

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

§ 3 Formal standards of scientific legal research and writing

I. Introduction

- Note: Regarding the formal standards, due to the different space available, there are some differences between journal articles and other short contributions on one side and scientific theses and other monographs on the other side. By nature, there are little differences between the different types of thesis (bachelor, master, doctoral or habilitation thesis) but sometimes there are binding rules of individual faculties or universities for certain types. They can present a problem if they are incompatible with internationally recognized standards of scientific work.
- 1) *The reasons for formal standards in scientific work*
 - not an end in itself but required by the principles of intellectual honesty, accuracy and precision
 - 2) *The principles guiding the formal standards in scientific work*
 - allowing easy *orientation*, avoiding misunderstandings
 - providing quick and easy *access* to available information
 - allowing quick and easy *verification* of the correct understanding and use of information
 - presenting the positions of others in any context as *accurate* as possible
 - 3) *Variations in formal standards depending on the scientific discipline and the national scientific culture*
 - a) The existence of variations in formal scientific standards
 - different requirements in legal science, political science and economical science
 - different requirements in different countries
 - different requirements in different languages
 - b) The need to justify variations in formal scientific standards
 - universality or relativity of scientific standards?
 - scientific standards as part of cultural heritage?
 - specific standards or just habits (conventions) of the national or disciplinary tradition?
 - c) The necessary limits to variations in scientific standards
 - different traditions or cultural backgrounds cannot justify deviations from requirements of science
 - unprecise or unaccurate citing is unscientific - in any discipline, country or language...
 - 4) *How to meet formal standards easily*
 - learning and meeting the standards from the beginning
 - using preformulated text blocks for the citation of statutes, important books and court decisions
 - using generally acknowledged aids (e.g. official lists of abbreviations)

II. The formal structure of the scientific work

1) *The general structure of a scientific thesis*

- proposed structure: 1 cover sheet, 2 outline table of contents, 3 table of contents, 4 list of abbreviations, 5 main text, 6 multi-lingual summary, 7 comprehensive bibliography, 8 table of legislation, 9 table of jurisprudence, 10 appendix, 11 index
- the cover sheet often needs to follow special rules of the faculty or the study program
- the outline table of contents (not more than 1 page) provides for a quick overview
- the table of contents provides the most important guidance for the reader
 - must present all headlines in exactly the same wording as in the main text
 - should also list all diagrams, graphics and statistics in your text (or should be followed by a table of diagrams)
 - should be as clear as possible (→ make it clearer by smart formatting)
 - can be produced and updated automatically by a special function in the word processor
- often forgotten in Indonesia: the list of abbreviations
 - important for readers who are not specialists in the relevant field of law
 - must include all abbreviations used in your text
- the multi-lingual summary must be at least in English and in the language of the work
- the *tables of legislation and jurisprudence*
 - must list all important legal sources and jurisprudence presented and discussed
 - must be *separate from the bibliography* because legal sources and jurisprudence are not scientific literature themselves but the objects of scientific research
 - should also indicate on which pages in the work the legislation or jurisprudence is discussed
- very helpful: a well-structured *appendix* with materials difficult to access (foreign statutes and judgements, translations of important legal terminology, drafts, statistics, diagrams etc.)
 - can often be formatted in a smaller font size to avoid that it becomes too large

2) *Formal standards for structuring*

- see also the (intellectual) standards presented above (§ 3 III.2)
- in particular: well-balanced structuring
 - not too many subdivisions (→ makes the reading of the text difficult)
 - no long sections without subdivisions (→ makes an easy orientation impossible)

III. In particular: the bibliography and the index

1) *What must be listed in the bibliography?*

- ▶ **all cited scientific literature but no other documents:**
- *only scientific literature* (other literature may be listed separately or in a separate section at the end of the bibliography)
 - also scientific contributions published in the internet (drawing the line may be delicate)
- only literature cited in your text (exception: the French model of a well-structured and commented comprehensive bibliography that is not just a list of books but a scientific work itself)
- *no legal norms or court decisions* (they must be listed separately in tables of legislation and jurisprudence)
- *no political documents* (they may be listed in a separate table)
- no other documents or websites

2) *How must it be presented?*

- a division of the bibliography into categories (textbooks, works of references, articles etc.) is not common (except in the French comprehensive bibliographies) but often helpful
- pay attention to the *correct spelling of the names* (including the use of special characters and diacritics)
- list the authors of joint publications in the order chosen by them, not in the alphabetical order

- in times of internet the city of publication does not need to be indicated anymore (if not required by the rules of your faculty)
- specify the exact address of *internet publications* with a *deep link* and specify the date of your last verification of this address
 - a general note on the last verification is enough (e.g. "All websites last visited April 27, 2020.")
 - for sources outside the world wide web (www) refer also to the internet protocol ("http://")

3) *Are there special rules for publications in foreign languages?*

- rule no. 1: the names of the authors or editors, the titles and subtitles are given in the language of the cited publication; you may add translations of the titles and subtitles [in square brackets]
- rule no. 2: all other bibliographical specifications are made in the language of your work
 - so do not use the words "editor", "edition", "volume" or "page" or the corresponding abbreviations ("ed.", "vol.") if you write your text in Bahasa Indonesia!
 - this rule results from logic; it applies without regard to language, country or national tradition

4) *Often "forgotten" but imperative for every scientific work: the index*

- an often underestimated guidance that may attract readers
 - function: to allow a quick and easy access of the reader to all passages relevant to him
 - imperative in any master, doctoral or habilitation thesis
 - often decisive for the willingness of the reader to search for the relevant passages and, thus, for the scientific impact of the work
- causes a considerable amount of work which many lazy authors are not willing to invest
 - but can be produced and updated semi-automatically by a special function of the word processor
- must be placed at the very end of the book
- prepare an *expedient and consistent system of entries at two or three levels*, following both a systematic and an associative concept
 - use a homogeneous and common terminology to enable the reader to look up the right keywords
 - combine entries and sub-entries in two different ways (e.g. "Constitution - of the European Union" and "European Union - constitution")
 - include also common colloquial, non-technical keywords (e.g. "European constitution")

IV. The scientific style of writing

1) *An objective and precise style of writing*

- in particular: neutral formulations without subjective elements
- in particular: precise and exact formulations, exact linking of thoughts by carefully chosen prepositions, conjunctions or other logical connections

2) *A structured, purposeful style of writing*

- following the concept of structured scientific research in every detail: outlining the problem, unfolding the possible solutions, presenting the views in jurisprudence and literature, presenting one's own decision, giving reasons for one's own decision and recapitulating
- discussing theories and presenting the views of others always in the context and from the perspective of the own specific questions (except if you write a commentary or textbook...)

3) *A concise style of writing*

- A scientific thesis is not an essay! In the continental legal tradition, scientific texts are expected to be short, compact and concentrated
- recommended: frequent review of the text in order to shorten it without losing substance

4) *But nonetheless a fluent and gripping style of writing*

- as far as possible with regard to one's own qualities as a writer...
- trying to use a simple terminology and to avoid complicated involved sentences
- trying to apply active voice instead of passive voice (→ more precise)

V. The art of scientific citing

- the conventions vary strongly, depending on the country and discipline, but the standards are universal since they derive from the demands of logic, precision and accuracy

1) *The need of extensive scientific citing*

- every single information, which is not evident, must be substantiated (cf. § 3 III.1)
- wherever you draw upon considerations of others, you must document it by citation (cf. § 3 I.1)
- if there is not enough room for extensive footnotes (→ in course papers and journal articles) refer to a source that presents the scholarly debate in detail and note "... with further references"

2) *Precision and accuracy as guiding principles of scientific citing*

- a) *Where exactly* do I find the information? How can I get access to it?
 - always refer to the *exact page*, marginal number, paragraph, recital, footnote etc.
 - when citing journal articles or court decisions, specify both the page where the text begins and the page with the quoted passage
 - refer to *margin numbers* where possible because this will be more precise
 - when citing court decisions, refer preferably to official margin numbers because they are independent from the place of publication (internet, law journal, official reports etc.)
 - provide *deep links* to internet sources
 - do not adopt citations of others without verification (they will often be incorrect or not fit into the specific context of your text)
 - b) *What exactly* is the information?
 - present it as accurately as possible
 - indicate clearly where you need to interpret it
 - indicate if the cited opinion is the prevailing or a minority opinion
 - c) What is the essence of the information in the *specific context*?
 - Has the sentence or part of a sentence in your text the same meaning as the cited passage?
 - Does the cited passage express exactly the scientific opinion you want to refer to?
 - Often *clarifications* are necessary to elucidate the context. For example, you may need to specify that you agree with the result of the author but not with his reasoning (or the other way around). Use conjunctions, adverbs, attributes and other grammatical means. In most languages, there are also special expressions applied for this purpose. For example, the English abbreviation "cf." (for "confer"), which expresses that the reference is rather vague, may indicate that the cited author is principally but not in detail of the same opinion or that his opinion is based on slightly different arguments.
 - d) The correct exact position of the footnote
 - Behind the paragraph, the sentence or the relevant part of the sentence? Inside or outside the brackets?
 - the footnote always refers to the part of the text (paragraph, sentence, part of the sentence, parenthesis etc.) that is specified by its exact position
 - sometimes it may be appropriate to insert a footnote directly behind an individual word
- ### 3) *The correct citing of literature and jurisprudence*
- if possible follow the citing suggestion of the cited work's author or editor
 - note that the *formal style of citing* (especially how to indicate the number of the page referred to, the year of publication of books, and the volume, issue and year of publication of journals) *varies strongly*, even when publishing in English, from discipline to discipline, country to country,¹ and journal to journal
 - in legal writing *follow the citation rules in legal science*, not in political, economic or social sciences - in most countries, and internationally, they are different!

¹ See for an overview on the legal citation styles in numerous countries *NYU School of Law, Guide to Foreign and International Legal Citations*, 2006, www.law.nyu.edu/sites/default/files/upload_documents/Final_GFILC_pdf.pdf.

- note the *differences between legal citation in Common Law and continental legal tradition*; note that citing in international papers in English does not necessarily follow the Common Law style!
- when citing *court decisions* for readers in other countries, do not do it in the domestic way (e.g. "BVerfGE 89, 155, 235") without explaining it because the readers would not understand; provide *deep links* to their internet publication and English translation, if available
- for contributions to journals or anthologies you need to follow the citing directives of their editors; align your paper to these rules before submitting it!
- within a thesis titles of articles, webaddresses of online articles and subtitles of books are usually specified in the bibliography but not in the footnotes
- *cite the latest edition* (except if there are special reasons to cite a previous edition)
 - citing old editions or listing them in a bibliography proves that your work is not up-to-date
- *no citing in direct speech* without a special, justifying reason
 - the wording must be essential to understand the meaning
 - the cited passage must be limited to the necessary minimum
 - if you cite literally you must indicate it by quotation marks and different formatting
- *correct citing of sources in different languages*: provide all bibliographical specifications, except names, titles and subtitles, in the language of your work
- if possible identify the "prevailing opinion" when referring to different scholarly positions
- indicate when a cited passage in a judgement is an "obiter dictum"

4) *The correct citing of legal norms*

- use common abbreviations for the designation of well-known statutes, regulations and treaties and explain them in your list of abbreviations
- refer to the individual norm as precisely as possible (which article, section, sub-section, phrase, number etc.?)
- no copying & pasting of large excerpts of statutes, treaties or constitutions (except in a legal text for readers who are not lawyers)

VI. The formatting of the scientific text

- restrained and graduated use of modern formatting options, such as bold types, italics, different font sizes and underlinings
- *emphasizing of important keywords* so that they are not missed and later can be found again easily
- no isolated headlines at the bottoms of the pages (→ indicates a lack of professionalism)
- the line spacing between a headline and the previous text must be bigger than that between the headline and the following text to show by the formatting that the headline and the following (not the previous) text form a block in substance (often ignored in Southeast Asia)

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