



THE EXISTENCE OF THE LEGAL POSITION OF OPINION BY STATE ATTORNEY AS A LEGAL SOURCE IN THE FRAMEWORK OF RESOLUTION OF LEGAL PROBLEMS

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Abstract

The public often relies on legal opinions provided by State Attorneys (JPN) or legal consultants as guidance in dealing with legal issues by using JPN (State Attorney) or legal consultants, where in the prosecutor's office there are also state attorneys who assist in conducting legal studies in resolving legal issues. The research method used by the author is a qualitative research method with a normative juridical approach. The research data was analyzed using content analysis. The results of the study indicate that in preparing a legal opinion, JPN (State Attorney) or a legal consultant must follow the guiding principles. Legal opinions are important for providing legal information based on strong law. The process of creating a legal opinion is carried out using a convergent approach, involving various disciplines to provide a comprehensive picture of the legal aspects of a legal relationship or legal event. Legal opinions have a significant position as a basis for thought that can contribute to legal progress and can take the form of criticism of certain policies. In order to have binding legal force.

INTRODUCTION

Along with the development of the times and the increasing public need for legal services, currently the role of a JPN (state attorney) is not only limited to the function of litigation before judges and/or in court. As individuals who are active in the legal world, JPNs (state attorneys) will often interact with many people, both in the scope of work and outside of work, both with those who understand the law and those who do not, so that they often ask questions related to legal issues and ask for opinions from a JPN (*state attorney*)

State Attorneys are expected to provide answers and explanations in a manner that is as simple as possible so that they can be understood by those with limited legal knowledge. This is evident in the increasing use of legal consultant services in various business sectors, one of whose roles is to provide *legal opinions*. This requires a State Attorney (JPN) to formulate legal language that is understandable to their clients. Based on these factors, legal professionals require expertise to provide legal opinions on a given issue.

A *legal opinion* is the answer to a question asked by a client facing a legal problem. If a judge uses a legal opinion from a legal scholar as a reference in determining the law, then the opinion can be considered doctrine.¹ Doctrine is one of the sources of law.² This means there is a relationship between *legal opinion* and doctrine, which is a source of law. Doctrine is one of the sources of law, which indicates a relationship between *legal opinion* and doctrine as a source of law. According to Satjipto Rahardjo, one of the processes of lawmaking involves socio-political factors, namely the idea of society that wants a problem to be regulated by law. This idea is processed by society itself, criticized, discussed, and defended through the exchange of opinions between various groups or forces within society.³ This shows that legal opinions play a crucial role in the lawmaking process. Without them, resolving societal legal issues would be unclear.

A legal opinion provided by a state attorney (JPN) regarding a client's problems is called a *legal opinion*. This occurs in situations where legal standards cannot be clearly established to support the resolution of a client's case, whether in civil or criminal law. Legal opinions often arise from polemics or legal dilemmas that have broad implications for society. Therefore, an actual, concrete, and factual explanation is needed to address the issues of concern to the public.⁴

The emergence of a *legal opinion* is caused by legal debate in society. This debate or discussion of the law can arise from various factors. In legal cases that generate legal debate, there is often a deviation *from the law* from the existing facts. Such situations trigger differences of opinion and even conflict among legal observers, which can lead to conflict between various vested interests *or* intervention from other parties, such as politicians, authorities, and so on.⁵

1 Sudikno Mertokusumo, *Understanding Law: An Introduction*, Yogyakarta, Liberty, 2008, p. 116

2 *Ibid.*, p. 85

3 Satjipto Rahardjo, *Legal Studies*. Semarang, Citra Aditya Bakti, 2014, p. 187

4 Syahrul Sitorus, "Legal Opinion and Legal Due Diligence, " *Jurnal Hikmah*, Vol. 15, No. 2, July-December 2018, p. 166.

5 Mukhlis Taib, *Dynamics of Legislation in Indonesia*, Bandung, Refika Aditama. 2017, p. 167.

Differences or conflicting opinions regarding a legal issue conveyed through various media will attract the attention of the public, as well as intellectuals, academics, and legal practitioners, who will focus on the case. Primarily, they will critique it from a legal, sociological, philosophical, and political perspective. At this level, what is known as legal opinion in society (*public opinion*) is formed. *legal opinion*) will appear, presented in the form of *a legal opinion*. Therefore, the presence of this new technology can be seen as an aid to experts in processing information originating from legal sources.⁶

Based on the explanation above, it encourages the author to put forward the topic related to the existence of *legal opinions* which have a position as a legal source that can be used in resolving legal problems. Formulation of the problem is based on the background of the problem above, the author is interested in examining in more depth: How is the existence of *a legal opinion* by the State Attorney who has a position as a source of law in resolving legal problems ?

RESEARCH METHODS

Normative legal research method using a library approach. Normative legal research is legal research that use utilizes secondary data. The secondary data sought is primarily derived from studies of legislation and library research related to the topic. Secondary data comes from primary, secondary, and tertiary legal materials.

The method of collecting research data is carried out using the documentation method, namely referring to/collecting documented materials, while the data collection tool used is a documentation study, namely a study by studying data in the form of books, research reports, seminar papers, expert writings, and all laws and regulations related to the research material. The research data was analyzed using content analysis. Content analysis was conducted on all secondary data collected, but the content analysis primarily focused on documents in the form of legal studies and literature research related to the existence of legal opinions, which serve as legal sources in resolving legal issues.

DISCUSSION RESULTS

The Existence of Legal Opinions Which Have a Position as a Source of Law in Resolving Legal Problems

Legal opinion

In the common law (Anglo-Saxon) legal system, there is the term "legal opinion," while in the civil law (Continental Europe) legal system, it is known as "legal critics." In Latin, this term is called "ius opinion," which means "legal view" or "legal opinion." Legal opinion can also be defined as a legal view or opinion that is examined partially, impartially, gradually, or crucially, especially regarding inequality in the implementation of legal regulations.

According to Henry Campbell Black in "Black's Law Dictionary," a legal opinion is defined as "a written document in which a JPN (State Attorney) provides an understanding of the law as it applies to the assumed facts." The JPN (State Attorney) may be a lawyer representing the state or other governmental entity." A party may have the right to rely on the legal opinion, depending on factors such as the identity of the parties to whom the opinion is addressed and the law that governs this opinion. (A set of written documents that serve as application guidelines for JPNs (State

⁶ Wilson Eduardo, et.al, Neutrosophy to Enrich *Legal opinion* Mining, *NSS University of New Mexico Journal* Vol 44, 2021

Attorneys) or the understanding of legal opinions relating to various legal issues of the parties concerned according to the facts.) A JPN (state attorney) may personally represent various aspects of the regulations of the legal entity that regulates it. One party has the right to believe in the legal opinion, depending on factors such as the identity of the parties concerned made by a JPN (State Attorney) through the legal opinion and the law that regulates it.

Legal opinions became familiar to Indonesian State Attorneys (JPNs) when they were involved in international commercial transactions involving foreign legal consultants. In the agreement-making process, foreign legal consultants stipulate a condition precedent: a legal opinion agreement must be prepared and issued by the Indonesian State Attorneys (JPNs).

Indonesia uses law as a vital tool in regulating social life. However, problems such as high court costs, delays in case resolution, unequal income distribution, and injustice persist. Plaintiffs often spend significant time and money responding to legally inadmissible defenses. Analysis and improvement of legal regulations are needed to address these issues.

In the Civil Procedure Code, there is recognition of the importance of efficient case resolution. The first rule affirms that all other rules must be interpreted, administered, and applied by the court and the parties to achieve a just, expeditious, and economical resolution of each action and proceeding. This rule reiterates the importance of efficient dispute resolution through five main objectives in pre-trial conferences: (1) expediting the resolution of actions; (2) establishing strong oversight from the outset to prevent cases from becoming stagnant due to lack of management; (3) avoiding unproductive pre-trial activities; (4) improving the quality of trials through better preparation; and (5) facilitating settlement.

A state attorney (public attorney) should not act carelessly in providing legal opinions, especially those related to international aspects. To be able to provide a quality legal opinion, a public attorney (public attorney) needs to have a good understanding of the existing legal issues and the causes behind those problems. The practice of legal opinions first emerged in the United States in various commercial transactions, such as mergers, acquisitions, bank loan agreements, and the sale and purchase of securities. However, several countries, such as France, the United Kingdom, and Indonesia, have objected to providing legal opinions to resolve legal issues.

These objections are based on two reasons. First, the process of providing a legal opinion to a client regarding the validity of documents in a transaction only summarizes the work that should have been achieved through a cooperative relationship between the client and the client. In such situations, providing a legal opinion is considered unnecessary because it provides no benefit and can potentially cause future losses. Second, when providing a legal opinion to a party other than the client, the attorney (public attorney) will face a conflict of interest, where they must disclose confidential information to the other party that should not be disclosed.

In an effort to strengthen the existence of legal opinions in Indonesia, the Indonesian Attorney General's Office has issued PERJA No. 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions, and Legal Services in the Civil and State Administrative Fields as a reference for institutions and JPN (State Attorneys) in implementing the functions of law enforcement, legal aid, legal considerations, other legal actions, and legal services in the civil and state administrative fields.

Procedure for Making a Legal Opinion

Understanding the law is not limited to statutory regulations alone but also stems from court decisions and the opinions of senior legal practitioners. Legal opinions encompass more than just the content and wording of statutory regulations but also the implementation of statutory provisions in everyday practice. One of the challenges in drafting a legal opinion is ensuring consistency between statutory regulations, both vertically and horizontally.

There is no standard for creating a legal opinion, as each state attorney (JPN) has a standard format, but their opinions can vary. This situation is similar to the drafting of a civil contract by the parties involved. During the drafting process, awareness and understanding of the necessary provisions are crucial. Furthermore, the expertise of the legal opinion writer is essential to effectively meet the client's legal needs. Things that must be considered in preparing a legal opinion, namely; accurate, "check and recheck" must be done to avoid errors in facts, opinions, figures, quotations and bibliography. in short, irrelevant things don't need to be written. Clearly, "ambiguity" must be avoided in writing Legal Opinions. The ordering, selection and arrangement of materials must be sufficiently systematic.

As for the procedure for obtaining a law, namely in the opening or introduction of the opinion, it can take several forms, but at least it must be:

- a. First identify the area or legal standard in dispute.
- b. Providing legal education or guidance from a lawyer (state attorney) regarding the client's disputed issues. The court will then issue a decision. In this aspect, the lawyer (state attorney) will provide an opinion regarding the resolution of the legal issues that need to be resolved. This section can be easily implemented because no significant changes are required to the Criminal or Civil Procedure Code.
- c. As for the statutory regulations used for the proposed Judge's instructions, which can be carried out by the court in the arrangement of cases and reasonable decisions.
- d. In the realm of the Court, the Court has the authority to "manage their own affairs" and will also authorize legal opinion procedures.
- e. This new procedure will raise questions and concerns, as any change to a functioning system must. But a closer look shows that the concerns can be satisfactorily addressed.

In general, in practice, the form of preparing a legal opinion consists of:

- A. Introduction
The introductory section provides an explanation of the basis for the reasons given by the Lawyer (State Attorney) or Consultant in compiling a legal opinion, either based on a request submitted in writing or verbally.
- B. Problems for which a legal opinion is requested
This section outlines the fundamental issues faced by the client, which form the basis for the request for a legal opinion. These issues relate to the legal issues outlined or presented by the client in the letter accompanying the legal opinion request.
- C. Materials related to existing problems.
Next, this section includes materials relevant to the problem at hand, such as information, data, and related documents. A description of the documents and material information, both written and oral, collected from the client and other third parties. It also discloses additional information that may support the main issues raised in the legal opinion. In addition, this section includes a statement

from the Attorney (State Attorney) or Legal Consultant regarding the sources of facts used in preparing the legal opinion. The legal opinion itself can be formulated based on original documents and/or copies of documents and/or oral statements from the client submitted to the JPN (State Attorney) from the time of receipt until the date of the legal opinion. These documents and oral statements serve as an important foundation in efforts to uncover relevant facts.

D. Legal basis and legislation related to the problem

This section explains the laws and other regulations that form the basis for drafting a legal opinion. It also outlines the limitations of interpreting a legal opinion issued by the State Attorney (JPN), stating that the legal opinion can only be interpreted based on the laws of the Republic of Indonesia. Therefore, the legal opinion cannot be translated or interpreted based on the laws of any country other than the Republic of Indonesia.

E. Chronological description of facts

Next, this section presents relevant facts related to the issue at hand, taken from original documents and/or photocopies and/or based on oral statements from the client up to the date of issuance of the legal opinion. This information is arranged chronologically to facilitate the reader's understanding of the origins of the issue and its development.

F. Legal analysis

Then, this section presents the analysis and legal considerations of the JPN (State Attorney) regarding the main problem, which is based on applicable legal provisions and documents relevant to the main problem.

G. Legal opinion

This section also outlines the opinion of the State Attorney (JPN) or Legal Consultant regarding the main issue, based on legal analysis and consideration of relevant facts, information, and documents. This legal opinion is presented with a focus on the problem, structured systematically, and without unnecessary detail.

H. Conclusions and suggestions or solutions to problems.

This section explains the conclusions drawn from the analysis after completing all the stages of preparing a legal opinion outlined above. After reaching a conclusion, the State Attorney (JPN) then provides suggestions and/or solutions to resolve the legal issues discussed in the legal opinion. The goal is for the JPN (State Attorney) to provide more than one suggestion and/or solution to the problem requested in the legal opinion, allowing the client or other interested parties to choose the suggestion and/or solution that best suits their needs.

The procedure for a preliminary legal opinion proposed here would be similar to this type of general opinion, as the court would provide an opinion on legal standards within the context of a non-final opinion. However, it is felt that this type of general opinion is more limited and less helpful than a preliminary legal opinion, as it addresses only the legal issues necessary to decide a particular motion. The court does not have the opportunity to thoroughly analyze the case to express an opinion on a legal issue that could impact the case more broadly than the one currently being argued. The proposed introduction provides that opportunity. The statement of the legal issues made by the court in the context of this opinion may change later in the case, such as when a motion for reconsideration or subsequent motions or arguments arise. However, this is a statement of opinion on the legal issues that will arise. In the process of drafting a legal opinion, there are several principles that should be used as

guidelines, namely:

Legal opinions are prepared with reference to Indonesian law. State Attorneys (JPNs) in Indonesia must use Indonesian law as the basis for their legal opinions and are not authorized to provide legal opinions based on non-Indonesian law.

Legal opinions must be presented clearly, firmly, and concisely, using correct and systematic grammar. This ensures that the legal opinion can be easily understood and accepted by the client or other parties who read it, avoiding biased interpretations, and hopefully creating legal certainty through the legal opinion.

A legal opinion does not constitute a guarantee. The State Attorney (JPN) has no authority to provide certainty regarding the outcome of a case resolution through a legal opinion provided to a client.

Legal opinions must be presented honestly and completely. This means that legal opinions must be presented to clients as they should be, not fabricated, and not simply provided to satisfy the client's wishes. If, based on applicable legal provisions, the client's request cannot be fulfilled, this must be conveyed honestly and clearly in the legal opinion without concealing any information.

There is no binding agreement between the State Attorney (JPN) and the client in a legal opinion. The State Attorney (JPN) is responsible for the content and accuracy of the legal opinion they have prepared, but they cannot be held legally responsible for any losses that may arise from actions taken by the client based on the legal opinion. A legal opinion issued by a State Attorney (JPN) does not bind the client or the parties requesting the legal opinion to implement any or all of its contents. The decision to take or not to take action based on the legal opinion is entirely the client's decision and responsibility.

Functions and Purposes of Legal Opinions

In line with the definition of a legal opinion, which is a legal opinion that arises to answer a client's questions regarding a particular legal problem, a legal opinion is indeed intended to provide information to the client regarding a problem they are experiencing. Based on the statement above, it can be concluded that the function of a legal opinion is to provide input to the party receiving the legal opinion to be used as a basis for addressing and finding the best solution or solution to a legal problem they are experiencing. A JPN (state attorney) must have the ability to analyze an event or incident, including whether it is a legal act or not. He must be able to explain what actually happened to a legal object or subject that gave rise to a legal problem or issue. Meanwhile, legal opinion aims to describe a legal context both implicitly and explicitly. If various legal contradictions occur that result in public protests against the implementation of a legal rule, or in other words, there is a deviation from the cultural norms that apply in a society, and if the law is implemented, it will have a broad impact, namely, it will affect the stability of state security and socio-politics.

A legal opinion is to provide an explanation to clients who want to understand all aspects related to the problem they are facing, so the content of the opinion must meet the client's expectations. Based on the explanation above, the function of a legal opinion is to provide a legal opinion regarding a legal issue in order to obtain the right decision or action regarding the matter.

To provide a sound legal opinion, a state attorney (JPN) must understand and comprehend the legal issues at hand and the reasons behind them. Furthermore, the JPN (state attorney) must gather complete and accurate data or information, along with an understanding of the legal regulations governing the matter, to then determine the appropriate legal approach to resolving the issue. Failure to read and understand

a case can result in errors in providing legal opinions or guidance for resolving the issue. Mistakes in providing legal opinions can risk causing problems or harm to the client.

Legal opinion as a source of law

Essentially, legal sources serve to discover or explore the law related to a particular issue. When applied to real-life legal problems, legal perspectives from scholars or legal experts are required to resolve the issue. These legal perspectives can be considered doctrines, which also serve as legal sources and references for judges in making legal decisions.

A legal source, in its broadest sense, is the origin of a law, in the form of a decision by a ruler authorized to issue a decision on a legal issue. Meanwhile, doctrine is the legal perspective of legal experts that has been formulated and used as a new reference in legal development. A legal source is essentially the location where we can find or explore the law. Statutes, international treaties, and jurisprudence are examples of legal sources. Of course, these three legal sources often cannot be directly applied to concrete problems, necessitating the legal perspective of legal scholars or legal experts. The views of legal scholars, known as doctrine, serve as a legal source that can be used as a reference in finding relevant legal sources.

A legal source can be understood as the origin of the law established by a ruler who has the authority to issue such decisions. In other words, the decision must come from a competent authority. Furthermore, the definition of a legal source also encompasses various factors that can or should influence the ruler in establishing his or her law. For example, belief in the law, a sense of justice, and legal perceptions, both from the perspective of the ruler and the public, as well as theories, opinions, and teachings from legal science.

Doctrine is the opinion of experts summarized to serve as a new reference in legal development. For example, in the nineteenth century, classical contract law theory emerged as a reaction and critique of medieval traditions regarding substantive justice. These critiques by scholars and legal experts became legal opinions. Furthermore, Friedman's opinion on freedom of contract remains considered an essential aspect of individual liberty. This legal opinion addresses the problems arising from shifting rules regarding freedom of contract.

Because a legal opinion has binding legal force, it must meet certain requirements to serve as a legal reference and critique a policy, potentially providing positive input to encourage policy change. This is the essence of the legal opinion's role: to provide legal information with a strong legal basis. Legal opinions serve various functions in resolving clients' legal issues, not limited to litigation but also including advice on ongoing or planned business activities. The advantage of a legal opinion is that it promotes equality of rights and obligations for clients, ensuring that the legal decisions they receive are balanced and fair, reflecting their actions or future actions. A legal opinion also broadens clients' understanding of the legal issues they face and the potential legal challenges they face

CONCLUSION

In preparing a legal opinion, a state attorney (JPN) must adhere to several guiding principles. The role and existence of a legal opinion are crucial in providing legal information with a strong legal basis, especially when the client is dissatisfied with the legal opinion. Legal opinions have many functions in raising and resolving various legal issues faced by clients. The process of preparing a legal opinion is carried out with a

convergent approach, considering the complexity of the material faced, which involves not only legal studies but also other disciplines, in order to obtain a comprehensive picture or information regarding the legal aspects of a particular legal relationship or legal event. Legal opinions have a significant position as a basis for thinking elaborated by scholars and legal experts in relation to legal developments. The legal opinions provided by these experts are summarized into new references for legal progress, which can also take the form of criticism of certain policies with the aim of providing suggestions or input. To have binding legal force, this legal opinion must be included in the judge's decision; this means that a legal opinion can be a source of law categorized as doctrine and will have binding legal force after becoming part of the judge's decision. In preparing a legal opinion, a state attorney (JPN) must adhere to several guiding principles. The role and existence of a legal opinion are crucial in providing legal information with a strong legal basis, especially when the client is dissatisfied with *the legal opinion*. *Legal opinions* have many functions in raising and resolving various legal issues faced by clients. The process of preparing a legal opinion is carried out with a convergent approach, considering the complexity of the material faced, which involves not only legal studies but also other disciplines, in order to obtain a comprehensive picture or information regarding the legal aspects of a particular legal relationship or legal event. Legal opinions have a significant position as a basis for thinking elaborated by scholars and legal experts in relation to legal developments. The legal opinions provided by these experts are summarized into new references for legal progress, which can also take the form of criticism of certain policies with the aim of providing suggestions or input. To have binding legal force, this legal opinion must be included in the judge's decision; this means that a legal opinion can be a source of law categorized as doctrine and will have binding legal force after becoming part of the judge's decision.

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