



Exploring the Depths: A Comparative Analysis of Doctrinal and Non-Doctrinal Legal Research

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ABSTRACT

Legal research incorporates systematic findings on an identified topic and investigates the law to improve it. Researchers adopt both doctrinal and non-doctrinal legal research methods when researching the law. The right approach will ensure the effective fulfilment of research questions. Hence, this paper compares doctrinal and non-doctrinal legal research regarding their nature, scope, aims, essential tools, advantages, limitations, and interrelationships. These differences assist law researchers in deciding the most suitable type of legal research when dealing with their respective research questions. This paper also highlights that law researchers often use the non-doctrinal method within the doctrinal research framework to strengthen their suggestions and provide additional significance in pursuing law reform. The study's findings aim to assist law researchers, particularly novice researchers, in choosing the right type of legal research when developing papers.

Key Words: Doctrinal, Legal Research, Law Reform. Non-Doctrinal, Research Questions.

1. INTRODUCTION

Legal research plays a crucial role in the development and functioning of legal systems worldwide. Legal research significantly impacts various aspects of law, including legislation, case law, legal practice, and policy-making. The importance of legal research lies in its ability to provide a valuable recommendation in proposing reformation of the legal landscape, promoting legal awareness, informed decision-making, ensuring fairness and justice, and, most importantly, upholding the rule of law. Through comprehensive analysis, critical thinking, and rigorous investigation, legal research generates valuable insights, interpretations, and solutions to complex legal issues. It enables the identification and interpretation of relevant legal principles, statutes, regulations, and precedents, essential for accurate legal analysis and argumentation. Moreover, legal research supports the evolution of legal doctrines, facilitates the adaptation of laws to societal changes, and contributes to legal reforms. It empowers legal professionals, scholars, and policymakers with the knowledge and understanding necessary to address emerging legal challenges, resolve disputes, and propose effective legal remedies. The core content of this paper underscores the indispensability of legal research as a fundamental pillar of a just and well-functioning legal system, emphasising its role in shaping the development, interpretation, and application of laws. Earlier, legal researchers commonly utilised the doctrinal research method. It was believed that the strength of a legal system lies within the doctrine or legal document itself. Emerging issues within society initiated legal research. Identifying the weaknesses of law and rectifying them was done by analysing doctrine supplemented by philosophy, theories and legal formulas. However, this method is said to be lacking in incorporating the actual problem in law practice.

Merely referring to legal documents and theories could not identify the real and actual problem. The inception of non-doctrinal legal research is the output of the weaknesses in doctrinal legal research. To date, doctrinal and non-doctrinal legal research is the acknowledged forms of research design for law-based study. This study aims to compare the

features of both doctrinal and non-doctrinal studies to provide a guideline for future law-based researchers in deciding the research design that suits them best. The discussion in the paper commences with introducing the key terms: research, legal research, doctrine, doctrinal, and doctrinal and non-doctrinal legal research. The features of doctrinal and non-doctrinal legal research will then be observed, specifically in the nature, scope, aims, essential tools, advantages, and limitations. The discussion continues to examine the interrelation between doctrinal and non-doctrinal legal research before the concluding remarks.

2. LITERATURE REVIEW

A study on research methodology becomes common when the research community begins to question the reliability of the output of a study. Synder (2019) stated that the literature review as a research method is currently more relevant than ever. Traditional literature reviews often lack thoroughness and rigour and are conducted ad hoc rather than following a specific methodology. However, systematic reviews are not always the best strategy. Instead, when wanting to study a broader topic that has been conceptualised differently and studied within diverse disciplines, this can hinder a complete systematic review process. Researchers have diversified the methodology depending on the study's aims as they research various fields. Many researchers then started to conduct and produce writing explaining the comprehensive research methodology process (Osugwu, 2020; Patel & Patel, 2019). In their study, Patel & Patel (2019) emphasised that researchers need to understand the assumptions underlying various techniques and know the criteria by which they can decide that specific techniques and procedures will apply to certain problems and others will not.

3. KNOWING THE IMPORTANT TERMS FOR THE RESEARCH METHOD

3.1 Research

Research is a systematic investigation into and study of materials and sources to establish facts and reach new conclusions (Nuraisyah Chua Abdullah, 2018). The purpose of research is to acquire knowledge, referred to “basic”, “pure”, or “fundamental” research or to know about “something” scientifically and systematically, known as “applied” or “action” research (Nuraisyah Chua Abdullah, 2018). Research is a scientific activity undertaken to establish something, a fact, a theory, a principle or an application. The purpose may be to find solutions to the identified problem (Nuraisyah Chua Abdullah, 2018). While conducting research, the researcher may want to discover (Patel & Patel, 2019), interpret, or develop knowledge, insights, or solutions to a specific problem or question. It involves gathering and analysing relevant data, information, or evidence using established methodologies and techniques. Researchers can research various fields, such as science, social sciences, humanities, and technology. The primary purpose of research is to expand existing knowledge, challenge assumptions, or fill gaps in understanding. It aims to generate reliable and valid findings that advance knowledge, inform decision-making, or solve practical problems. Researchers employ different methods and approaches depending on the nature of the study. These can include qualitative research, which focuses on understanding meanings, perspectives, and experiences, or quantitative research, which involves collecting and analysing numerical data. Doctrinal and non-doctrinal studies are the common approaches used in qualitative methods.

3.2 Legal Research

Legal research is a systematic investigation that seeks to increase law knowledge. The term “legal research” takes into its ambit a “systematic finding” or “ascertaining law” on the identified topic or in the given area, as well as “an inquiry” into “law” to make advancements in the science of law (K Vibhute and F Aynalem, 2009). Legal research involves systematically investigating and analysing legal sources, principles, cases, statutes, regulations, and other relevant materials to find answers to legal questions, resolve legal issues, or provide a basis for legal arguments. It sometimes requires integrating the crucial aspects of legal practice and academic scholarship to provide practical solutions and assist the policy-making process. The goals of legal research can vary depending on the context. It may involve finding relevant legal precedents to support a legal argument, interpreting and applying statutes or regulations,

analysing case law to understand judicial reasoning, identifying legal trends, or conducting comparative analysis of legal systems. Legal research plays a fundamental role in legal practice, assisting lawyers in providing accurate advice, preparing legal documents, and representing clients effectively. It also serves as a foundation for judicial decision-making, enabling judges to apply existing legal principles to the cases before them. Additionally, legal research is essential in academic scholarship, contributing to developing legal theories, understanding legal doctrines, and exploring legal issues.

3.3 Doctrinal Research Methods For Law

Legal rules qualify as doctrinal because law makers design them to apply consistently and to evolve organically and slowly rather than being casual or convenient norms (K Vibhute and F Aynalem, 2009).

4. DIFFERENCES BETWEEN DOCTRINAL AND NON-DOCTRINAL LEGAL RESEARCH

4.1 Definition

Doctrinal legal research is research into legal doctrines by analysing statutory provisions and cases by applying the power of reasoning (K Vibhute and F Aynalem, 2009). It is usually a two-part process because it involves first locating the sources of the law and then interpreting and analysing the text. It emphasises the analysis of legal rules, principles, and doctrine (K Vibhute and F Aynalem, 2009). Doctrinal research is looking at research in law, namely what the law is. It is, thus, internal, endeavours to develop theories and involves a systematic exposition, analysis and critical evaluation of legal rules, doctrines or concepts, their conceptual bases, and interrelationship (K Vibhute and F Aynalem, 2009). Internal here refers to the study of law “using reason, logic and argument” and the “primacy of critical reasoning based around authoritative texts”(Hutchinson & Nigel, 2019). It is also known as “black-letter law” or “core law”(Hutchinson & Nigel, 2019). The term “black letter” refers to research about the law included in legislation and case law, where the term originated from the name of the Gothic type, which continued to be used for law texts (Hutchinson & Nigel, 2019).

Non-doctrinal legal research is research into the relationship of law with other behavioural sciences (K Vibhute and F Aynalem, 2009). It allows the researcher to perform interdisciplinary research, where he analyses law from the perspective of other sciences and employs these sciences in formulating the law. Thus, it provides insight into the law in context, namely how it works in the real world (Nuraisyah Chua Abdullah, 2018). It is research about law, namely what the law should be. It is external and endeavours to see whether the theories and the doctrines that are appropriate to apply in society at a given time are still valid and relevant and help to test whether the theories assumed work in the way they should. It is interested in knowing the “law-in-action” (Nuraisyah Chua Abdullah, 2018). It involves exploring legal issues through social science methodologies, empirical studies, historical analysis, comparative studies, philosophical inquiry, or critical theory.

4.2 Place and Source of Data

The law library is the source for the substantive legal rules, doctrines, concepts and judicial decisions required for doctrinal legal research. It is thus library-based research (Ali et al., 2017). Doctrinal research is called 'armchair research' or pure theoretical research (Nuraisyah Chua Abdullah, 2018).

In non-doctrinal research, the data is primarily from sources other than law, such as interviews, questionnaires, and statistical surveys, to generate empirical data to answer research questions. It focuses on the “social reality of law” rather than “law” itself. It is also known as “empirical research” or “socio-legal research” (K Vibhute and F Aynalem, 2009).

4.3 Aims

In doctrinal legal research, the researcher logically and systematically arranges the statutory provisions and judicial pronouncements, which constitute the basic data, to deduce, on legal reasoning and rationale, some legal propositions. The aim is to study case law and statutory law to find the law. It also aims at consistency and certainty of law and, to some extent, looks into the purpose and policy of law that exists and aims to study legal institutions (K Vibhute and F Aynalem, 2009). It deals with “inbuilt”, “loopholes”, “gaps”, “ambiguities”, or “inconsistencies” in the substantive

law (Nuraisyah Chua Abdullah, 2018). Non-doctrinal legal research goes beyond the analysis of legal texts and focuses on understanding legal issues from interdisciplinary, socio-legal, or theoretical perspectives.

In non-doctrinal legal research, the investigation is through empirical data on how law and legal institutions affect human attitudes and their impact on society. The emphasis is on understanding the law's social, political, economic, and cultural dimensions. It highlights the “gaps” between the “law-in-the statute book” (the image of law projected in the books) and “law-in-action” (the reality) and the law's impact on social behaviour (K Vibhute and F Aynalem, 2009). The researcher tries primarily to seek, among other things, answers to the following:

- Are laws and legal institutions serving the needs of society?
- Are they suited to the community in which they are operating?
- What societal forces have influenced shaping or reshaping a particular set of laws or legal norms?
- Are laws adequately administered and enforced, or do they exist only in statute books?
- What are the factors, if any, responsible for poor or non-implementation of the laws?
- What factors influenced the adjudicators (courts or administrative agencies) in interpreting and administering the laws?
- The law's enactment is for whose benefit, and are they using it?
- Have the intended ‘legislative targets’ benefited from the law? If not, for what reasons? Where do ‘bottlenecks’ lie?
- What has been the impact of the law or legal institutions in changing the attitude of the people?
- What are the social obstacles in realising the expected behaviour or change? (K Vibhute and F Aynalem, 2009)

It often seeks to critique, challenge, or reform existing legal frameworks and practices and is commonly used to study law's impact on society and individuals. This non-doctrinal study may provide insights into the effectiveness and fairness of legal systems and policies and help identify areas for legal reform and amendment.

4.4 Basic Tools

Doctrinal legal research primarily analyses and interprets existing legal sources such as statutes, case law, regulations, and legal principles. It involves examining and analysing legal rules, principles, and precedents within a specific legal system. Researchers typically use textual analysis, examining legal texts to identify patterns, doctrines, and principles. The emphasis is on understanding and applying legal rules and principles within established legal frameworks. The essential tools for doctrinal research comprise the primary and secondary sources materials. The primary sources contain original information from statutes and judicial decisions. Examples of statutes are the relevant Acts of Parliament (and the amendments) and secondary or subordinate legislation, such as rules, regulations, orders, notifications, bye-laws, and statutory orders. Judicial decisions refer to case reports. The development of common law by the common law judges is a clear example of law-making by the judges (S. N. Sharma, 2007). Secondary source materials are textbooks, commentaries on statutes, annotated statutes, abstracts, encyclopedias, reviews, research articles, parliamentary debates, and other Government records (K Vibhute and F Aynalem, 2009). Doctrinal legal research is commonly used for legal drafting, opinion writing, and case analysis. It provides a legal education and scholarship foundation, including law review articles and textbooks. It also forms the basis for judicial decision-making and legal argumentation.

The essential tools for non-doctrinal research comprise the primary sources of empirical data, where the required information is obtained directly from the respondents, and the secondary sources materials, where the researcher collects the necessary information indirectly from published or unpublished documents. Examples of primary sources are:

- Interview
- Questionnaire
- Schedule
- Interview Guide

Secondary sources include published or unpublished materials such as Census Reports, Reports of Governmental and/or Non-Governmental Agencies, and appropriate literature on the sociology of law(K Vibhute and F Aynalem, 2009). Non-doctrinal research can be quantitative or qualitative. Researchers may use methods such as surveys, interviews, case studies, ethnography, or discourse analysis to understand legal phenomena in context. It usually involves an interdisciplinary approach, drawing on insights from other disciplines such as sociology, political science, anthropology, economics, or philosophy.

4.5 Advantages

4.5.1 Doctrinal Legal Research

Firstly, doctrinal legal research provides fast answers to the problem because the researcher is continuously involved in elucidating and analysing legislation and case law and integrating statutory provisions and judicial decisions into a coherent and feasible body of doctrine. It also provides lawyers, judges, and others with the tools to reach conclusions about various problems.

Secondly, through his analysis, a doctrinal legal researcher attempts to test a legal proposition or doctrine's logical coherence, consistency and technical soundness.

Thirdly, doctrinal legal research contributes to the “understanding” of “law”, legal concepts or doctrine, and legal processes in a better way as it offers logical exposition and analysis of a law or a doctrine or legal system. Such an analysis also reveals (in)consistency in, and (un)certainly of, the law, legal principles or doctrines.

Fourthly, doctrinal legal research looks at gaps and loopholes in the law or the doctrine and recommends necessary amendments to improve the law or the doctrine.

Fifthly, a doctrinal legal researcher may initiate a theory in the field of law through the logical ordering and systematising of legal propositions that emerged from his analysis and reasoning. Doctrinal legal research thus assists in developing a theory.

Sixthly, a doctrinal legal researcher, through his systematic analysis of legal principles, concepts or doctrines in the light of judicial statements, may predict the “future” of the principle, concept or doctrine, its probable “contents” and “directions” in which it is likely to proceed in future.

Seventhly, doctrinal legal research provides a sound basis for non-doctrinal legal research. Sufficient experience in doctrinal legal research is necessary before a researcher embarks on non-doctrinal research (K Vibhute and F Aynalem, 2009).

4.5.2 Non-Doctrinal Legal Research

Firstly, non-doctrinal research highlights the “gaps” between “legislative goals” and “social reality” and hence depicts a “true picture” of “law-in-action”. The gap is about the practice of law enforcers, regulators and adjudicators and intended beneficiaries' use or under-use of the law.

Secondly, it assesses the law's impact on social values, outlook and attitude towards the changes contemplated by the law under inquiry.

Thirdly, it contributes significant feedback to policymakers, legislatures, and judges for better formulation, enforcement, and interpretation of the law. It assesses the "role and contribution of the law" in bringing the intended social consequences.

Fourthly, it shapes social legislation in tune with the philosophy of social engineering and makes more effective instruments of the planned socio-economic transformation (K Vibhute and F Aynalem, 2009).

4.6 Limitations

4.6.1 Doctrinal Legal Research

Firstly, depending upon the researcher's reasoning power and analytical skills, doctrinal legal research may lead to different "perceptions" and "projections" of the same legal fact, concept or doctrine when various law scholars analyse it. Scholars may perceive a legal point or principle differently with equally convincing logical reasoning.

Secondly, a doctrinal legal researcher gathers the policy from his experience, authoritative statutory materials, case reports, and reflections. Therefore, his "inquiry" into a legal principle, concept or law does not get any support from social facts or values.

Thirdly, doctrinal legal research does not involve studying the factors that lie outside the law but have directly or indirectly influenced the operation of the law or the doctrine.

Fourthly, lower courts' actual practices and attitudes are explored (K Vibhute and F Aynalem, 2009).

4.6.2 Non-Doctrinal Legal Research

Firstly, non-doctrinal legal research is time-consuming and costly as it requires much time to collect the required information from the field. It also calls for additional training in designing and employing data collection tools, such as interviews, questionnaires, schedules, and observation. It entails more outstanding commitments of time and energy to produce meaningful results (K Vibhute and F Aynalem, 2009).

Secondly, non-doctrinal legal research needs a strong base of doctrinal legal research. A legal scholar who is weak in doctrinal legal research cannot handle non-doctrinal legal research in a meaningful way. It may be futile, leading to no significant results (K Vibhute and F Aynalem, 2009).

5. INTER-RELATION BETWEEN DOCTRINAL AND NON-DOCTRINAL LEGAL RESEARCH

Nowadays, the trend is that doctrinal legal research uses a non-doctrinal methodology, for example, utilising interviews and having a focus group discussion to find direct evidence, for instance, from judges, lawyers, and politicians. The doctrinal legal research will not be a non-doctrinal legal analysis just because acquiring materials is similar to non-doctrinal legal research. Modern researchers do not confine their work to merely asking about the law and how to implement it; they also go to the field and ask people what they think about it while retaining its doctrinal status.

According to Terry Hutchinson (Hutchinson, 2016), academic lawyers use non-doctrinal methods but often infuse them within their doctrinal research framework. While the doctrinal core of legal scholarship remains intact, legal scholars endeavour to accommodate statistics, comparative perspectives, social science evidence and methods, and theoretical analysis within the legal research framework to provide additional ballast in pursuing law reform(Hutchinson, 2016)

Table 1: Key differences between the Doctrinal and Non-Doctrinal Legal Studies

| Items | Doctrinal | Non-Doctrinal |
|--------------------|--|---|
| Focus | Doctrinal research focuses on legal texts and principles | Non-doctrinal research explores broader social, political, and theoretical dimensions of law |
| Methodology | Doctrinal research relies on legal analysis and interpretation | Non-doctrinal research employs diverse social science and theoretical methodologies. |
| Aims | Doctrinal research aims to interpret and apply existing law | Non-doctrinal research aims to understand the law's impact and explore possibilities for reform or improvement. |

6. CONCLUSION

Whether the research is doctrinal or not depends on the research question. The research question must be clear and capable of pursuing doctrinal or non-doctrinal research. Non-doctrinal legal research cannot replace doctrinal legal research; however, it can be a valuable supplement to doctrinal legal research.

Most legal scholarship is not concerned with empirical investigation but with analysing and manipulating theoretical concepts (Beard & Johnson, 2001). Doctrinal and non-doctrinal legal research are fundamental approaches in legal scholarship and analysis. Each approach has its methodologies, focuses, and applications. Doctrinal legal study offers a systematic and rigorous approach to understanding and applying legal rules and principles. While it has been criticised for its narrow focus and limited consideration of social context, it remains an essential tool for legal practitioners and scholars.

On the other hand, non-doctrinal legal study offers a holistic and multidimensional approach to understanding law, complementing the traditional doctrinal approach with insights from different disciplines and a focus on the real-world impact of legal rules and institutions. The combination of methodologies, namely, a mixed method using ideological, social, and legal, can work together to understand the law better (Ali et al., 2017).

ACKNOWLEDGMENT

The authors express their gratitude to the Faculty of Law at Universiti Teknologi MARA (UiTM) Shah Alam, Selangor, Malaysia, for their encouragement in the article's publication.

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