conceptual approach (Marzuki, 2022) ^[12].

Statute approach is conducted by studying all laws and regulations concerning the legal problem that should be addressed. Legal research is carried out for lawyering; the statute approach enables the researcher to observe the consistency between the legislations, the non-contradictory any statutory provision to any Constitutional provision, and the harmony of regulations with any statutory provision. The outcome of the study becomes the basis of argument, by which the problem is settled.

Case approach is conducted by studying cases that have been, which no legal redress may be exhausted to appeal. The cases should be relevant to the legal problem that is the subject matter of the research. The main point of this approach is to study the ratio decided or reasoning of judicial decision. In this approach, many similar cases are studied. From the study, it may be found an argument to resolve the legal problem.

The third approach is historical approach. Historical approach is carried out by searching the background of the subject matter of the research and the development of laws and regulation concerning the legal problem. This kind of approach is needed when the researcher wants to find a

philosophy or school of thought that brings about the subject matter of research. It is badly needed if the researcher considers that the philosophy is relevant to the current situation.

The next approach is comparative approach. This approach is conducted by comparing law of a certain country with law of more than one country concerning the same subject matter. Comparative approach may also be done by comparing judicial decisions of one country and court judgment of other countries of similar cases. This approach is useful for obtaining similarities and differences between the laws of the countries. Conducting comparative approach, the researcher may find consistency between the philosophy and the law of the countries. By the same token, comparing judicial decisions of different countries for similar cases, the researcher gets reasoning of the judgments, which may be the answer of the legal problem of the research.

The last type of approach is the conceptual approach. This approach departs from doctrines and schools of thought in jurisprudence. Learning the doctrines and the schools of thought, the researcher may find ideas that create notions of law, legal concepts, and legal principles that are relevant to the legal problem he/she faces. The understanding of doctrines and schools of thought in jurisprudence will be the backbone for the researcher to establish a legal argument to resolve the legal problem.

Legal Reform

In this contemporary global changes world, the role of legal systems in addressing pressing challenges has garnered increasing attention from scholars, policymakers, and practitioners (Burchardt, 2018; Adedoyin et. al., 2020) ^[2, 11]. In general, the existing scientific literature considers the key role of the legislative framework in responding to three interrelated and evolving challenges: climate change, technological progress and changing socio-cultural norms. These challenges necessitated substantial legal reforms and adaptation to ensure the effective functioning of society and the protection of individual and environmental rights (Klaasen, 2020; Santos et. al., 2022) ^[8, 19].

According to Pomaza-Ponomarenko et al. (2023) ^[17], societal norms and values are continually evolving, influencing legal systems' responses to issues like gender equality, human rights, and racial justice (Dent, 2011; Lomazzi et. al., 2019) ^[4, 10]. Legal scholars assess the impact of cultural shifts on discrimination laws, marriage equality, and access to healthcare services (Wootton et. al., 2018; Drabble et. al., 2021) ^[5]. The intricate nature of legal reform shed light on the role of political institutions and actors in shaping reform initiatives. It highlights the significance of political stability, ideological perspectives, and the presence of political will in determining the feasibility and success of legal changes.

Legal reform encompasses a comprehensive and systematic process of reassessment, review, and improvement of the legal framework within a society. It aims to address deficiencies, adapt to societal changes, and enhance the legal system's effectiveness, efficiency, and fairness (Pomaza-Ponomarenko et al., 2023) ^[17].

The scope of legal reform is broad and covers substantive laws, procedural norms, legal institutions, and legal enforcement mechanisms. It seeks to ensure that regulations are clear, consistent, and reflect societal values, promoting justice, equality, and the rule of law (Kryvytskyi, 2018) ^[9].

Legal changes involve transforming legal norms, principles,

and practices within society. They include amending existing laws or introducing new legislation, resulting in changes to legal frameworks, processes, and outcomes. Legal changes profoundly affect society, impacting power dynamics, social relations, and individual rights and obligations. Legal changes can positively affect social justice, human rights protection, and economic development. By updating laws aligned with societal values, legal changes can promote equality, inclusivity, and the well-being of individuals and communities. They can also foster economic growth by creating a transparent, predictable, and favorable legal environment that attracts investment, encourages entrepreneurship, and stimulates innovation (Yushchuk, 1997; Pomaza-Ponomarenko *et al.*, 2023)^[22, 17].

Legal changes can also create challenges and have unforeseen consequences. Poorly designed reforms, inadequate implementation, and stakeholder resistance can undermine the intended goals of legal changes. In some cases, legal reforms can disproportionately affect certain segments of society or exacerbate existing inequalities. Therefore, it is crucial to consider potential risks, engage stakeholders, and ensure inclusivity in the reform process to mitigate negative outcomes and maximize positive results (Pomaza-Ponomarenko *et al.*, 2023)^[17].

The processes of legal reform are influenced by the complex interaction of political, social, and economic factors (Chebotaryov, 2012)^[3]. Political factors play a significant role in shaping legal reform initiatives. Social factors, including public sentiment, societal values, and grassroots movements, contribute to the demand for legal reform. Awareness, engagement, and participation of citizens, civil society organizations, and advocacy groups can influence the direction and priorities of legal changes. Economic factors also play a significant role in legal reform processes. Economic conditions, the level of development, and the distribution of resources in society impact the feasibility and sustainability of legal changes.

Legal reform processes are complex and multifaceted, influenced by intricate political, social, and economic dynamics. The interaction of these factors varies in each specific context (Lytvyn *et al.*, 2022)^[11]. Political institutions and actors are crucial in stimulating and shaping legal reform processes. The government, legislative, judicial and administrative bodies are vital institutions responsible for adopting, implementing, and interpreting laws. Their willingness, capacity, and effectiveness in carrying out legal reforms play a significant role in determining the success and impact of such changes. The government, particularly the executive branch, often leads in initiating legal reforms. It formulates the political agenda, proposes legislation, and mobilizes resources for its implementation (Pomaza-Ponomarenko *et al.*, 2023)^[17].

The judicial branch safeguards the rule of law and plays a decisive role in interpreting and applying laws. Political ideologies shape goals, priorities, and approaches to legal reform. Liberal ideologies often prioritize individual rights, freedoms, and market-based approaches. Legal reforms influenced by liberal ideologies may focus on advancing private property rights, strengthening contract enforcement, and ensuring the protection of civil liberties (Elkins, *et al.*, 2009)^[6]. On the other hand, socialist ideologies may emphasize social justice, equality, and collective well-being.

Legal changes within socialist ideologies may involve measures aimed at enhancing labor rights, wealth redistribution, and promoting social protection.

Conclusion

The identification of a legal problem is pivotal in legal research. Legal research is carried out to resolve legal problem which can act as a key to legal reforms. Identifying legal problems incorrectly may lead to failure of establishing legal argument applied to the legal problem and, consequently, the problem will be unresolved.

The legal problem is created by two relational propositions. The relation may be causal relation, in which the first proposition causes the latter proposition. Another form of relationship of the two propositions is functional relation. In this relationship, the first proposition works for the latter proposition. The third form of legal problem is the relationship by which the latter proposition confirms the meaning of the first proposition. In this relationship, the latter proposition explains the meaning of the first proposition.

Carrying out legal research, the researcher needs legal research materials. These may be primary and secondary legal materials. In addition, if necessary, non-legal materials are also employed to support and complement the outcome of the research. The primary legal materials are authoritative materials. The secondary legal materials are all law publications.

In conducting legal research, five types of approaches may be used. Statute approach is used to observe the harmony of laws and regulations dealing with the subject matter of research. Case approach is to study the reasoning of judicial decisions that have been *res judicata*. Historical approach is conducted when the researcher wants to know the development of law concerning the subject matter of research. Comparative approach is utilized to get known similarities and differences of law of many countries. Conceptual approach is conducted to understand doctrines and schools of thought in jurisprudence, by which it may inspire the researcher to establish an argument.

Legal research is more than doctrinal research. Doctrinal research is only the study on reading and analyzing the primary materials and secondary materials. Legal research is carried out to resolve legal problems which can lead to legal change. The outcome of legal research is to prescribe what shall be done to resolve the legal problem.

The function of research is to find the truth. Social research and legal research are different in terms of truth. Legal research is carried out to resolve legal problem. Therefore, it discovers the coherence truth which is a key to legal reform. Legal research is applied research whose result is prescription in the form of legal opinion and recommendation which can leads to legal reform.

Legal reform encompasses a comprehensive and systematic process of reassessment, review, and improvement of the legal framework within a society. It aims to address deficiencies, adapt to societal changes, and enhance the legal system's effectiveness, efficiency, and fairness. Its scope covers substantive laws, procedural norms, legal institutions, and legal enforcement mechanisms. Legal changes involve transforming legal norms, principles, and practices within society. Legal reform sheds light on the role of political institutions and actors in shaping reform initiatives.

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