

Definition, Function, and Scope of Legal Drafting

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Info Artikel	Abstract
Article History Received : 2022-07-03 Revised: 2022-07-18 Published: 2022-07-30	Indonesia, as a nation governed by the rule of law, demands high-quality legal products to ensure legal certainty, justice, and the benefits of law in social and state life. However, in practice, various legal problems are still frequently encountered due to poor drafting of legal documents, such as regulations with multiple interpretations and unclear contracts. Therefore, this study aims to comprehensively examine the definition, function, and scope of legal drafting as an important basis for the formation of good legal documents. The research method used is normative legal research with a qualitative approach through library research, by reviewing various literature, journals, and the opinions of relevant experts. The results show that legal drafting is a process of preparing legal documents that requires precise language, clear systematics, and a deep understanding of legal substance. Legal drafting has an important function in creating legal certainty, regulating and controlling behavior, providing legal protection, and serving as a guideline for dispute resolution and a means of social engineering. The scope includes legislative drafting, contract drafting, regulatory drafting, and judicial drafting. In conclusion, good mastery of legal drafting is essential for legal students and practitioners to be able to produce quality, clear legal documents that do not give rise to multiple interpretations, thereby supporting the creation of an effective and just legal system.
Keywords: <i>Definition, Function, Scope of Legal Drafting</i>	

I. INTRODUCTION

The Republic of Indonesia is a state based on law (*rechtsstaat*) as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of this principle is that every aspect of national and social life must be regulated based on applicable law. High-quality legal products are an absolute requirement for the implementation of good governance and the comprehensive protection of citizens' rights.

In order to create quality legal products, special skills and methodologies are required, known as legal drafting or legal design. (Aslamiah & Yamani, 2025) Legal drafting is a discipline and skill that combines a deep understanding of legal substance with the ability to write technically and systematically. This skill is the foundation of every legal product, from statutes to simple business contracts.

A common phenomenon in legal practice in Indonesia is the emergence of various problems stemming from poor legal document drafting. Multiple interpretations of laws, incomplete contracts, or agreements containing unfair

clauses are often the main causes of protracted legal disputes. This situation demonstrates the importance of mastering proper legal drafting techniques and methods.

Based on the above description, the author feels the need to compile a paper that specifically examines the definition, function, and scope of legal drafting. A comprehensive understanding of these three aspects is expected to provide a strong foundation for law students and practitioners in developing their competencies in the field of legal drafting.

II. RESEARCH METHODS

The research method used in this paper is normative legal research with a qualitative approach, which focuses on library research. This research examines the concept of understanding, function, and scope of legal drafting by examining various secondary legal sources, such as legal literature books, scientific journals, and expert opinions relevant to the research topic. Data collection techniques are carried out through documentary studies of primary, secondary, and tertiary legal materials related to legal drafting.

Furthermore, the data obtained are analyzed descriptively and analytically by describing, interpreting, and connecting various existing concepts and theories, so as to obtain a comprehensive understanding of legal drafting as a scientific discipline and practice in the preparation of legal documents.

III. RESULTS AND DISCUSSION

A. Understanding Legal Drafting

1. Etymological and Terminological Definition

Etymologically, legal drafting comes from English, which consists of two words, namely "legal" which means relating to law or legally valid, and "drafting" which means designing, compiling or formulating. (Kisnawati et al., 2019). Thus, literally legal drafting can be interpreted as the activity of designing or compiling documents of a legal nature. (Garner, 2013).

Legal drafting, in terminology, is the process of preparing legal documents, whether in the form of laws, contracts, agreements, or other legal documents, using precise, clear, systematic, and unambiguous legal language. This process encompasses a series of activities, from planning and research to formulation and finalization of a legal document.

2. Definition According to Experts

Bryan A. Garner, a highly influential legal drafting expert, defines legal drafting as "the art and science of formulating legal documents so that they are clearly understandable and consistently enforceable in accordance with the drafters' intent." According to him, a good drafter is one who is able to combine legal expertise with effective written communication skills.

Ann Seidman, Robert B. Seidman, and Nalin Abeyekere states that legal drafting in the context of legislation is the process of writing laws and regulations aimed at changing social behavior in accordance with established public policy objectives. This approach emphasizes the policy and social dimensions of the legal drafting process, not merely the technical-normative aspects.³

Reed Dickerson, in his landmark book, *The Fundamentals of Legal Drafting*, argues that legal drafting is a very different activity from ordinary legal writing. He argues that legal drafting

requires much greater precision because the resulting document will be binding on the parties involved and will be interpreted by those who may not know the author's original intent.

From the various definitions put forward by these experts, it can be concluded that legal drafting contains three main dimensions: (1) the technical dimension, which is related to the techniques and methods of preparing legal documents; (2) the substantive dimension, which is related to mastery of the legal material that will be included in the document; and (3) the communication dimension, which is related to the ability to convey legal norms or agreements effectively to the interested parties.

3. Basic Elements of Legal Drafting

Based on the various definitions above, there are several basic elements that are always inherent in every legal drafting activity, namely:

- The existence of a legal subject who acts as a designer (drafter) who has competence and authority.
- The existence of objects in the form of legal documents to be drafted, either in the form of regulations or agreements.
- There is a specific legal objective or purpose that is to be realized through this document.
- The use of legal language that is appropriate, clear, consistent and does not give rise to multiple interpretations.

B. Legal Drafting Function

1. Function of Legal Certainty

The first and most fundamental function of legal drafting is to create legal certainty (*rechtssicherheit*) (Mahliati et al., 2025); (Atiyah et al., 2025) Legal certainty requires that every norm or provision in a legal document be formulated clearly and definitively, so that everyone can know exactly what their rights and obligations are. Ambiguity in legal formulations will open the door to differing interpretations, which can ultimately lead to legal uncertainty and conflict. (Mertokusumo, 2005).

This legal certainty is achieved through precise writing techniques in legal drafting, such as the use of precise definitions, consistent use of terms, unambiguous sentence structure, and a logical and orderly writing system. Every word chosen in a legal document must be legally accountable and avoid any ambiguity.

2. Behavioral Regulation and Control Function

Law is essentially an instrument for regulating and controlling human behavior in social life. Legal drafting serves to translate these regulatory intentions into operational and enforceable legal texts. In both legislation and contracts, legal drafting plays a role in determining desired behavioral patterns, prohibiting harmful behavior, and establishing sanctions for violators.

This regulatory function is crucial in the context of national legal development. Well-drafted laws and regulations will serve as effective guidelines for the public and law enforcement officials in carrying out their activities within the applicable legal framework.

3. Legal Protection Function

Legal drafting serves to provide legal protection to the parties involved in a legal relationship. In business contracts, for example, carefully drafted clauses will protect the interests of the parties from potential breaches of contract or unlawful acts. Meanwhile, in legislation, precisely formulated articles will protect the wider public from potential abuse of power.

1. Dispute Resolution Function

Well-drafted legal documents also serve as guidelines for resolving disputes that may arise in the future. Clear and complete provisions in a contract or regulation will facilitate judges, arbitrators, and mediators in making appropriate and fair decisions. Conversely, vague and incomplete legal documents will complicate the dispute resolution process and potentially result in decisions that do not reflect true justice.

Therefore, in contract drafting, for example, it is very important to include a comprehensive dispute resolution clause, which regulates the choice of forum (court or arbitration), applicable law, the language used in the dispute resolution process, and the deadline for resolution.

4. Functions of Transformation and Social Engineering

Legal drafting, particularly in the context of legislative drafting, has a transformative and social engineering function. Roscoe Pound, a highly influential American jurist, stated that law can be used as a tool for planned social change (law as a tool of social engineering). In this context, legal drafting becomes a highly strategic instrument for directing society toward better,

fairer, and more prosperous conditions in accordance with the ideals of national law.

C. Scope of Legal Drafting

1. Legislative Drafting (Legislative Drafting)

Legislative drafting is one of the main areas in legal drafting that specifically relates to the preparation of various types of legislation. In Indonesia, the types and hierarchy of legislation are regulated in Article 7 of Law Number 12 of 2011, which includes: the 1945 Constitution of the Republic of Indonesia, MPR Decrees, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regulations.

In legislative drafting, a legal drafter must pay attention to various important aspects, including: (a) the basis for the authority to form regulations, (b) the principles for forming good legislation as regulated in Articles 5 and 6 of Law No. 12 of 2011, (c) systematics and writing formats that comply with standard standards, (d) the use of appropriate and standard legal language, and (e) guarantees of consistency with higher regulations (the principle of *lex superior derogat legi inferiori*).

2. Contract Drafting (Designing Contracts and Agreements)

Contract drafting is the activity of preparing a legally binding contract or agreement between two or more parties. Unlike legislative drafting, which is public and generally applicable, contract drafting produces a document that is private and only binds the parties who agree to it. In the Indonesian civil law system, which is based on the Civil Code, a valid agreement has binding force like a law for the parties (*pacta sunt servanda*). The scope of contract drafting is very broad, covering various types of contracts such as: sales and purchase contracts, rental contracts, credit agreements, business cooperation contracts, confidentiality agreements (Non-Disclosure Agreements/NDA),

employment contracts/work agreements, procurement contracts for goods and services, construction contracts, and international agreements. Each type of contract has different characteristics, formats, and specific clauses that vary according to the needs of the parties.

3. Regulatory Drafting (Institutional

Regulation Design)

Regulatory drafting includes the preparation of various types of internal regulations of an institution, organization, or corporation, which include: Articles of Association and Bylaws (AD/ART), Company Regulations, Internal Policies and Procedures (Standard Operating Procedure/SOP), Professional Code of Ethics, Corporate Governance Guidelines (Good Corporate Governance/GCG), as well as various other internal policies and regulations.

Although these internal regulations do not have the same legal force as statutory regulations, these documents are still legally binding on all parties within the organization or company concerned. Therefore, they must be prepared in accordance with good legal drafting principles.

4. Judicial Drafting (Judicial Document Drafting)

Judicial drafting involves the preparation of various documents used in the judicial process, whether at first instance, on appeal, or in cassation. Documents within the scope of judicial drafting include: lawsuits, answers/exception letters, duplicates, replies, conclusions, appeal briefs, counter-appeal briefs, cassation briefs, special powers of attorney, and various types of court decisions.

Judicial drafting skills are crucial and a core competency for advocates, judges, prosecutors, notaries, and other legal officials. Well-drafted court documents significantly impact the course of the trial and the quality of the resulting decisions.

D. Basic Principles of Legal Drafting

In order to produce quality legal documents, there are several basic principles that every drafter must always adhere to:

- a. Clarity: Each provision must be formulated in language that is clear, straightforward, and easy to understand by the intended parties, without sacrificing the accuracy of its legal meaning.
- b. Consistency: The use of legal terms, terminology, and writing style should be consistent throughout the document. A term should have only one meaning in a legal document.
- c. Completeness: Legal documents must regulate all relevant aspects completely and

comprehensively, no important matters must be missed or not regulated so as to create a legal vacuum (leemten in het recht).

- d. Truth and Accuracy: Every fact, data, legal reference, and norm stated in the document must be true, accurate, and legally accountable.
- e. Simplicity: Use simple, direct, and uncomplicated sentences. Avoid unnecessary legal jargon and excessive sentence length that can obscure meaning.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on all the discussion explanations presented in the previous chapters, it can be concluded that legal drafting is the art and science of designing and compiling legal documents that encompass technical, substantive, and communication dimensions. Essentially, legal drafting is the process of expressing legal norms or wills into written language that is precise, clear, systematic, and unambiguous, so that it can be understood and implemented consistently by all interested parties. Legal drafting also carries out five main functions in the legal system, namely the function of legal certainty that ensures clarity of norms, the function of regulating and controlling behavior that determines the limits of action, the function of legal protection that guarantees the rights of the parties, the function of dispute resolution as a reference in resolving legal conflicts, and the function of social transformation that makes law a means of planned social change. In addition, the scope of legal drafting includes four main areas, namely legislative drafting related to the preparation of laws and regulations, contract drafting related to the preparation of contracts and agreements, regulatory drafting related to institutional regulations, and judicial drafting related to court documents. In its implementation, all these areas must be guided by the basic principles of legal drafting, namely clarity, consistency, completeness, truth and simplicity.

B. Suggestion

Based on the conclusions outlined, the author proposes several suggestions that are expected to contribute positively to the development of legal

drafting competency in Indonesia. For academics and law students, mastery of legal drafting should not stop at the theoretical level, but needs to be accompanied by intensive and continuous training and practice in drafting legal documents, so that the legal education curriculum needs to provide a greater portion with a practical approach. For legal practitioners, such as advocates, notaries, prosecutors, and legal consultants, improving legal drafting competency must be carried out continuously to be able to adapt to the development of legal needs of society, so that training and certification in this field need to be continuously encouraged by authorized professional organizations. Meanwhile, for legislative and government institutions, the process of formulating laws and regulations should involve competent and professional legal drafters, and pay serious attention to the quality of academic manuscripts as the basis for drafting regulations, because this greatly determines the quality of the resulting legal product.

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