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Legal Drafting Training for Creating Students' Ability to Make Agreements

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Abstract

Legal drafting is an essential element in legal practice. Legal drafting relates to legal drafting made by legal subjects, both individuals and legal entities (authorized institutions), namely in the form of MoUs, cooperation agreements, and agreements/contracts. A complete understanding of legal drafting is essential for practitioners in various fields and agencies. Legal practitioners must often prepare legal drafts for their interests, clients, or institutions. Likewise, government agencies, state institutions, institutions, bodies, and commissions other than state institutions are interested in preparing legal drafting. Preparing legal drafting must consider the theories, principles, and rules regulated by statutory regulations and universal legal norms, standards, and practices. In this way, the validity of the agreed legal drafting product and the legal interests of the parties who drafted the legal drafting can be legally protected. However, many still need to understand how to prepare legal drafting correctly and legally. This training aims to help and provide students with understanding regarding making agreements. The output of this activity is 1) increasing students' legal awareness; 2) students can agree.
Keywords: Legal Drafting, Student Ability, Agreements

1. Introduction

The distinction between legislative drafting and legal drafting represents a nuanced area within legal studies, addressing the production of different legal documents. Legislative drafting is primarily concerned with formulating statutory regulations by authorized entities, including laws, government regulations, presidential decrees, regional regulations, and other statutory instruments (Dickerson, 2009; Xanthaki, 2014). Conversely, legal drafting encompasses documents produced by legal actors, both individuals and organizations, such as memoranda of understanding (MoUs), cooperation agreements, and contracts (Butt & Castle, 2006; Stark, 2007). Although both processes share a common foundation in legal theory, the specific content and focus differ, with legislative drafting about public law and legal drafting to private law transactions (Reed & Holmes, 2019).

Understanding the intricacies of legal drafting is pivotal for professionals across various sectors, necessitating familiarity with the underpinning legal theories, principles, and norms that govern document formulation (Adams, 2013). This proficiency is vital for government entities and non-state institutions creating legal documents (Crump, 2016). The legal drafting process demands adherence to legal standards and practices to ensure the produced documents are valid, enforceable, and capable of safeguarding the interests of the parties involved (Hagan, 2016; Kimble, 2012).

In light of these considerations, community service programs have been developed to enhance legal drafting capabilities, exemplified by training initiatives to cultivate student agreement-making skills (Mellinkoff, 2004). Such training endeavors are designed to augment legal awareness and ensure the reliability and effectiveness of agreements to forestall potential disputes (Stark, 2007; Adams, 2013). Training objectives typically include equipping participants with knowledge of legal drafting theories, principles, and rules, alongside practical skills in agreement preparation and dispute resolution techniques (Butt & Castle, 2006; Hagan, 2016).

Legal drafting thus emerges as a critical skill within legal practice, bridging legal theory with practical application in creating binding and enforceable legal documents (Kimble, 2012; Reed & Holmes, 2019). Its significance underscores the imperative for comprehensive education and training in this domain to

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ensure legal practitioners are well-equipped to navigate the complexities of contract negotiation and agreement formulation (Dickerson, 2009; Xanthaki, 2014).

2. Method

The research methodology employed in this study is characterized by its normative-empirical legal approach. Normative legal research, anchored in normative legal science theoretical frameworks, delves into statutory law, comparative legal analyses, prevailing legal principles, and established theories (Tamanaha, 2008). It endeavors to comprehend and interpret the law within its formal context, aiming to elucidate legal norms, doctrines, and their systemic coherence (Perry, 2013). On the other hand, empirical legal research grounds itself in observing factual occurrences and realities within the societal and legal realms (Cane & Kritzer, 2010). It seeks to empirically verify the application and impact of these normative legal frameworks in real-world scenarios, providing a critical bridge between theoretical legal constructs and their practical manifestations (Epstein & Martin, 2014).

The imperative drives the decision to utilize a normative-empirical research method to integrate the doctrinal purity of normative analysis with the tangible insights gleaned from empirical inquiry. This hybrid approach facilitates a comprehensive understanding of the law in action, enabling the exploration of how legal principles are actualized within societal contexts and the resultant legal phenomena (Hutchinson, 2015; Banakar, 2016). By synthesizing these methodologies, the research aims to yield a nuanced understanding of the dynamic interplay between legal norms and their societal application, thereby enriching the discourse on legal theory and practice (Twining, 2012).

3. Result and Discussions

A complete understanding of legal drafting is essential for practitioners in various fields and agencies. Legal drafting is designing legal texts in drafting regulations, decisions, or agreements. Legal practitioners must often prepare legal drafts for their interests, clients, or institutions. Likewise, government agencies, state institutions, institutions, bodies, and commissions other than state institutions are interested in preparing legal drafting.

Article 1313 of the Civil Code defines a contract as an act in which one or more people bind themselves to one or more other people. Furthermore, Subekti also believes that a contract, or what is usually called an agreement, is an event where someone promises to someone else or where two people promise each other to carry out something. A contract is a product of an agreement between the parties bound by it. Meanwhile, Michael D. Bayles states contract law is the legal rule for implementing agreements or agreements.

Please note that the anatomy of a contract consists of an opening, comparison, recital/premise/consideration, contents of the contract, and the closing part. Thus, the elements in the contract are essential, natural, and accidental. These elements constitute the scope of the elaboration of the contents of the contract. Meanwhile, the explanation of the elements of the contract is as follows.

1. Essential Elements
   These elements are the main things that must be in a contract. These main clauses determine whether or not the contract in question exists. For example, in a sales and purchase contract, the essential elements are the existence of goods and a price. These two elements are necessary for the sale and purchase contract to exist.
2. Elements of Naturalia
   The clauses contained in the natural element are classified as supporting clauses. These elements have been regulated in statutory regulations. If the parties do not agree otherwise than what is regulated by statutory regulations, then the parties are interpreted as complying with existing regulations—for example, the clause regarding taxes. Suppose the parties need to determine otherwise regarding the mechanisms and rules regarding the party who is obliged to pay tax. In that case, the parties are interpreted to be subject to existing taxation regulations.
3. Elements of Accidentalia

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This element will bind the parties if agreed upon. For example, prohibitions, default, compensation, fines, interest, contract termination, force majeure, insurance, and dispute resolution. Example: in a contract, the parties agree that contractual disputes will be resolved through arbitration. Consequently, the parties can only propose a case resolution that has been agreed upon.

These three elements are stated in the contract based on the need so that the mutual goals and desires of the parties can be adequately accommodated.

Furthermore, one of the principles that applies in contract law is the principle of freedom of contract, which gives freedom to the parties to a contract to determine the content and form of the agreement. This is reflected in Article 1338 of the Civil Code, which confirms that all contracts made by the law will apply as law to those who make them. This consent cannot be withdrawn other than by agreement of both parties or for reasons determined by law. Apart from that, the agreement must also be carried out in good faith.

However, even though the principle of freedom of contract gives parties the freedom to make contracts, a contract must fulfill the terms of contract validity to be legally valid. Based on Article 1320 of the Civil Code, for a valid agreement to occur, the following four conditions need to be met:

1. the agreement that binds them;
2. the ability to create an agreement;
3. a particular subject matter;
4. a cause that is not prohibited.

The first and second conditions are called subjective conditions because they concern the parties agreeing. Meanwhilagreementird and fourth conditions are called objective conditions because they involve the object of the Agreement. Subject agreements are conditions that, if not fulfilled, can cancel the contract/agreement. In contrast, objective conditions are conditions that, if not fulfilled, can make the contract/agreement null and void. Thus, the conditions for the validity of the contract are as follows:

1. Subjective Terms
   Subjective terms are divided into:
   a. Agreement of the pay agreement of the conditions for an agreement to be declared valid is the Agreement of the pay agreement. In this case, Agreement means that the will and Agreement of both agreements agree. With an agreement by the parties, the Agreement becomes an agreement between the parties who make it. On the other hand, an agreement has no legal force if there is an element of coercion or pressure in its making. Article 1321 of the Civil Code also emphasizes that no agreement has any force if given due to a mistake, obtained by force, or fraud.
   b. Skills in making an engagement
      Regarding competency, Article 1329 of the Civil Code states that every person has the authority to agree unless the person is declared incompetent. Every person who is an adult or a teenager and is of sound mind is competent according to the law.
      Therefore, you must ensure that you are not included in the qualifications of people who are not competent to make contracts, namely children who are minors and people who are placed under guardianship as regulated in Article 1330 of the Civil Code.
      Article 330 of the Civil Code explains that immature persons have not reached the age of 21 and have never previously been married. Furthermore, based on SEMA Appendix 4/2016 concerning the Formulation of Civil Chamber Law (p. 3), the limitation on the age of maturity must be seen based on the context of the case in question (evasion) so that in this case, the age of majority to enter into a contract is 21 years as stated in Civil Code.
      Then, specific provisions regarding people who are placed under guardianship are further regulated in Article 433 of the Civil Code, which regulates that every adult who is always in a state of imbecility, madness, or dark eyes must be placed under guardianship, even if he is sometimes competent to use his mind. An adult may also be placed under custodial care for extravagance.
2. Objective Terms
   Objective conditions are divided into:

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a. The presence of particular objects
   Article 1332 of the Civil Code states that only goods that can be traded are the subject of an agreement. Furthermore, Article 1333 of the Civil Code also regulates that an agreement must have an item of at least a specified type as its principal.
   However, in our opinion, certain things can also be interpreted as achievements, for example, giving something, doing something, or not doing something, as stated in Article 1234 of the Civil Code. In short, performance is the debtor's obligation and what the creditor is entitled to in an agreement.
b. There are legitimate reasons
   In this case, a halal cause is defined as a cause that is not prohibited. Based on Article 1337 of the Civil Code, a cause is prohibited if the cause is prohibited by law or if the cause is contrary to morality or public order.
   The making or drafting an agreement must be carried out according to the correct procedures and not conflict with other applicable regulations. Training like this needs to be carried out regularly over a certain period to refresh understanding related to making agreements/contracts so that law students or graduates will not experience difficulties and mistakes in making agreements/contracts. The stages in the contract are as follows:
   1) Pre-contract.
      The parties carry out this stage before the contract is formed. The parties negotiate regarding their respective interests and then exchange rights and obligations in a contractual relationship.
      Several essential aspects in the contract preparation stage are:
      a. understanding of the legal basis of a drafted contract;
      b. good command of legal language;
      c. the ability to negotiate to determine the rights and obligations that will be stated in the contract later.
   2) Formation of contracts.
      At this stage, a contractual relationship is born between the parties. Meanwhile, the contract design process consists of research, outlining, and wording. By conducting research, the contract drafter will have a sufficient understanding of the contract being formulated.
      Furthermore, regarding the preparation of the contract framework, here are the guidelines that must be used:
      a. Systematic, complete, and explicit. A systematic, complete, and transparent framework will help the parties understand their respective rights and obligations outlined in the contract.
      b. One clause, one concept. Each clause made in the contract has one concept. By applying this principle, the contract will be well understood by the parties and third parties, such as judges.
      c. Title of each clause. Giving a title to each clause will make it easier to trace the contract in question.
      d. Applying the 3P principles (predict, provide, protect): If there are predictions of possibilities that may occur in the implementation of the contract, it will be easier to anticipate them by providing clauses that regulate if these possibilities occur. The clauses created are also intended to protect the interests of the parties.
      e. Supporting clauses at the end. The placement of supporting clauses after the main clauses shows that the contract preparation was carried out systematically.

3. Contract implementation.
   This stage is the implementation (performance) of the exchange of rights and obligations based on the parties' agreement. This stage is also called the post-contractual phase.
   These three stages must be based on the principles of contract law. A rule or norm has a philosophical basis and a fundamental principle or principle as its spirit.

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Furthermore, some things are regulated as minimally as possible in a contract, including things included in the essential elements. However, more than simply regulating things classified as essential elements is required. Based on our practice, a contract can be said to be by best practice in contract making both nationally and internationally if the contract contains:

a. Title that reflects the type of agreement being made;
b. Preamble containing the date of making and signing the agreement;
c. Identity and information regarding the position of the parties to the contract;
d. Premises containing the background and reasons for making the contract;
e. Words of agreement as an introduction that will bridge the opening and contents of the contract;
f. Content, namely the terms and conditions which cover the rights and obligations of the parties, the elements of which consist of:
    1) Essentials, namely the main things that must be in a contract. Examples include parties, objects (goods), prices, and periods.
    2) Naturalia, namely supporting matters which, if not regulated in the contract, or if the parties have not agreed otherwise than what is regulated by statutory regulations, will follow the statutory regulations. Examples include payment obligations, delivery mechanisms, installation, and so on.
    3) Accidental, which will bind the parties if agreed upon. Examples include arrangements related to representations and warranties, intellectual property, the confidentiality of information, violations and warnings, applicable law, dispute resolution, correspondence, force majeure, termination and termination, transfer, waiver, severability, and the entire agreement.
g. Closing, which states the understanding and awareness of the parties in signing the contract made as well as mentioning the number of copies of the agreement signed;
h. Seal and signature;
i. Legal Defects in Contracts.

Then, what needs to be paid attention to is that there should be no legal defects in the contract due to a discrepancy between the contract made and the applicable law, resulting in the contract not being legally binding. As explained above, a contract is also categorized as legally defective if the contract does not meet the contract validity requirements. If the subjective conditions are not met, then the consequence is that one of the parties can request cancellation of the contract, or, in short, the contract can be canceled (voidable). In contrast, if the objective conditions are not met, the consequence is that the contract becomes void and is deemed to have never existed, or in short, the contract is null and void (null and void).

Based on our practice, suppose a dispute is related to the contract. In that case, two options can be taken: 1) Settlement of the dispute through court (litigation) and 2) Settlement of disputes outside the court (non-litigation) or what is often called Alternative Dispute Resolution, namely through consultation, negotiation, mediation, conciliation, expert assessment, or arbitration.

However, which dispute resolution mechanism will be used refers to the dispute resolution mechanism agreed in the contract. In general, a contract stipulates that dispute resolution will be resolved first by negotiation or deliberation to reach a consensus within a time frame agreed upon by the parties. Furthermore, suppose negotiations or consensus deliberation cannot be carried out or are unsuccessful within that period. In that case, the parties will resolve the dispute through the mechanism chosen by the parties, either through court or arbitration.

Then, it is essential to know that if an agreement involves confidential information, dispute resolution is carried out through arbitration. Based on our practice, the arbitration hearing process is carried out in a closed and confidential manner, thus supporting the nature and character of the confidential information.

Preparing legal Drafting must consider the theories, principles, and rules regulated by statutory regulations and universal legal norms, standards, and practices. In this way, the validity of the agreed-upon legal drafting product and the legal interests of the parties who drafted the legal Drafting can be

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legally protected. However, many still need to understand how to prepare legal Drafting correctly and legally.

Meanwhile, legal practitioner Ike Farida said ten things should be paid attention to when agreeing:

1. The agreement must contain the identities of the parties, including address, domicile, age, and gender. Explaining who signed the agreement as an individual or representing a legal entity is also necessary. If you represent a legal entity, you must explain your position in that legal entity.
2. The scope of the agreement and the name of this agreement are as follows:
3. The agreement needs to contain the object being promised.
4. The validity period of the agreement.
5. The rights and obligations of the parties need to be stated in detail.
6. Sanctions (legal consequences, ed) if rights and obligations are not fulfilled.

Seventh, force majeure must be included in the agreement to deal with circumstances beyond the parties' wishes. Eight is the dispute resolution mechanism chosen when a dispute occurs, such as a court, arbitration, or other institutions. Even if this dispute resolution option is not included in the agreement, the dispute resolution uses a court mechanism. Nine confirms the law agreed upon by the parties to be applied in the agreement. For example, in the case of buying and selling, they are carried out across countries (export-import). Likewise, with language, agreements made in Indonesia must be in Indonesian. If translated into a foreign language, it is only complementary. Ten, no less important, the agreement needs to be stamped.

Legal Drafting opens up insight and automatically improves skills, including making agreements/contracts. It also increases self-awareness when making agreements, so you are not easily trapped in inappropriate agreements. With the implementation of Legal Drafting Training for students, it is hoped that students' abilities will increase in making an agreement or contract. When agreeing, what must be considered are the conditions for the validity of an agreement regulated in Article 1320 of the Civil Code.

4. Conclusion

One of the objectives of this training is to provide knowledge regarding the theory, principles, and rules of legal drafting in preparing agreements/contracts. The contract legal system or open system is a regulation that states that every person is free to enter into agreements, whether those have been regulated in the relevant law or not. The provisions of this system of legal regulation of agreements are stated in Article 1338, paragraph (1) of the Civil Code, which reads, "All agreements made legally apply as law for those who make them." In preparing an agreement/contract made valid, binding, and enforceable, the conditions for the validity of an agreement regulated in Article 1320 of the Civil Code need to be considered. The advice that we can give during the implementation of the activity is that it should be scheduled every year so that it helps students to have more skills in legal drafting, especially making agreements/contracts, so that it becomes a provision when they enter the world of work.

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