

## The Role of Higher Legal Education in Improving the Professional Capacity of Legislative Drafters Through the Legislative Drafting Class

Eka N. A. M. Sihombing<sup>1</sup>

<sup>1</sup>Universitas Muhammadiyah Sumatera Utara, Indonesia

E-mail: [ekahombing@umsu.ac.id](mailto:ekahombing@umsu.ac.id)

### ABSTRACT

Legal higher education has a very important role in improving the capacity of human resources in the legal field, one of which is through teaching legislative drafting courses. This course is designed to equip students with skills in compiling and designing clear, precise, and legal regulations in accordance with legal principles. Quality regulatory drafters are needed to create effective and optimally implemented regulations. This study aims to explore how legal higher education, especially through legislative drafting courses, can strengthen students' abilities in designing quality laws and regulations. With a qualitative approach, this study examines the teaching materials taught, the teaching methods used, and the contribution of the course to improving the capacity of legal drafters. The results of the study show that teaching legislative drafting in universities not only provides technical skills, but also strengthens students' understanding of the legal principles underlying the creation of regulations. Therefore, legal higher education through this course has a significant contribution to improving the capacity of quality legal drafters and regulations in Indonesia.

**Keyword: Education; Law; Legislative; Drafting; Drafter**

### *Corresponding Author:*

Eka N. A. M. Sihombing,  
Universitas Muhammadiyah Sumatera Utara,  
Jl. Kapten Mochtar Basri No.3, Glugur Darat II, Kec. Medan Tim., Kota  
Medan, Sumatera Utara 20238, Indonesia  
Email: [ekahombing@umsu.ac.id](mailto:ekahombing@umsu.ac.id)



## 1. INTRODUCTION

Educational development is an integral part of national development whose main goal is to improve the quality of human resources. To achieve this goal, various methods are needed such as educational institutions. In addition, education is also one of the barometers for determining the progress of a country. Education is very influential in development, both in the development of human resources, economy, social, and even more so the role of education in the development of society, nation, and state. If the quality of education is good then the country is also good, if the quality of education is bad then the condition of the country is also bad. In educational development, the role of educational institutions cannot be separated from supporting this development. Therefore, the general target of development in the field of education essentially demands a change in mental attitude in such a way and requires that education is not only seen as an effort to improve status alone, but education is also seen as a means of renewing society (Arief, 2020).

Legal education does not only produce legal experts who know the ins and outs of legal rules, the application of law and will fill 11 institutions in the legal field, but also participate in "creating" and "developing" law through legal doctrine and legal analysis. In reality, this is not the case. This can be seen in the legal development policy during the New Order. The development or renewal of legal education is placed as a component of development, or legal renewal but as a component of educational development. The development of legal education is separate and not an integral part of the development or renewal of law. Higher legal education as one of the potential institutions that can contribute its thoughts in the formation of laws and regulations, especially regulations on information and communication technology. Through this education, it is directed to become an advanced and modern nation, among others characterized by an attitude that upholds morality when using information and communication technology, especially in using social media.

Educational development must be future-oriented, and followed by a comprehensive and imitative future analysis of every existing phenomenon, because it is very crucial and the tension of educational development is so fast. In line with this is E.F. Schumacher who stated that education is the most important, seen from its application, then education is the key to everything (Sedarmayanti, 2001).

Higher legal education has a very important role in increasing the professional capacity of legislative drafters, especially through the Legislative Drafting course. This course provides the knowledge, skills, and experience needed by students to become qualified regulatory drafters.

## 2. RESEARCH METHOD

The type of research used in this study is qualitative with a legislative approach and a conceptual approach (Marzuki, 2017). The statutory regulatory approach is used to find answers regarding the concept of legislative supervision of the formation of laws based on applicable legal regulations such as the formation of legislation Law and the 1945 Constitution of the Republic of Indonesia (Sihombing & Hadita, 2021). The comparative approach is used to find legal materials applicable in other countries in answering the concept of legislative supervision from a constitutional perspective by using the United States and Russia as comparative materials compared to Indonesia (Efendi & Ibrahim, 2018). Meanwhile, the conceptual approach is used to analyze the problem using the trias politica theory, the doctrine of checks and balances, and the theory of authority. The data collection technique used is a literature study by collecting all literature materials relevant to the problem being studied (Marzuki, 2017). Data analysis techniques use qualitative methods as an effort to find answers to the problems raised in the study. Furthermore, the results of the data analysis are presented descriptively-prescriptively.

## 3. RESULTS AND DISCUSSION

### A. *Philosophy of Higher Education in Law and the Profession of Drafting Legislation*

Humans have interests that are always disturbed by the dangers around them. Humans want to live peacefully and need protection for these interests. Therefore, the protection of interests is realized in the form of social norms, including legal norms (Mertokusumo, 2015).

The issue of law enforcement professionalism is closely related to the governance of Human Resources (HR), especially in the management of HR in higher legal education, namely students and/or Bachelor of Law. The objectives of higher legal education are very necessary to be determined considering that legal education in Indonesia continues to develop, although on the other hand, until now there has been no agreement regarding the formulation and objectives of legal education from each higher legal education institution, both the Faculty of Law, Faculty of Sharia to the College of Law. In the future, higher legal education must be able to provide legal teaching that is not limited to academic skills, but also has the ability to "problem solve", because basically law students will be faced with the real conditions of society later. So that law students as law enforcers can later be relied on by the community to have idealism, morals, behavior that prioritizes justice, honesty, wisdom and responsibility. Therefore, the existence of higher legal education as a guardian of law enforcement must be able to realize a comprehensive system of education with a priority on national legal renewal, so that it is able to create professional law enforcers with critical reasoning skills, idealists and are able to understand the various values that exist in, so that later they can realize just law (Juwana, 2003).

The legal development program needs to be a top priority because the amendment to the 1945 Constitution has broad and fundamental implications in our state system that need to be followed by changes in the legal field. In addition, the rapid flow of globalization supported by the development of information technology has changed the pattern of relations between the State and citizens with their government. These changes also require the arrangement of the legal system and the legal framework that underlies it. Within this framework, the Prolegnas is needed to organize the national legal system in a comprehensive and integrated manner that is always based on the constitution. Prolegnas and Prolegda become a filter for the contents (pouring) of Pancasila and the 1945 Constitution in Laws and Regional Regulations with two functions, namely: First, as a portrait of the planned contents of the law to achieve the goals of the State in accordance with Pancasila, the 1945 Constitution and the national legal system for five years. Second, as a mechanism and procedure for making laws and regulations so that what has been determined as a plan can be implemented with the correct procedures and mechanisms (Sugianto, 2022).

The stereotype of society towards every student and/or graduate of higher legal education is very legalistic, expert in memorizing and obedient to doctrine. The learning pattern to the stereotype of society

towards legal education will only produce skilled law enforcers, who understand and memorize existing regulations, but have minimal conscience. When legal values cannot be implemented as a whole, then the purpose of law in the form of justice will be violated. This is in line with Satjipto Rahardjo's opinion, that legal thinking for humans must be returned to the basic philosophy of law (Rahardjo, 2007).

The existence of legislative drafting courses emphasizes the concept of a state of law. A state of law according to Wirjono Prodjodikoro is a state in which all state apparatuses, especially government apparatuses, in every action towards citizens and in relationships must not be arbitrary, but must pay attention to the law, and everyone in social relations must be subject to applicable legal regulations. It has been explained previously that legislative drafting is a basic concept of drafting laws and regulations. The ability to implement legislative drafting in drafting a regional regulation is expected to be able to create legal products that are in accordance with the aspirations of the community, the interests of the future government and the realization of a good legal system and ultimately be able to create justice, benefits and legal certainty (Hidayat, 2017).

Legislative drafting is very necessary, considering Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a country of law. So automatically, whatever is in Indonesia, must be based on or founded on rules. Therefore, a good regulation can be made with a good understanding and legislative drafting process (Handayani, 2015).

One of the national goals of the Indonesian nation is to educate the nation, as stated in the 4th paragraph of the 1945 Constitution of the Republic of Indonesia which states that "Then from that to form an Indonesian state government that protects all Indonesian people and all Indonesian blood and to advance public welfare, educate the nation and participate in implementing world order based on independence, eternal peace, and social justice". Higher legal education must be able to become a pioneer in organizing education that is noble. Higher legal education, when the principles of integrity can be practiced in any life, basically equips students with understanding and principles in the form of different ethical values that have a significant impact on the level of professionalism in their strategic role. Higher legal education institutions should remind that the ideal principle of higher legal education is to be able to implement the axiological aspect of legal education appropriately, so that the development of student capacity as prospective law enforcers creates law enforcers who have a sense of professionalism (Rosana, et. al., 2021).

Philosophy of Higher Education in Law and the Profession of Drafting Legislation Higher education in law and the profession of drafting legislation aims to form individuals who have high competence in understanding, formulating, and analyzing law as a means of regulating society.

#### ***B. The Role of Higher Legal Education in Improving the Professional Capacity of Legislative Drafters Through Legislative Drafting Courses***

Legal development in Indonesia is one of the areas that continues to be a concern and at the same time a hope for bringing about more concrete changes in the situation in Indonesia. This is caused, among other things, by the existence of a prolonged multidimensional crisis, both concerning a crisis of trust, an economic crisis, a moral crisis and so on. On the other hand, efforts to improve the government system (division of power between the central and regional governments) which emphasizes decentralization are also part of legal development that is quite draining, both concerning financial personnel, and so on (Cahyono, 2001).

The prevailing view, mostly within the common law world, is that drafting is a pure form art or a aquasi craft (Scharffs, 1955). Black's Law Dictionary menyebutkan bahwa Legislative Drafting is the act of giving or enacting laws, the power to make laws, the act of legislating, preparation and enactment of laws, the making of laws via legislation, in contrast to court made laws, formulation of rule for the future, laws enacted by lawmaking body. Selanjutnya Sally Wehmeir menyebutkan Legislation is law or set of law passed by a parliament and the process of making passing laws: legislation will be difficult and will take time (Black, 2010).

Article 5 letter b of Law Number 12 of 2012 states that higher education aims to "produce graduates who master branches of science and/or technology to meet national interests and increase the nation's competitiveness". (Law Number 12 of 2012 concerning Higher Education) Article 5 letter b of Law Number 12 of 2012 directly emphasizes that law colleges as part of higher education institutions have the aim of preparing graduates who are not only capable in terms of science but also able to adapt to technology. The function of legislative drafting in the process of making laws and regulations is very important because it greatly assists in the creation of legal products that are born. Legislative drafting is a basic concept regarding

the preparation of laws and regulations that contain academic manuscripts resulting from scientific studies along with the initial manuscript of proposed laws and regulations. While the formation of laws and regulations is the process of laws and regulations which basically starts from planning, preparation, drafting techniques, formulation, discussion, ratification, promulgation, and dissemination (Handoyo, 2011).

In this case, law colleges have an important role in providing human resources ready to enter law enforcement institutions, especially from undergraduate graduates. Meanwhile, for master's and doctoral programs, law colleges increase the capacity of law enforcers and other legal professions. Efforts to enable universities to become pioneers in fostering integrated human resource development and development in order to meet (1) the needs of citizens who are ideally oriented towards education, through the creation of a conducive environment for the growth of a dynamic academic spirit, and can be a vehicle for the socialization of values, norms, and independent attitudes, and (2) the needs of a pragmatically oriented society through the readiness to educate people who can be absorbed by the business world according to their respective specifications (Budoyo, 2018).

The theoretical work of Wilkins has had a lasting impact on thinking about the regulation of the legal profession because it took a broader view of regulation than simply licensing, complaints and discipline, which had been the earlier focus. Wilkins proposed a four celled typology of regulation comprising disciplinary, liability, institutional, and legislative controls (Wilkins, 1992).

The Higher Education Law Curriculum is a set of legal courses, which means that there do not necessarily have to be courses with non-legal material, except for courses that strengthen and improve a student to be produced as a Bachelor of Law. The curriculum, one of which functions as a tool to achieve educational goals, which basically has main components and supporting components that are interrelated and interact with each other in order to achieve these goals. The Higher Education Law Curriculum began when the Law College was first established in Indonesia. Since 1909, there has been Legal Education and law schools in Indonesia even though it is not yet a higher education, namely for the Native Legal Expert Education School. Meanwhile, higher legal education itself was only organized starting in 1924, and was declared effective when the *Rechtshoogesschool* (Legal College) was opened. The Higher Education Law curriculum update continues to be implemented, especially after there was a statement that the Bachelor of Law was not ready to use. Various curriculum updates, it turns out, still do not reduce complaints about legal education products that are 'not ready to use' still echoing. Even with a pragmatic approach, new complaints arise, including that graduates do not have an adequate basis for legal reasoning, and low theoretical mastery as a basis for rational and systematic thinking (Winardi, 2019).

The Role of Legal Education in the Profession of Legislative Drafting, namely the Development of Analytical and Synthesis Skills Regulatory drafters not only need the ability to compose texts, but also the ability to analyze complex legal issues and synthesize legal solutions that can be applied in regulations. Through this course, students are trained to identify legal problems that need to be regulated and formulate solutions in the form of clear and applicable regulations. Understanding the Process of Forming Legislation In addition to technical skills in drafting, students are also taught about the broader legislative process, including how draft regulations are drafted, discussed, approved, and applied in the legal system. This understanding is very important for regulatory drafters to know the impact of the regulations they draft, both legally, socially, and economically. Improving the Quality of Legislation Through good education in the field of legislative drafting, graduates are expected to be able to draft higher quality legislation. Regulations that are clear, on target, and can be applied well in the field will reduce the potential for legal problems in the future and increase the effectiveness of policy implementation. Overall, higher legal education through the Legislative Drafting course plays an important role in preparing prospective professionals who are able to draft regulations that are effective, applicable, and in accordance with applicable legal principles.

#### 4. CONCLUSION

Higher legal education has a strategic role in building the professional capacity of legislative drafters through teaching the Legislative Drafting course. This course provides the theoretical foundation and practical skills needed for law students to understand the basic principles, drafting techniques, and legal aspects of drafting regulations. Through an interdisciplinary approach, this course helps students master the process of drafting quality, effective regulations in accordance with the hierarchy of laws and regulations. In this way, law graduates can contribute significantly to improving the national legal system, either as drafters of laws, legal consultants, or experts in legislative and executive institutions.

## REFERENCES

- Arief, H. (2020). Urgensi pendidikan tinggi hukum dalam memenuhi tuntutan kemajuan teknologi informasi dan komunikasi.
- Black, H. C. (1978). *Black's law dictionary*. West Publishing Co.
- Budoyo, S. (2018). Peranan perguruan tinggi dalam mengatasi problematika hukum di Indonesia. *Jurnal Meta-Yuridis*, 1(1).
- Cahyono, S. (2001). Peran serta perguruan tinggi (pendidikan hukum) dalam mewujudkan agenda pembinaan hukum khususnya di bidang perundang-undangan. *Perspektif*, 9(4).
- Efendi, J., & Ibrahim, J. (2018). *Metode penelitian hukum: Normatif dan empiris*.
- Handayani, I. G. A. K. R. (2015). Formulasi legislative drafting yang ideal dalam rangka mewujudkan negara hukum yang demokratis dan menjunjung nilai-nilai lingkungan. *Jurnal Hukum Ius Quia Iustum*, 22(3), 373–393.
- Handoyo, H. C. (2011). *Prinsip-prinsip legislative drafting*. Danendra.
- Hidayat, N. A. (2017). Implementasi legislative drafting dalam proses penyusunan peraturan daerah kabupaten/kota (Studi pada Sekretariat Dewan Perwakilan Rakyat Daerah (DPRD) Kabupaten Bungo). *Jurnal Serambi Hukum*, 11(1).
- Juwana, H. (2003). Memikirkan kembali sistem pendidikan hukum di Indonesia. *Jurnal Jentera*.
- Marzuki, M. (2017). *Penelitian hukum: Edisi revisi*. Prenada Media.
- Mertokusumo, S. (2015). *Teori hukum* (Cet. 15). Atmajaya.
- Miles, B. M., Huberman, A. M., & Saldana, J. (2014). *Qualitative data analysis: A methods sourcebook*. Sage Publication Inc.
- Nasution, B. J. (2008). *Metode penelitian ilmu hukum*. Mandar Maju.
- Nutting, C. (1955). Legislative drafting: A review. *American Bar Association Journal*.
- Rahardjo, S. (2007). *Mendudukkan UUD, suatu pembahasan dari optik ilmu hukum umum*. Undip Press.
- Rosana, A. S., Dewi, M. D. P., & Baiquni, M. I. (2021). Strategi perguruan tinggi hukum dalam menghadapi era disrupsi teknologi sebagai upaya membentuk para penegak hukum yang berintegritas dan berkarakter Pancasila. *Seminar Nasional Hukum Universitas Negeri Semarang*, 7(2), 509–522. <https://doi.org/10.15294/snhunnes.v7i2.731>
- Scharffs, B. G. (2001). Law as craft. *Vanderbilt Law Review*, 45, 2339.
- Scumacher, E. F. (2001). In Sedarmayanti, *Sumber daya manusia dan produktivitas kerja*. Mandar Maju.
- Sedarmayanti, M., & Pd, M. (2001). *Sumber daya manusia dan produktivitas kerja*. Mandar Maju.
- Sugianto, B. (2022). *Legislative drafting menurut UU No.12 Tahun 2011*. Sekolah Tinggi Ilmu Hukum Sumpah Pemuda Palembang.
- Wehmeir, S. (2010). *Oxford advanced learner's dictionary international student edition*. Oxford University Press.
- Wilkins, D. (1992). Who should regulate lawyers? *Harvard Law Review*, 105, 801–87.
- Winardi. (2019). Penegakan hukum & pendidikan tinggi hukum: Urgensi rekonstruksi kurikulum. *Jurnal Sila Negara*, 1(1).