

CHAPTER III RESEARCH METHODS

A. Type of Research

This research is using Comparative Law between Indonesia and Malaysia. Comparative Law is a method to comprehend/understand a legal issue, or legal institutions, or the entire justice system. There are 2 kinds of Comparative Law which is Macro (study 2 or more of legal systems) and Micro (study 3 or more topic or legal aspect).

From the comparative law, we can get the equality and difference of the macro and micro. Thus, we can know the advantage and disadvantage. This is best for us to know which legal system and legal aspect we should adopted.

This research uses the normative legal research because the normative legal research has interpretation of the *hermeneutic* character. The interpretation or *hermeneutic* character is defined as the process of changing from something that unknown to be known and understood.¹⁰¹

Researcher adopts the approach of legal finding in analyzing the data. There are seven types of methods used in analyzing data to establish legal findings, namely:¹⁰²

1. Positive Law Inventory Research

¹⁰¹ E. Sumaryono, *Hermeneutik Sebuah Metode Filsafat*, (Jakarta : Kanisius, 1993). P.57.

¹⁰² *Ibid.*

This research identified positive law by using critical-analytical and logical-systematical approaches.

2. Legal Principles Research

This research selects articles containing the rule of law, clarifies and analyzes the articles based on the legal principles, then reconstructs them.

3. Clinical Law Research

This research is to discover what are the juristically for a case *in-concreto* by collecting positive law *in-abstracto*. This type of research uses the legal norms as a major premise, and the facts of the case are used as a minor premise.

4. Legal Research on Regulation Structures

The first step of this research is to collect all regulations as an object of the research. Secondly, to clarify the object based on the chronology of the regulation. Thirdly, to analyze the basic understanding of a legal system and the last step is to construct the research based on the basic understanding of the legal system.

5. Legal Research on the Synchronization of Regulation

Synchronization of regulation can be reviewed vertically or horizontally. If the synchronization of regulation is reviewed vertically, it means the regulation will be examined based on its hierarchy. If the synchronization of regulation is reviewed horizontally, it means that the research aims to find the strengths and weaknesses of the

regulation. In this regard, researchers may give recommendations for possible amendments to the regulation.

6. Legal History Research

The research intends to explain the development of the areas of law. This type of research aims to reveal the legal facts of the past in relation to the facts of the present law.

7. Comparative Law Research

The research aims to compare the legal system or regulations between one state and another.

Based on the seven methods above, the researcher adopts a Legal History Research. The reason is that the Legal History Research assists to describe the development of the areas of law. This type of research aims to reveal the legal facts of the past in relation to the facts of the present law.

This research is conducted within five months, since April 2013 until August 2013. The research report is drafted within three months more, since May 2013 until August 2013.

B. Type Of Data

There are two types of legal research, namely normative legal research and socio-legal research. A Normative research method is also known as a doctrinal method.¹⁰³ The normative research method (qualitative legal research) is usually known as a study of documents,

¹⁰³ Amiruddin, Pengantar Metode Penelitian Hukum. (Jakarta : Raja Grafindo Press, 2004). P.118.

which using the secondary data as the sources, such as legal theories, regulations, court decisions and doctrines.¹⁰⁴

Different from the normative legal research, a socio-legal research considers law as a social phenomenon with a structural approach and generally quantified (quantitative legal research).¹⁰⁵ There are two types of data from this normative legal research, namely the primary and secondary data. The primary data obtained directly from the first source, i.e. the result of the source of law presented by the researcher from the website of United Nations. The secondary data is obtained from official documents, books, reports, journals, etc.¹⁰⁶

As it is mentioned previously that the secondary data consists of primary, secondary and tertiary legal materials, the secondary data of this research is comprised of:

1. Primary Legal Materials:

- a. United Nations Universal Declaration of Humans Rights
- b. International Covenant on Civil and Political Rights
- c. International Covenant on Economic, Social and Cultural Rights
- d. Act No12 Of 2005 regarding the Ratification of ICCPR in Indonesia
- e. Act No 39 of 1999 regarding the Human Rights in Indonesia

¹⁰⁴Topo Santoso, *Penulisan Proposal Penelitian Hukum Normatif dan Pelatihan Penelitian Hukum Fakultas Hukum Universitas Indonesia*, (Jakarta : Fakultas Hukum Universitas Indonesia, 2005).

¹⁰⁵Soetandya Wignyosoebroto, *Metodologi Penelitian Hukum, Diktat (kumpulan tulisan), Program Pasca sarjana Unai*, (Surabaya, 1993).

¹⁰⁶*Ibid.*

f. Secondary Legal Materials: journal, books, reports and internet-based sources.

g. Malaysian Penal Code of Criminal

2. Tertiary Legal Materials: Black's Law Dictionary and Oxford Paperback Thesaurus.

C. Data Collection Technique

Since this research utilizes a normative legal research, consequently researcher relies mostly in the use of library research method. The data collection technique used by this research is a library research method. The library research means that all data, namely the judgment of the Death Penalty, articles, journals and other sources relevant to the Human Rights and ICCPR that can be found on the websites, internet journals, articles, etc.

D. Data Analysis Methods

There are two types of data analysis, namely: qualitative and quantitative methods. The qualitative research is a type of scientific research. In general terms, scientific research consists of an investigation that seeks answers to a question; systematically uses a predefined set of procedures to answer the question; collects evidence; produces findings that were not determined in advance; and produce findings that are applicable beyond the immediate boundaries of the study. Qualitative research shares these characteristics. Additionally, it seeks to understand a given research problem or topic from the perspectives of the local

population it involves. Qualitative research is especially effective in obtaining culturally specific information about the values, opinions, behaviors, and social context of particular populations.¹⁰⁷ The quantitative research generates statistics through the use of large-scale survey research, using methods such as questionnaires or structured interviews.¹⁰⁸

Researcher used the qualitative method in analyzing data to examine the research object. A normative legal research generally employs a qualitative method rather than a quantitative method. As for a qualitative method, Mertokusumo¹⁰⁹ explains that there are various methods of analyzing data that can be used for a legal research, they are:

- a. Text interpretation is the interpretation is based on the meaning of words or language;
- b. Systematic interpretation is the interpretation is conducted by linking one legal source to other legal sources;
- c. Legislative-history interpretation is the interpretation is conducted by examining the legislative history;
- d. Comparative interpretation is the interpretation is conducted by comparing and contrasting various legal sources;

¹⁰⁷ What is qualitative research? , <http://www.fhi.org/nr/rdonlyres/etl7vogszehu5s4stpzb3tyqlpp7rojv4waq37elpbyei3tgmc4ty6dunbccfzxtaj2rvbaubz4f/overview1.pdf> download on 2nd June 2013.

¹⁰⁸ Andrew Sanchez, *The Difference Between Qualitative and Quantitative Research*, 2006, available on <http://e-articles.info/e/a/title/THE-DIFFERENCE-BETWEEN-QUALITATIVE-AND-QUANTITATIVE-RESEARCH/> download on 2nd June 2013.

¹⁰⁹ Sudikno Mertokusumo, *Mengenal Hukum (suatu pengantar)*, (Yogyakarta : Liberty, 1986). P.24.

- e. Analogy interpretation is the interpretation is conducted by way of analogy;

Researcher utilizes only three type of data analysis namely text interpretation, systematic interpretation and analogy interpretation. Researcher selects these types because they are more suitable for this research since it adopts the normative legal research method with a clinical positive law approach.

The steps to analyze data are conducted based on the following phases:

1. Data Collection: Gathering the primary and secondary data, namely the documents relating to the Human Rights and Death Penalty case and international legal instruments relevant to the issues of indigenous people.
2. Data Classification: Classifying all of the collected data. In this regard, the substances of the Death Penalty case are classified into the arguments, explanations of expert, and the decisions of the court. The international legal instruments are classified based on the legal binding and non legal binding international legal instruments, the ratified and un-ratified conventions by the State of Indonesia and Malaysia.
3. Conclusion: all data that is obtained within the research will be gathered and concluded to answer the research questions. The method

in drawing a conclusion is based on AIRAC (Answers, Issue, Rules, Analysis, and Conclusion).