



LEGAL BRIEF

journal homepage: www.legal.isha.or.id/index.php/legal



The Dimensions of Legal Opinion's Role in Settlement of Civil Law Cases

May Shinta Retnowati

Sharia Faculty,
University of Darussalam Gontor, Jl.Raya Siman KM 6, Siman, Ponorogo, 63471,
Indonesia

Email: mayshinta@unida.gontor.a.c.id

Abstract

Legal opinion is a doctrine that was originally used for the legal practice. Doctrine is a source of the law. The legal opinion has a function to be able to resolve cases or acts against the law, whether it's a criminal and civil law cases. Legal opinions are usually used as directions or instructions for the community when experiencing a legal problem. usually clients come to lawyers to assist him in solving the problem. The problem that will be discussed in this research is the dimension of legal opinion in solving civil law problems. While the research method used is a qualitative research method with an empirical juridical approach. The results of this study indicate that legal opinion is a dynamic and easy alternative in solving civil law problems. Legal opinion is also a dimension of civil case settlement that can be used as a basis in addressing and finding the best solution for a legal problem that is being experienced. While the purpose of legal opinion is to describe a legal contextual either explicitly or implicitly.

Keywords: Legal Opinion, Legal Issues, Civil Law

A. Introduction

The needs of the community along with the times are always evolving. Likewise, in the field of legal services, it is increasingly complex. Currently, the duties of a lawyer are not only limited to carrying out their functions in the practice of procedural law a judge or court. As someone who contributes to the legal field, lawyers will often make contact with many people, both within the scope of work and outside of work, both with those who understand the law or not. A client will usually ask for problems and the opinion of an attorney regarding the problem at hand.

There is also a lawyer's job is to answer and explain about law and the client was acceptable and understood the law need. The lawyer's opinion about client's problem is called a legal opinion. Legal opinion arises from the existence of a polemic or a very dilemmatic phenomenon caused by the implications of the law itself, and has a very wide excess in society, so that an actual, concrete and factual form of

elaboration is needed in order to eliminate the topic of problems that are problems in the community. society.¹

The emergence of legal opinions due to legal debates in the community, meanwhile legal discussions can arise due to several things, such as the existence of a decision that contradicts the judge in court with the public's view. In legal cases that give rise to legal debates usually contain deviant of law from legal facts. Circumstances like this trigger differences and even conflicts between observers of legal issues, as the beginning of triggering conflicts from various interested parties (vested interests) or interference from other parties (politicians, authorities and others).²

Legal opinion are usually used as consideration for interested parties who are experiencing legal problems in order to be able to make and take an appropriate decision or action regarding the problems faced.³

Therefore, an understanding of the scope or dimensions of the role of legal opinion is very much needed by the community to resolve civil law problems outside the court. Based on the explanation above, it encourages the writer to put forward the subject related to the dimension of legal opinion which has a position as a doctrine or source of law that can be used in resolving civil lawcase.

B. Method

In this study, the research method used is qualitative research with an empirical juridical approach. This method obtains data from the field using observation, interview, and documentation techniques by approaching legislation or legal sources. With the data collection method so that relevant information is found. After going through the data collection process, the researchers then conducted an analysis. Data analysis in this study was carried out using the method of content analysis. Content analysis is a method of data analysis that is carried out systematically and objectively.⁴ To simplify the process, the researcher first conducts a study, reduces it through the process of preparing abstractions, and grouping the data based on the main issues. After that, it just entered the data interpretation stage based on the existing theoretical substance approach. So it is possible to find new methods, concepts or theories in analyzing similar problems.⁵

C. Result and Discussion

1. The Historically of Legal Opinion

Legal Opinion is a term used by countries that adhere to the Common Law (Anglo Saxon), while in the Civil Law (Continental Europe) this legal system it is

¹ Syahrul Sitorus, "Pendapat Hukum (Legal Opinion) dan Uji Kepatutan Dari Segi Hukum (Legal Due Diligenci)", Jurnal Hikmah, Vol. 15, No. 2, Juli-Desember 2018, h. 166

² Ibid., p. 167

³ Ery Agus Priyono and Kornelius Benuf, Position of Legal Opinion as a Source of Law, El- Mudhrarib: Journal of Islamic Banking Economic Studies, Vol. 1, No.2,2020

⁴ Read more: Fred N. Karlinger, Foundation of Behavioral Research, (New York: Holt Rinechart and Winston, 1973), p. 525.

⁵ Priyono, *Bahan Kuliah Metodologi Penelitian*, (Semarang: Universitas Diponegoro, 2003), h. 23

known as Legal Critics.⁶ Legal Opinion began to be recognized by Indonesian legal advisors when conducting international commercial transactions dealing with foreign legal advisors. In entering into an agreement, the foreign legal advisor determines the initial requirements (a condition precedent), namely by enforcing a Legal Opinion agreement that must be prepared and issued by the Indonesian legal advisor.⁷

A legal advisor should not be arbitrary in giving his Legal Opinion, especially with regard to the civil law dimension in the international scope. Mean commercial transaction. In order to be able to provide a good Legal Opinion, a legal advisor is required to understand the existing legal problems and the causes of these problems. The practice of Legal Opinion was first started in the United States in various commercial transactions such as consolidation and merging of loan agreements from banks and securities sellers. However, several countries, such as France, England and Indonesia, objected to issuing Legal Opinions to resolve legal issues. This is based on two reasons. *First*, the process of giving legal opinions to clients regarding the validity of documents in transactions, is nothing but summarizing the results of work, which should be carried out in the context of a cooperative relationship between the client and his legal advisor. In such circumstances, the issuance of legal opinions is unnecessary because it does not have an impact on profits or can cause losses in the future. *Second*, giving legal opinions to other parties who are not clients, then legal advisors will be meet the conflict of interest where legal advisors must provide confidential information to other parties that should not be given.⁸

The practice of issuing legal opinions is deemed necessary by some countries, including in Indonesia, so that the practice of Legal Opinion is not limited to US domestic commercial transactions. In order to strengthen the existence of Legal Opinion in Indonesia, the government issued Law no. 18 of 2003 concerning Advocates.⁹

2. Systematics of Legal Opinion of Civil Law

Understanding of the law is not only limited to laws and regulations, but also comes from court decisions and the opinions of senior legal practitioners. Legal opinion does not only revolve around the content and sound of statutory regulations, but also concerns the implementation of statutory provisions in daily practice. One of the challenges in preparing a legal opinion is the inconsistency between one statutory regulation and another, both vertically and horizontally.¹⁰

Basically there is no systematic standard in the preparation of legal opinions, because each lawyer or advocate has its own format. This is the same as the preparation of a civil contract in the civil law scope,¹¹ which will be carried out by

⁶ Hamzah Halim, Cara Praktis Memahami dan Menyusun Legal Audit & Legal Opinion, (Jakarta: Kencana, 2005), h. 201-202

⁷ Didik Suraputra, "Pendapat Hukum dalam Transaksi Komersial", Jurnal Hukum dan Pembangunan, Vol. 2, No. 35, 2005, h. 135-143

⁸ Ibid., 144.

⁹ Maharani Roya Ananta, "Implementasi Kewajibann Advokat dalam Menjaga Rahasian Klien", Jurnal Fakultas Hukum Universitas Brawijaya Malang, 2014, h. 4

¹⁰ Agus Pryono & Kornelius Benuf, "Kedudukan Legal Opinion sebagai Sumber Hukum", Jurnal Suara Hukum Vol. 2, No. 1, Maret 2020, h. 62

¹¹ May Shinta, et.al KoNsep Essensialia Pada Prinsip Pembuatan Kontrak Dalam Perikatan, Journal of Indonesian Comparative of Syari'ah Law, Vol 4. No.1. 2021

interested parties, in its preparation there are several elements that must be adam such as the element of awareness, this element must also exist, awareness of the parties is needed in formulating a legal opinion. The next element is the expertise of legal experts in expressing the understanding and provisions of the need or examination and is also needed in order to be able to resolve the legal needs of the client:¹²

- a. Introduction Section, The contains is an explanation on the legal basis used by an Advocate/Lawyer or Consultant to make a legal opinion (whether based on a written request or an oral request)..
- b. The client's problem to be asked for a legal opinion. In this section, the main problem faced by the client is requested to make a legal opinion. The problem refers to a legal issue that was conveyed by the client in his letter when submitting a request for a legal opinion.
- c. Clauses relating to existing problems. Clauses relating to civil law issues that are used as a complement to the identity of the client, for example, the completeness of this clause, the completeness of civil cases are not much different from other legal cases. This section contains a description of the documents, material information in written or oral form obtained from the client itself, or from other third parties and also contains additional information related to the subject matter that can be added to the legal opinion to support the subject matter. This section also contains statements of Lawyers regarding the sources of facts used in the preparation of legal opinions, namely that legal opinions can be made based on original documents and/or photocopies and/or oral statements from clients to Advocates/Lawyers or Legal Consultants. from the date of receipt until the date of issuance of the legal opinion. Documents and oral statements become the basis for finding and digging up the facts.
- d. Legal basis and legislation related to the problem. In civil law cases, the legal sources used to analyze the case can be described by relevant laws and regulations. For example, if the case is in the commercial or commercial domain, it can refer to the KUHD (Book of Commercial Law), in the realm of In Islamic economics, it refers to KHES (Compilation of Sharia Economic Law), and so on to be used as the basis for making legal opinions. This section also describes the limitations of the interpretation of legal opinions made by advocates/lawyers or legal consultants, namely that the legal opinion in question can only be interpreted according to the provisions of the law of the Republic of Indonesia. Such legal opinion cannot be interpreted according to the legal provisions of a country other than the Republic of Indonesia.
- e. The Description of chronological facts. This section contains a description of the facts that are in accordance with the problem based on original documents and/or photocopies and/or based on oral statements from clients up to the date of issuance of legal opinion documents and arranged chronologically with the aim that readers can understand the chronology of the main problems and their developments.

¹² Syahrul Sitorus, "Pendapat Hukum (Legal Opinion) . . . , h. 168-169

- f. Legal analysis This section describes the analysis and legal considerations of Lawyers on the subject matter based on applicable legal provisions and documents related to the subject matter.
- g. Legal opinion Contains a description of the opinion of Lawyer on the subject matter of a civil case based on civil law analysis and considerations on facts, information and documents related to the existing subject matter. Legal opinions are conveyed by always focusing on the problem, systematically and not complicated
- h. Conclusions and suggestions or solutions to problems. This section contains a description of the conclusions that exist based on the results of the analysis after carrying out all the stages of making legal opinions that have been described. After getting a conclusion, a Lawyer then provides suggestions and/or solutions in resolving the legal problems that have been discussed in the legal so that the Advocate/Lawyer or Legal Consultant can provide more than one suggestion and/or solution to the problems raised. a legal opinion is requested with the aim that the client or other interested parties can choose one of the best suggestions and/or solutions in their view.

3. Principles in Making Legal Opinions

In making a legal opinion, there are several principles that must be used as guidelines, there are:¹³

First, Legal Opinions are made based on Indonesian law. advocates or lawyers who have the authority to serve in the state of Indonesia, the law that is used as the basis for conducting legal opinions is Indonesian law and is not competent to express legal opinions based on laws other than Indonesian law.

Second, Legal Opinions are conveyed in a clear, firm and straightforward manner with correct and systematic grammar. That is, the legal opinion must be easily understood and accepted by the client or the party who reads it, so that it will not lead to multiple interpretations and it is hoped that through a legal opinion there will be legal certainty.

Third, Legal Opinion does not guarantee to provide a situation. Lawyers, are not authorized to provide guarantees or certainty about the condition of a case settlement in practice through legal opinions given to clients, this is in accordance with the Advocates Code of Ethics Article 4 Point c which states: "*Advocates are not justified in guaranteeing to their clients that the case, which he handled will win.*"

Fourth, Legal Opinions must be submitted honestly and completely. This means that a legal opinion must be conveyed to the client as it should be, not fabricated and not merely providing an opinion just to fulfill the client's wishes. If based on applicable legal provisions the client's request cannot be fulfilled, then this must be conveyed honestly and clearly in a legal opinion without being covered up.

Fifth, Between a lawyer and a client there is nothing binding in a legal opinion. A lawyers are responsible for the content and truth in the legal opinions that they have made, but advocates, lawyers and legal consultants cannot be held legally responsible for the losses that arise as a result of the client taking action based on the legal opinion.

¹³ Agus Priyono & Kornelius Benuf, "Kedudukan Legal Opinion. . . ,h. 63-64

Sixth, Legal Opinions made by lawyers or advocates or legal consultants who have been selected by the client do not bind the client or parties requesting a legal opinion to implement part or all of the contents of the legal opinion. The decision to take or not to take action based on a legal opinion, is entirely up to the client in question and is the responsibility of the decision maker

4. The Role of Legal Opinion in the Scope of Civil Law Cases

Judging from the notion of legal opinion, which is a legal opinion that appears and aims to answer questions from clients regarding a particular legal problem, legal opinion is intended to provide information to clients regarding a problem that is being experienced. Based on this statement, it can be concluded that the role of legal opinion is to provide input to parties who receive legal opinions (clients) to be used as a basis for responding and finding the best solution a legal problem that is being experienced. A lawyer must have the ability to analyze an event that are included in the category of legal actions or not. He must be able to describe what actually happened to a legal object or subject, causing legal problem.

Civil law in Indonesia is civil law adopted from the Netherlands which was originally based on the Civil Code, known as *Burgerlijk Wetboek* (BW). Some of the substance of the BW material has been replaced with Indonesian Laws, such as the Marriage Law, Mortgage Law, and Bankruptcy Law. The codification of the Civil Code was issued in 1984, after Indonesia became independent, based on Article 2 of the transitional rules of the 1945 Constitution, the Civil Code can still be implemented before being replaced by a new law based on this Constitution.

In civil law cases or problems relating to civil relations between individuals, such as commercial practices (trade, business agreements), family (marriage), inheritance, grants, endowments, and so on. Marriage Law in Indonesia has been regulated in Law No. 1 of 1974 which contains provisions and procedures for carrying out legal marriages according to the law. For example, in the case of pregnant marriages out of wedlock, whether it is the man who conceived her or not the one who impregnated her, it has been described in the KHI (Islamic Law Compilation) CHAPTER VII Concerning Pregnant Marriage as follows;¹⁴ Article 53

- 1) *A woman who is pregnant out of wedlock can be married off to a man who impregnates her*
- 2) *Marriage with a pregnant woman referred to in paragraph (1) can be carried out without waiting for the birth of her child*
- 3) *By holding a marriage during pregnancy, there is no need for re-marriage after the child is born*

From the provisions in the article above, it shows that the marriage of a woman who is pregnant with a man who is pregnant with her. The basis of marriage in pregnancy in the marriage law in Indonesia is still not regulated in a complex manner, so marriage in pregnancy can be a case or social problem, because basically marriage in a state of pregnancy in a normative social context is still considered a disgrace for the perpetrators of marriage. and family, but with the marriage that is carried out it can be a solution to the case in terms of KHI which is a Muslim reference when they do not find a solution in the primary books (al Qur'an and as Sunnah). This decision is

¹⁴ KHI Pasal 53

also viewed from the legal opinion of Muslims (Fatwa), such as in the Fatwa of Tarjih Muhammadiyah regarding the permitting of marriage of pregnant women with men who impregnate them and the prohibition of marrying men who impregnate her with the qiyas method by considering the benefits which are the main elements in the law. maqashid shariah which was issued in the fatwa of the Muhammadiyah Tarjih Council on the Law of Pregnant Marriage as a result of the seminar by the Javanese Tarjih.¹⁵

In addition, in the Indonesian legal system regarding Civil Law, in practice the provisions of the Civil Code are implemented in sharia commercial transactions such as sharia banking in Indonesia. In the settlement of civil disputes, the legal materials used are guided by BW, this is understandable because in previous times transactions were used by the Indonesian people. After that came the KHES (Compilation of Sharia Economic Law) which is a compilation of provisions rather than commercial muamalah transactions in accordance with sharia provisions. This KHES basically does not include a law, but is a material applied law issued by the Supreme Court which has the same position and function before the law that has been legalized by law. This also refers to the role of the legal opinions of judges when referring to legal guidelines for resolving community civil cases. So basically a practitioner, a judge not only acts as a mouthpiece of the law, but he is also obliged to make legal discoveries as outlined in each of his decisions, in the discovery process the judge must be guided by the principle that law is for humans, not humans for law, so that judges must prioritize the value of justice in society and adjust according to changes in society.¹⁶

Legal opinion on civil law also aims to describe a legal contextual both implicitly and explicitly, if there are various juridical contradictions that result in public protests against the enforcement of a rule of law, or in other words there are deviations from cultural norms that apply in a society, and if the law is implemented, it will have a wide impact, namely it will affect the stability of state security and socio-politics.¹⁷ In the implementation of civil dispute settlement legal opinion can be a practical and relatively inexpensive solution to resolve disputes. This can be stated in the function of legal opinion which can provide an overview of the law that befalls or will happen to the client based on the applicable legal provisions.

For example, in the business field, legal opinions are classified into two functions, namely, *first*, an unqualified favorable opinion, meaning that the legal opinion becomes the consideration of entrepreneurs in taking actions that are profitable for their business. The *second* function, namely in the event that legal advisors cannot provide legal opinions without conditions and are not profitable, then this opinion can serve as a warning to entrepreneurs regarding possible risks that must be considered in making commercial decisions¹⁸

In order to be able to provide a good legal opinion, a lawyer or legal consultant must understand and understand the legal problems that exist and why they occur.

¹⁵ Mutmainah, AnAlisis Terhadap Fatwa Majelis Tarjih Muhammadiyah Tentang Hukum Kawin Hamil Dengan Pendekatan Maq,Shid Al-Syari'ah, Thesis Universitas Muhammadiyah Malang, 2013.

¹⁶ Artinya seorang hakim juga berwenang dalam memberikan pendapat hukum di setiap putusannya, sehingga legal opinion juga memiliki fungsi sebagai penemuan hukum oleh hakim. Lihat: Agus Pryono & Cornelius Benuf, "Kedudukan Legal Opinion. . . , h. 65

¹⁷ Maharani Ananta Roya, "Implementasi Kewajiban Advokat. . . , h. 23-43

¹⁸ Sidik Suraputra, "Pendapat Hukum Dalam. . . , h. 146.

Then a lawyer or legal consultant is able to obtain complete and accurate data or information along with how the legal rules regulate it, and then determine how to resolve the problem completely legally. Failure to read and understand the case can lead to errors in providing legal opinions or directions in resolving a problem that is being experienced. Mistakes to provide a legal opinion (legal opinion) will actually be able to cause the client to suffer losses¹⁹

D. Conclusion

The Role of a legal opinion is to provide input to the party receiving a legal opinion to be used as a basis for responding to and finding the best solution or solution to a legal problem that is being experienced. While the purpose of legal opinion is to describe a legal contextual both implicitly and explicitly, if there are various juridical contradictions that result in public protests against the enforcement of a rule of law, or in other words there are deviations from cultural norms that apply in a society, and if the law If this is implemented, it will have a broad impact, namely it will affect the stability of state security and socio-politics. In making a legal opinion, an advocate/lawyer or legal consultant must have several principles that are used as guidelines. There is no systematic standard in the preparation of legal opinions, because each lawyer or advocate has its own format.

References

Ahmad, K. (1983). *Studies in Islamic Economics*. Leicester: The Islamic Foundation.

Ali, M. D. (1993). *Hukum Islam, Pengantar Ilmu Hukum dan Tata Hukum di Indonesia* (Cetakan ke). Jakarta: Raja Grafindo Rosada.

Antonio, M. S. (2009). *Bank Syariah: Dari Teori ke Praktek* (Cetakan ke). Jakarta: Gema Insani.

Ananta, Maharani Roya. 2014. "Implementasi Kewajiban Advokat dalam Menjaga Rahasian Klien". *Jurnal Fakultas Hukum Universitas Brawijaya Malang*.

Halim Hamzah. 2005. *Cara Praktis Memahami dan Menyusun Legal Audit & Legal Opinion*. Jakarta: Kencana.

Hukumonline. "PERADI, HKHPM dan AKHI Surati Ketua MA Soal Sumpah Advokat." Berita, <http://www.hukumonline.com/berita/baca/lt5731d94e12b88/peradi-hkhpmdan-akhi-surati-ketua-ma-soal-sumpah-advokat> (diakses pada tanggal 11 Mei 2016)

Ira, Maulana, 2021. Eksistensi Hukum Ekonomi Syariah Dalam hukum Perdata, *Jurnal Lentera* Vol.3 No,2

Karlinger, Fred N. 1973. *Foundation of Behavioral Research*. New York: Holt Rinehart and Winston.

May Shinta, et.al. 2021. Konsep Essensialia Pada Prinsip Pembuatan Kontrak Dalam Perikatan, *Journal of Indonesian Comparative of Syari'ah Law*, Vol 4. No.1.

Mertokusumo Sudikno. 2008. *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Liberty.

Mutmainah, 2013. *ANALISIS TERHADAP FATWA MAJELIS TARJIH MUHAMMADIYAH TENTANG HUKUM KAWIN HAMIL DENGAN PENDEKATAN MAQSHID AL-SYAR'AH*, Thesis Universitas Muhammadiyah Malang,

Nawai Hadari. 1995. *Metode Penelitian Bidang Sosial*. Yogyakarta: Gajah Mada University Press.

Ngutra Theresia. 2016. "Hukum dan Sumber-Sumber Hukum". *Jurnal Supermasi*. Vol. 2. No. 11.

Packer, Herbert L. *The Limits of the Criminal Sanction*. California: Stanford University Press, 1968.

Paul Tillich, "Being and Love," in *Moral Principles of Action*, ed. Ruth N. Anshen (New York): Harper & Bros., 1952), 663.

¹⁹ Syahrul Sitorus, "Pendapat Hukum (Legal Opinion). . . , h. 167

Pompe, Sebastian. Runtuhnya Institusi Mahkamah Agung. Jakarta: Lembaga Kajian dan Advokasi Untuk Independensi Peradilan, 2012.

Priyono. 2003. Bahan Kuliah Metodologi Penelitian. Semarang: Universitas Diponegoro.

Pryono Agus & Kornelius Benuf. 2020. "Kedudukan Legal Opinion sebagai Sumber Hukum". Vol. 2. No. 1.

Saldi Isra. Pergeseran Fungsi Legislasi : Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia. Jakarta: Raja Grafindo Persada, 2010.

Sarjono, Andrie Gusti Ari.2020. Kedudukanhukum Paralegal Desa Dalam Perspektif Undang-Undang Nomor 6 Tahun 2014 Tentang Desa, Jurnal Nommensen Journal of Legal Opinion (NJLO)

Sitorus Syahrul. 2018. "Pendapat Hukum (Legal Opinion) dan Uji Kepatutan Dari Segi Hukum (Legal Due Diligenci)". Jurnal Hikmah, Vol. 15. No. 2.

Suraputra Didik. 2005. "Pendapat Hukum dalam Transaksi Komersial". Jurnal Hukum dan Pembangunan. Vol. 2. No. 35.

Ulum, Miftahul. 2019, Fikih Legal Opinion (Reinterpretasi Hukum Gadai dalam Perspektif Hukum Pedata dan Hukum Islam), Jurnal Pendidikan dan Pranata Islam (Syaikhuna) Vol 10 No 1