

INTELLECTUAL AND FORMAL STANDARDS
OF SCIENTIFIC LEGAL RESEARCH AND WRITING

Contribution to the course *Methodology of Legal Research and Legal Writing*
from the perspective of European, in particular German legal education

§ 1 Quick introduction: Why do Indonesian publications not always meet the international standards in legal science?

I. A scientific legal paper is not an essay but a well-focused and concentrated, precisely formulated and tightly written text

- no anecdotes, unnecessary examples or other illustrative contents!
- a scientific legal paper should be concentrated (as short as possible with regard to the provided information and reasoning)
- a scientific legal paper does not need to be entertaining...

II. A scientific paper is well-structured by a logically and materially consistent cascade of numerated headlines, sub-headlines and sub-sub headlines which reflects clearly and precisely the line of thoughts

- no long unstructured text blocks!
- no inconsistent or just associative headlines like in a magazin article or essay!
- *no stereotype empty formalistic structuring* into "Introduction" or "Research Background", "Problems", "Research Method", "Discussion" and "Conclusion etc. because it leaves an amateurish impression
 - use this structuring, which is wide-spread in Indonesia, as a mental guideline but formulate specific headlines which refer to the contents
 - as for the "problems", they often can already be addressed in a longer, more elaborate introduction
 - the "research method" only needs to be clarified if you do *not* follow the "normative approach" which is the standard approach in legal science (see *infra*, VII.)
 - instead of one main part "Disussion" it is usually appropriate to have several main parts with headlines referring to their contents
 - the main parts must be structured in detail with various divisions, subdivisions, sub-subdivisions etc. and a coherent multi-level system of headlines

III. A scientific paper is written in an objective, not subjective style of writing

- no emotional expressions, exaggerations or purely confirmative expressions ("certainly", "of course", "without doubts", "very" etc.)
- in particular: no such expressions as surrogates for scientific reasoning!
- furthermore: no moralising or religious reasoning instead of scientific reasoning!

IV. In a scientific paper, any information is backed by a precise and accurate reference which allows to verify it

- necessary whenever you lean on the text of another author or the information as such is not evident (obvious)
- usually, at least one or two references in every longer paragraph

- indicate *what exactly* is the information in the cited source and *where exactly* (exact page number!) it can be found
- with regard to the huge quantity of references and the necessity to specify the context, nowadays in a scientific legal paper the reference is provided in a *footnote*, *not in brackets* in the main text; citing practices in political science and social sciences are usually unsuitable in the field of legal science

V. In a scientific paper, all relevant jurisprudence and literature on the topic is presented and discussed

- no relevant jurisprudence of domestic supreme or constitutional courts must be ignored
- in case of a comparison of domestic law with a specific foreign law, at least all important foreign jurisprudence and literature on the foreign law must be presented and discussed too
- scientific research must take into consideration the *newest publications* - in legal science, textbooks older than 3 or 4 years are usually outdated
- scientific research must not be limited to publications from Common Law countries just because they are available in English
- scientific discussion must not be limited to the positions of some authors only just because you could find their publications easily in the internet

VI. A scientific work must be thorough - a complex subject cannot be scientifically discussed in a short paper

- short papers of less than 10 A4 pages main text are usually inappropriate for scientific legal research

VII. Legal research is a normative discipline and must not focus one-sidedly on empirical research

- In Indonesia, the *socio-legal approach* plays an important role. Empirical research is important to identify adat law (customary law), to monitor the acceptance of and compliance with the prevailing law and to determine whether proposed legislation would fit with the local society.
- Note, however, that in legal science the socio-legal approach, even if it is important, can *only* be a *complementary approach*, since *legal science is essentially a normative and hermeneutic discipline*. In this discipline, legal sociology, which is primarily rooted in social sciences, is only a subsidiary subject, like legal history, legal philosophy or economics. The primary mission of legal science is to interpret and systemise the law, to elucidate legal concepts, to develop the legal dogmatics behind the norms and to analyse, critically discuss and integrate the judicial further development of law. Therefore, the "normative approach", as it is called in Indonesia, is its standard approach. This derives from the nature of legal science and therefore applies regardless of the local and cultural background.
- Consequently, explain briefly when you follow the socio-legal approach but *do not explain or justify when following the normative approach!* In the eyes of foreign or international lawyers, stereotype remarks on the "research method" or the work with primary, secondary and tertiary sources may arouse suspicion that you do not understand what legal science is and disqualify your work from the outset!
In the case that your paper is addressed to the Indonesian public only and the local readers may otherwise be irritated, you may add a short explanation at the end of your introduction: "This research follows the 'normative approach', which is the standard approach in legal science."

More information on this course contribution at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact me via WhatsApp (+62.852.14029884), e-mail (tschmit1@gwdg.de), Skype (Dr.Thomas.Schmitz) or in my office (Building A, room A.IV.11).