

LEGAL RESEARCH: AN OVERVIEW OF A RESEARCH PROPOSAL

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Abstract

The writer looked at the problems involved in writing a legal research proposal by identifying some of the basic challenges such as the choice of topic, resource materials, methodology and the theoretical framework to be adopted for the research. The aim is to take a holistic overview of a legal research methodology.

The primary and secondary sources of material selection were used through the use of the law libraries and the internet as well as journals and periodicals to gather information for this study.

The study shows that legal research works are still much being conducted under the doctrinal method which is not empirical in view of the fact that analysis of statistical data or qualitative methodology is often viewed as the concern of the pure scientist rather than in the humanities.

In conclusion, it was observed and recommended that the need to embark on empirical legal research methodology cannot be over emphasized as it is the only panacea by which the sociological effect of the law could be attained in the 21st century.

Keywords: Research proposal, legal research

Introduction

The development of the law will to a great extent be subjected to obsolete and archaic postulation and outdated rules that may be out of tune with those the laws supposed to govern if there is no consistent research that is being conducted from time to time to evaluate its operation within a particular geographical legal system. Therefore, this underscore the essence of a legal research not only in law but virtually in all other subjects in order to better the lot of the people the world over. For example, a research could have the aims of probing into the causes of plane crashes and the like globally with a view to stemming the tide. The concomitant effect of this may at the end of the day be geared towards the total eradication of plane crashes globally or at least to bring it under a bearable condition. Aside, it may be conducted on the causes of the recent religion 'sect' called 'Boko Haram' in Nigeria that had been taking it tolls on the lives of the citizenry in the country with a view to finding a lasting solution to it by way of offering some necessary recommendations to the government of the day. These hiccups are problems which pose great challenges to human existence and therefore, they are meant to be solved in order to ensure safety of every individual and to guarantee the Fundamental Human Rights of all Nigerians as enshrined under chapter IV of the 1999 Constitution⁷⁶ of the Federal Republic of Nigeria.

Before going into the 'nitty gritty' of this topic, it is imperative that one need to define what a research is in order to fully comprehend the scope of this paper.

⁷⁶ Cap. 23, Law of the Federation of Nigeria, 2004.

What is a research?

A research is the process of identification of a researchable problems and what can be used to solve the problems identified. It concerns with the collecting of materials and informations for the purpose of ascertaining the veracity or otherwise of some informations or identification of some determinable hypothesis.

Etymologically “research” is derived from the French word *recherché*, meaning to “search closely” or “to look for closely”. From this, it means that research is a vital tool for discovering and knowing. And it is a means of acquiring knowledge and faith.

In Rajkumari Agrawala’s words⁷⁷:

“Research is a continuum”. He further remarked that:

Research is the gathering of evidence or information for ascertaining an assumption or verifying some hypothesis. It is an inquiry for the verification of a fresh theory or for supplementing prevailing theories by new knowledge.

No research can be purely new as even original discoveries are an extension of the research already undertaken, being showed generally as expressing agreement or reputation or plain addition.

A researcher is burdened with the heritage of information already collected in his area of work. Communicated information, i.e., knowledge is the universal property of mankind and its sharing is not encumbered by any inherent limits in terms of time or number, though man-made barriers and devises which obstruct the free flow and sharing of information do exist in society. Knowledge cannot be suppressed though its flow may be delayed with some efforts. Like streams, human knowledge does not flow backwards. It is not open to any individual or generation to proclaim self disinheritance from already acquired knowledge.

The theoretical frame work of a legal researcher is concerned with the role of a problem –solver in any area of the law of his best interest. Therefore a research is “a process of systematic enquiry”⁷⁸. And it is a means of probing into the roots of unknown problems with the interest not only to discover their genesis but also with the aim of solving the identified problems in ways casually related to the expansion of human knowledge⁷⁹.

Presentation and analysis of a research work

To me, what I feel a researcher is expected to do here is nothing more than to showcase his research plan/proposal which normally provides the outlay of what he wants to do, what to achieve, what and how s/he wants to go about doing it. And to put it in a simple way – The writing of a research proposal. This is the masterpiece of the whole research work which encompasses all its features and its integral components which are hereunder listed as follows: -

- (a) Topic of the research.
- (b) Background and Introduction to the study/Literature review.
- (c) The statement of the problem.
- (d) Objectives of the study.
- (e) Justification of the study.
- (f) Definition of major concepts/terms.
- (g) Conceptual theoretical framework.
- (h) Major assumptions/hypotheses.
- (i) Methodology: -

⁷⁷ Indian Legal Research: An evolutionary and perspective analysis (1982)24 JILI at 470 – 78.

⁷⁸ Reasons and Rowan, 1981 : 19.

⁷⁹ Akindele and Olaopa, 2009 : 28.

- (i.) Sources of data collection.
- (ii.) Collection techniques.
- (iii.) Data analysis techniques.
- (j) Scope of the study.
- (k) Limitation to the study.
- (l) Chapters Sequences/Chapters Organization.
- (m) References, Footnotes and Bibliographies.
- (n) Abstract.

According to Professor Yusuf Aboki⁸⁰:

A research proposal is a brief statement of what a researcher wants to do on the topic he has chosen. It is a statement of how a perceived idea is likely to be undertaken for the purpose of concretizing it. On many occasions, during the actual research and writing, a lot of what is contained in the proposal may be changed slightly or substantially. Therefore, a research proposal is not a fixed and rigid document. It may undergo some changes in the light of findings, some of them unexpected, during the course of the research.

Let us now treat each of the aforementioned features one after the other.

Topic of a research proposal

It can be rightly asserted that the first task before a researcher is choosing of a research topic. This may at times create some challenges for the student in such a way that searching for a robust research topic could take months if not a whole semester in some cases. The title of the topic should be as short and concise as possible. It should be clear, precise and depict the threshold of the project. The topic should not be more than 21 – 23 words as the popular adage in research methodology is that the narrower the topic, the likely the in-depth study of the topic or subject matter. While the wider the title, the shallower the discussion will be.

However, to make the task of choosing a research topic easy, it has been suggested that the underlisted guidelines may be of assistance to students: -

- (i.) Students should initially read widely through titles of books and journal articles from which examples can be seen.
- (ii.) The topic must be of interest to the student.
- (iii.) The topic must be novel and original in such a way that it does not involve a duplication of another person's copyright.
- (iv.) The topic must be purely a researchable one.
- (v.) The topic must be very important and significance in such a way that it must be capable of adding new ideas or information to the present state of knowledge on the subject matter.

Introduction and background to the study/literature review

Here, the researcher is faced with the vivid account of what led to the formulation of the research topic chosen by him/her. Really, the introductory aspect will highlight what encouraged and motivated the writing of the proposal which may include the historical background, the antecedence and the current state of operations of the law with regard to the particular research topic which has made the research necessary. For instance, it could be in the quest of the law to act as an instrument of social engineering in the society. Informations about the topical issues being investigated are supposed to be provided and the background should be as concise as possible but captures very important information required.

⁸⁰ Introduction to Legal Research Methodology 2nd Edtn. 57

While the literature review of a research work is absolutely necessary in order to acquaint the researcher about what other people have said or written earlier about the area of the research topic. The importance of this in any legal research proposal has been underscored by PROFESSOR ABOKI⁸¹ thus:

Literature review is expected in proposals, although we sometimes see some without it. It is the opinion of this writer that it is an essential requirement in legal research and must be included in all proposals. Literature review determines whether a research topic is a novel one or not. It determines whether a research will contribute to the literature in that area or not.

In the same vein, PROFESSOR GASIOKWU⁸² said in his explanation of the term literature review:

This is one of the various steps involved in empirical research for testing hypothesis and collection of primary data. It is an extensive search for the relevant literature on the subject. It is during this period that suggestive ideas regarding hypothesis present themselves and the researcher takes stock of matters known and unknown relating to his topic. He should however avoid duplication of those areas of research, which have already received attention of competent scholars. In reviewing literature it is necessary to avoid entertaining preconceived notions on the basis of published literature. One bane on legal literature is that writers write articles not on the basis of actual state of law but as it ought to be.

The main aim of consulting literature is to gain sufficient theoretical and factual background, which would enable a legal scholar to formulate hypothesis for testing, construct questionnaire and avoid duplication of effect.

The above two quotations from the books of erudite Professors have thoroughly captured what a literature review means.

Statement of the problem

The purpose of the research should be stated here. In short, the researcher should state why the research is to be embarked upon. This borders on the problematic concern of the study. He must be specific so much so that even a layman may be able to understand the idea of the nature of the problems which are embedded in the rationale for the research. It can be done in form of questions or by examining issues and concerns by stating them in a problem form. At times, a statement of problem may contain many problems which should all be stated and a researcher must cover all of them or s/he takes only the problem that can best be handled as this must be clearly stated in the scope of the work.

Objectives of the study

This is quite different from the justification of the study. The objective shows outrightly the intentions of the researcher and what he/she intends to achieved by the research. It also helps to highlight the important aspect of the research in such a way that the readers will appreciate the nature and scope of the work. Epithet such as evaluate, examine, assess and investigate are often the acceptable words used in constructing research objectives.

Justification of the study

Justification means why the research is necessary. As we all know that research involves expenses, time and energy and therefore the need to find out why time, money and

⁸¹ op.cit P. 60 paras. 6.7

⁸² legal Research And Methodology: The A – Z of writing Theses and Dissertations in a Nutshell P. 91 paras. 5.1.5

energy should be committed to the research cannot be overemphasized. Therefore expenses committed on research can only be justified if the research has a good reason to be undertaken as for instance, if it is viable, useful, beneficial to the people or add value to the end user. It is worthwhile under this sub-head to even enumerate the people or group of people that will benefit from the research.

For example, a research work on “The operations of the 1999 Constitution of the Federal Republic of Nigeria between the Executives, Legislative and the Judiciary” will no doubt benefit the legal practitioners, judges, legislators, law students, law lecturers, police, prison officers e.t.c.

The researcher should be able to identify his contributions to knowledge through the research. The irony is that a research which will not serve a purpose or which is not useful has no justification to be embarked upon abinitio.

Definition of major concepts/terms

MAYER⁸³ regards concepts as the building-blocks of theory. This implies the idea of assigning meanings to the key concepts of the research. As a result, the operational definition of terms is an essential part of defining or stating the problem. If this is not precisely done in a research, it may create the problem of readers not to fully comprehend the content of the work particularly in a legal research that may contain so many legal maxim or jargons. A particular term may mean different things or interpretations to different people. In view of this, every major concept or legal maxim to be used in the study must be explained in the correct language of the field of study in order to avoid several interpretations by different readers of the work.

In defining the concepts, authoritative sources in the field are consulted and references made. Blacks law dictionary interpretations may also be used and some popular abbreviations used are clearly defined and explained such as Loc.cit; op.cit; id. or Ibid, ejusdem generis, ex post facto; nemo dat quod non habet e.t.c.

Conceptual/theoretical framework

This provides the foundation upon which the research structure is laid and act as a guide to the researcher in knowing the hypothesis to be generated and the type of information or data to be collected. It has often been said that there are so many theories from which a researcher can adopt one or a combination of two or more in explaining the research.

In a legal research, the recent findings shows that some of the theoretical framework that can be utilized are: -

- (a) Historical research.
- (b) Comparative research.
- (c) Analytical research.
- (d) Statistical research.
- (e) Ethnographic research.
- (f) Teleological research.

Theoretical frameworks help to situate the research within a particular approach in explaining the problem thereby giving the researcher a clear focus.

Major assumptions/hypotheses

As it has often been said, the clarion call is now a shift from doctrinal to non-doctrinal research or empirical research. By so doing, informations and data now can be collected or gathered in a scientific way, analyzed and studied in legal clinic or chambers from which

⁸³ (1973 : 41)

conclusion can be arrived at and suggestion are made with a view to enhancing or improving the jurisprudence of the legal system.

Empirical researches involve the formulation of hypothesis which has been defined as a statement of generalization, which is probable or possibly but needs to be tested through field studies or survey. AKINDELE AND OLAOPA⁸⁴ argued that:

Research problem in itself, cannot be scientifically solved until it has been reduced into hypothesis that shows a casual relationship or relationships between dependent and independent variables.

In effect therefore, a hypothesis is a hunch, a testable proposition the validity of which remains to be determined. A hypothesis is usually anchored on a relationship between variables. Variables are factors or qualities the researcher wants to study and draw conclusions about. And the two variables whose relationship is the subject matter of study are the independent and dependent variables. The independent variable is the cause of the dependent variable – the effect. For example in a case involving examination malpractice by students of the tertiary institutions, the independent variable may be indiscipline while the dependent variable can be attitude of the invigilators during examinations. It has been suggested that before a hypothesis is adopted for testing, the underlisted questions should be asked⁸⁵: -

1. Are the terms empirically specific, so that the concepts or variables can be distinguished in concrete situations?
2. Is the posited relationship between variables such that it could be verified or nullified by means of empirical operation?
3. Is there any prior evidence as to the truth or falseness of the posited relationship?
4. Can an appropriate study design be devised?
5. Are the variables “context-bound” or could they be equally well applied to other inaction situation?
6. Are the generalizations “culture-bound” or can they be also applied realistically to other cultures?
7. Is the empirical system that is constructed sufficiently precise and articulate to permit predictions in concrete situation?

Methodology

In the words of MARTIN BULNER⁸⁶:

-----methodology denotes the systematic and logical study of the general principles ----- concerned in the broadest sense with the question of how ---- - knowledge is established, and how others can be convinced that the knowledge is correct.

The researcher should map out a strategy for the research operations and also decide what research techniques to employ. But a good research may be a combination of two or more methodologies, for example, empirical and doctrinal.

ADAM PODGORECKI⁸⁷, defines techniques as the tool or know how most adequate to a given research task. A research technique should be differentiated from a research strategy which refers to the way in which one particular study is designed and carried out. A research technique and strategy in a doctrinal research may be different from that of non-doctrinal research although, methodology concerns three major items of the research:

⁸⁴ (1997 : 29)

⁸⁵ suggested by Robert Bales, quoted in Pauline V. Yound, Scitifica social surveys and Research (3rd Edtn 1962).

⁸⁶ Sociological Research Methods: An introduction London: Macmillian Press Ltd 1977, P. 4.

⁸⁷ Law and Society, London: Routledge and Kegan, 1974 P. 48.

- (i.) Sources of data collection: The researcher must state and specify the various sources of his data collection. These sources can be either primary and secondary or any other materials used in the study.
- (ii.) Collection Techniques: Here the researcher should specify the strategies for collecting data from the identified sources of data collection. Techniques may include for example libraries, journals, newspapers gazettes or through the use of questionnaires, interviews and participants observations. And it could as well be an oral interview in a predominantly illiterate environment.
- (iii.) Data Analysis Technique: Under this, the approaches to be used in summarizing and explaining the facts collected which could be in form of statistical tables, measures of central tendency, graphical representation as it may be relevant to the study.

Scope of the study

Basically, this indicates the time frame of the study within which the research is covering. Care must be taken in formulating a topic for research proposal so that the topic is as narrow as possible. The general belief is that “the wider the scope of a research, the shallower the discussion is likely to be. The narrower a research topic, the more in-depth, the discussion may be”.

Limitation to the study

Hardly can there be any research without some challenges which a researcher may encounter during the course of the research. For example a major barrier which a comparative researcher of two different countries’ Constitution may face will be a linguistic problems aside from the issue of how to select the countries of its study. It is expected that the researcher must state how to overcome any envisaged limitation to the study in his layout.

Chapters sequence/organization layout

Also expected of the researcher is the outline of what he or she intends to discuss under each chapter. This may be a summary of what each chapter will contain as the aim is to give a reader a brief idea of what the research is all about. So therefore, in a logical and sequential form, each chapter states what it contains as a sub-unit of the systemic work for example, as a general rule, chapter one is the introduction, chapter two is the literature review, chapter three and four deals with the core issues connected with or the theoretical framework of the research or study. The second to the last chapter is normally devoted to data presentation analysis, interpretations and major findings. While the last chapter of the study presents the summary of major findings, conclusion and recommendation. It may also contains some solutions to the identified problems in the research.

References, footnotes and bibliographies

According to Professor Kunle Ajayi⁸⁸:

References concern all authorities or texts, journals, magazines, newspapers and other documents consulted in collecting data for the study. Such sources must be duly acknowledged or credited with the appropriate pages in order to avoid plagiarism. Footnotes take care of other comments that are pertinent to the research. Both references and footnotes may come up immediately at the end of each chapter or at the end of all the chapters but before bibliography. Bibliography lists out all the relevant texts, journals, magazines, newspapers

⁸⁸ Research proposal writing & Literature Review Being a paper presented at the Faculty of Social Sciences Postgraduate Workshop on Proposal and Thesis Writing (29th March, 2011). University of Ado – Ekiti, EkitiState.

and other materials consulted during the course of the data collection, either data are utilized from them or not. The bibliographies are normally arranged into categories such as texts, journals, magazines and newspapers e.t.c. It is very pertinent that authors must be arranged alphabetically all through.

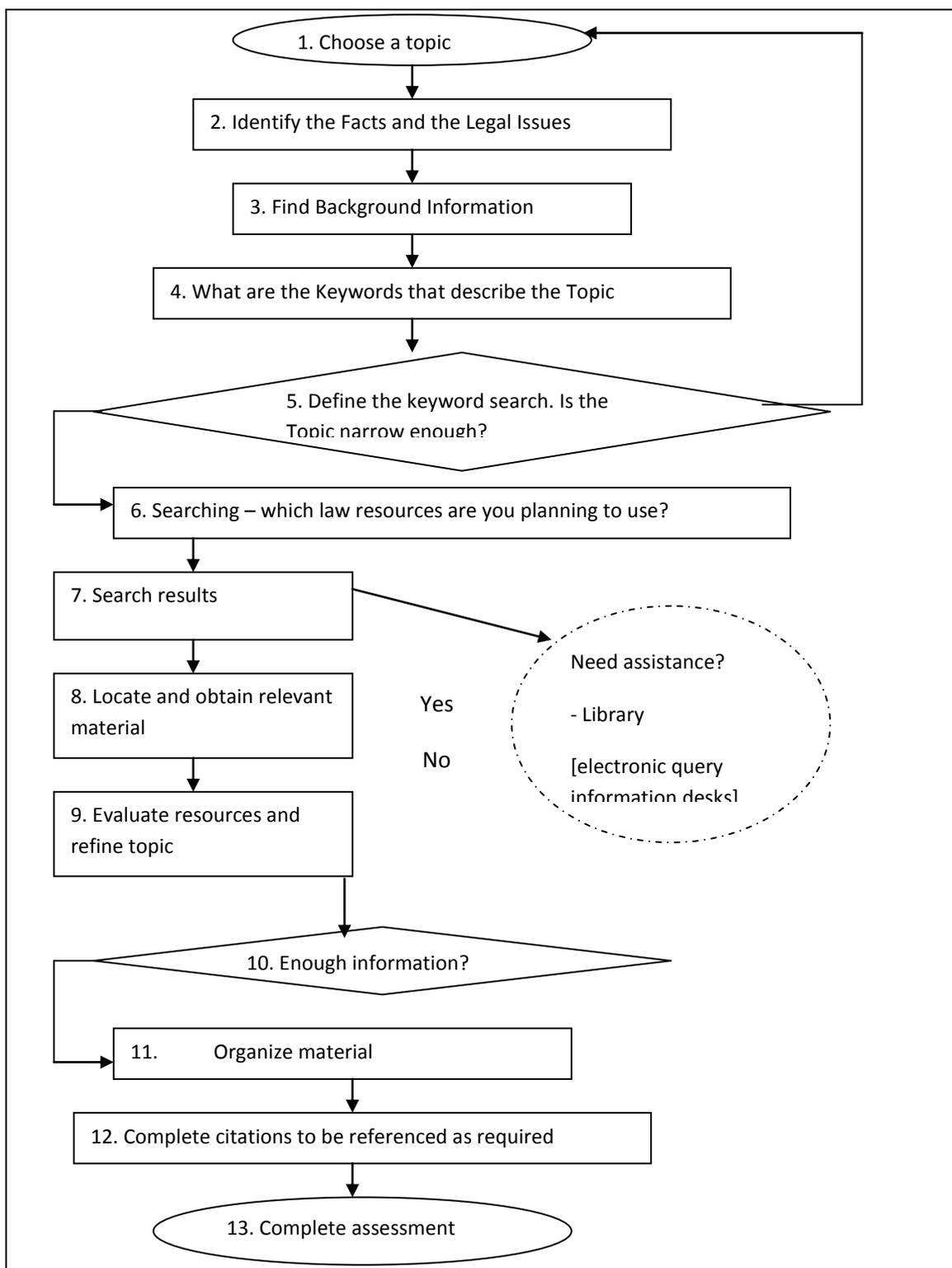
The above quotation aptly describes this sub-head except to add that in a legal research, the footnotes can be at the foot of each page and not necessarily at the end of each chapter or at the end of all the chapters.

Abstract

This may be bound with the thesis or submitted separately depending on the extant laws on same. It is usually done after the completion of the entire research work as it should contain the main issues and the conclusions of the researcher. It is often at times referred to as the summary of the substance of the research work or project. It may have a maximum length of 300 to 500 words but it is always short.

All the above presentations and analyses have been succinctly encapsulated in a flowchart which provides a step-by-step guide on legal research by the Rmit University College of Business⁸⁹ in the diagram below:

⁸⁹ www.Rmit.edu.au/



Conclusion

In conclusion, it remains to add that a research thesis shall also contain:

- (a) acknowledgements;
- (b) a table of contents showing appropriate pages where chapters, sub-headings, tables, figures, appendices e.t.c appear or start and;
- (c) the author's name in full and with surname last depending on the specifications given.

The methodologies of two different researchers may differ depending on the type of research employed. The doctrinal approach is often favoured in legal research but the current rationale is in favour of empirical research. This will make the law to be more functional and developmental in order to take cognizance of the technological developments the world over in the 21st century.