

## **CHAPTER III**

### **RESEARCH METHODOLOGY**

#### **3.1 Types of research**

There are three types of research, namely: Normative Legal Research, Applied Legal Research, and Empirical Legal Research. Normative Legal Research has a purpose of assessing the quality of the law itself, with the result that it is often classified and referred to as qualitative research. In normative legal research, written law is examined from various aspects such as aspects of theory, philosophy, comparison, structure/composition, consistency, general explanation and explanation of each article, formality and binding force of a law and the language used is legal language. so that we can conclude that normative legal research has a broad scope and has an object of: Doctrine, Principles, Norms, Legal Principles and Legal Policy.

Applied Legal Research is a combination of normative legal approaches with the addition of various empirical elements. Applied legal research regarding the implementation of normative legal provisions in action on any particular legal event that occurs in a society. In this type of research there are three categories namely:

a. Non-Judicial Case Study

This is a non-conflict legal case study approach so there is no interference with the court.

b. Judicial Case Study

This is a legal case study approach due to conflict so that it will involve intervention with the court to provide a settlement decision (jurisprudence).

c. Live Case Study

This is an approach to a legal event whose process is still ongoing or has not ended.

Applied Legal Research prioritizes Secondary Data, both in the form of Primary Legal Materials, Secondary Legal Materials and Tertiary Legal Materials. The secondary data is then corroborated or supported by primary data, in the form of interviews with related sources according to the research topic. The population determination technique uses Non-Random Purposive Sampling, which is one

Empirical Legal Research examines people in the relationship of living in society, the empirical legal research method can be said to be sociological legal research. The sociological legal research method is a legal research method that functions to see law in a real sense and examine how law works in society. It can be said that legal research is taken from facts that exist in a society, legal entity or government agency. The data used in this type of research is Primary Data and can be corroborated or supported by Secondary Data.

The type of research that will be conducted for this paper will be Normative Legal Research and will aim to analyze the elements of contract under Article 1320 of the Civil Code to determine whether smart contracts constitute as electronic contracts as regulated in Article 18(1) of the ITE law. This paper will also examine Articles 1342 to 1351 of the Civil Code regarding contract interpretation.

## 3.2 Types of data

### a. Primary Sources

Primary data is data obtained or collected directly from the original source (the main source). Primary data obtained through interviews, observation, or experiments. Therefore, primary data is usually linked with empirical law research.

### b. Secondary Sources

Secondary data is data that is already available or presented in the form of writing, tables, pictures which are the results of measurements, research results, writings of experts/experts, and so on. The secondary data that is used in research consists of three types of legal materials:

#### 1. Primary Legal Materials

Primary Legal Materials are legal materials that have an authoritative nature, which means that it has an authority or binding effect. It consists of: 1) Laws and regulations; 2) Official records or treaties in the establishment of legislation; 3) Court verdicts.

#### 2. Secondary Legal Materials

Secondary Legal Materials are legal materials that provide an explanation on the primary legal materials, which consist of all publications regarding law that are not part of an official document, including books, literatures, journals and scientific research related to issues at hand.

#### 3. Tertiary Legal Materials

Non-Legal Materials are materials that support primary legal material and secondary legal materials, such as abstracts, official government publications, official minutes, scientific magazines, documents, dictionaries, websites, and others.

As normative legal research will be conducted, the data collected in this paper will consist mainly of secondary sources.

### **3.3 Data collection technique**

In Normative Legal Research, the data used is secondary data, using a technique of data collection in the form of "Library Study", therefore Normative Legal Research is often also referred to as Library Legal Research. In Applied Legal Research, the data used is secondary data supported by primary data, while in the Empirical Legal Research type, the priority data is primary data supported by secondary data.

Primary data is obtained by surveys, interviews, experimentation, and other empirical data collection methods.

Secondary data will be obtained by studying documents or literature and library materials related to the research problems.

### **3.4 Research approach**

In a normative law research, there are several types of approaches that can be used to examine the issues:

1. Statutory Approach: Statutory approach is done by reviewing all laws and regulations that are related to the legal issue that is being handled.
2. Case-Based Approach: This approach is done by reviewing cases that are related to the issue faced, especially the cases that has had an inkracht court verdict. In using this approach, the thing that must be understood is ratio decidendi, that is the legal reasons that are used by the judge to reach the verdict.
3. Historical Approach: Historical approach is used to track the history of legal institutions from time to time. This approach helps to understand the philosophy of law from time to time. Through this approach, the changes and development of philosophy of law will be understood.
4. Comparative Approach: Comparative approach is done by conducting a comparative study of law. It is an activity to compare the law in a certain country with another country or the law from a certain time with another time. Through this approach, a clear picture about the consistency of philosophy and laws in several countries will be obtained.
5. Conceptual Approach: Conceptual approach is derived from views and doctrines that develops in the field of law. By studying these views and doctrines in the field of law, ideas that give birth to the understanding of law, concepts of law and principles of law that are related to the issue being discussed will be obtained.

This paper will combine statutory approach and conceptual approach in order to address the research problems. Statutory approach will be used in

reviewing the laws and regulations related to contract validity and contract interpretation in Indonesia. Conceptual approach will be done by using concepts and doctrines of contract law to discuss the issues.

### **3.5 Data analysis**

In analyzing research results, the type of legal research used largely determines the nature of the analysis. If the objective of the research is to examine the quality of the substance of legal norms, then the analysis is qualitative in nature, meaning that the formulation of justification is based on the quality of the opinions of jurists, doctrines, theories, as well as the formulation of the legal norms themselves. The legal materials obtained in this study, in the form of laws and regulations, articles, and so on, the authors describe and relate in such a way that they are presented in a more systematic study to answer the problems that have been formulated. The processing of legal materials is carried out using deductive or inductive methods. The deductive method is to draw conclusions from a problem that is general in nature to a concrete problem that is faced with a special nature, while the inductive method is to draw conclusions from a problem that is specific to a problem that is general in nature.

On the other hand, quantitative data, is the type of data that can be measured or counted directly, which are usually in the form of information or explanation that are expressed by numerals or numbers.

The data that will be analyzed in this paper will be qualitative data, which produces analytical descriptive data.