



The Drafting of Legal Contracts as an Instrument of Legal Certainty and Protection

Agung Abdul Rahman Wiyono^{1*}, Lovika Augusta Purwaningtyas²

¹ Faculty of Law, Universitas Panca Marga, Indonesia

² Faculty of Law, Universitas Abdurachman Saleh Situbondo, Indonesia

*Correspondence: agung.abdulrahman@upm.ac.id

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ABSTRACT

Contracts are legal instruments that play an important role in creating legal certainty and protection for parties in civil and business relationships. Problems that often arise in practice are unclear clause formulations, imbalance in bargaining positions, and a lack of understanding of the principles of contract law, which have the potential to cause disputes. This study aims to analyze the drafting of legal contracts as instruments of legal certainty and protection. The method used is normative legal research with a legislative and conceptual approach, through a literature study of primary, secondary, and tertiary legal materials. The results of the study show that contract design that meets the requirements of a valid agreement as stipulated in the Civil Code and is based on the principles of freedom of contract, consensualism, good faith, and balance is capable of providing legal certainty and legal protection in a preventive and repressive manner. Thus, contracts that are designed systematically, clearly, and proportionally not only function as evidence but also as strategic instruments in creating fair, stable, and certain legal relationships.

Keywords: Contract Design, Legal Certainty, Legal Protection, Contract Law

1. Introduction

A contract is a legal instrument that plays a crucial role in regulating the legal relationship between two or more parties. In social and economic practice, contracts serve as the primary foundation for ensuring legal certainty and protecting the rights and obligations of the parties involved. However, many contracts are still drafted without fully considering legal principles, thereby potentially leading to legal uncertainty and disputes in the future. The drafting of a sound legal contract must adhere to the principles of contract law as stipulated in the Civil Code, including the principle of freedom of contract, the principle of consensualism, the principle of good faith, and the principle of legal certainty (Ramadhan; & Perdana, 2026). A contract that is drafted clearly, systematically, and in a balanced manner can serve as a legal protection tool for the parties, both during the implementation phase and in dispute resolution. Common issues that arise in contract practice include unclear clause wording, an imbalance in the parties' positions, and a lack of legal protection for the weaker party.

The drafting of legal contracts is a crucial aspect of both business and civil law practice, as it serves as the foundation for regulating legal relationships between parties. A contract is not merely an administrative document; rather, it is a legally binding instrument that carries legal consequences in the event of a breach. In this context, provisions in the Civil Code affirm that a validly entered into agreement serves as law for the parties who entered into it. This principle demonstrates that contracts hold a strategic position in creating legal certainty. As an instrument of legal certainty, contract drafting must be conducted carefully, systematically, and in accordance with applicable laws and regulations (Rafi; et al., 2024). Every clause formulated must take into account the elements of a valid agreement, such as the existence of mutual consent, the legal capacity of the parties, a specific subject matter, and a lawful cause. If these four elements are met, the contract possesses legally binding force and can serve as the basis for protection in the event of a dispute. Thus, a contract acts as a preventive tool to minimize the risk of future disputes. In addition to providing certainty, a contract also serves

as a means of legal protection. Through the clear formulation of rights and obligations, a balanced allocation of risks, and structured dispute resolution mechanisms, the parties obtain

Well-drafted contracts can anticipate potential breaches of contract and force majeure events, thereby preventing incalculable losses. The drafting of legal contracts cannot be done haphazardly. It requires a deep understanding of the principles of contract law, clause drafting techniques, and an analysis of potential legal risks. With the right approach, a contract is not merely a formality but truly functions as an instrument that ensures legal certainty and protection for the parties in carrying out their agreed-upon legal relationship (Suwandono, 2023). Therefore, this research is important to examine the drafting of legal contracts as an instrument capable of providing legal certainty and protection for the parties, thereby preventing disputes and ensuring the fair and equitable implementation of the agreement. This research is particularly urgent given the massive shift in legal transactions from conventional forms to the digital realm (e-contracts). In practice, the widespread use of electronic contracts today is often not accompanied by an adequate technical understanding of their drafting, giving rise to several specific issues : The Phenomenon of Standardized Click-Wrap Agreements: Many digital contracts today take the form of standardized “take it or leave it” agreements.

This often disregards the principles of balance and fairness, as consumers or the weaker party have no room for negotiation, leaving them vulnerable to detrimental exculpatory clauses. Legal Vacuum in New Instruments: A legal vacuum (*rechtsvacuum*) exists regarding the validity of evidence and the protection of personal data in contracts based on smart contracts or blockchain. Without precise drafting, digital contracts risk losing their enforceability in the event of a breach in cyberspace. Jurisdictional Uncertainty: The borderless nature of digital contracts often creates uncertainty regarding which law applies in the event of a dispute. This demonstrates that traditional contract drafting methods are no longer sufficient to mitigate risks in the digital age.

2. Method Research

This study employs a normative legal research method using two main approaches: the statutory approach and the conceptual approach. The statutory approach involves examining various regulations governing agreements and contracts, particularly the provisions contained in the Civil Code and other laws and regulations related to contract law. Meanwhile, the conceptual approach is used to examine legal principles, doctrines, and theories developed in legal literature related to contract drafting (Mubin; & Iskandar;, 2025).

The legal materials used as the basis for this study consist of three types: primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations that serve as the normative foundation for contract regulation. Secondary legal materials are obtained from various sources such as legal textbooks, scholarly journal articles, and previous research relevant to the topic of legal contract drafting. Tertiary legal materials, meanwhile, include supporting sources such as legal dictionaries and encyclopedias that help clarify the legal terms and concepts used.

The collection of legal materials was conducted through library research, which involved searching for and cataloging various relevant written sources. Subsequently, all the collected legal materials were qualitatively analyzed using a descriptive-analytical method. This method involves systematically presenting, interpreting, and examining legal provisions and concepts, thereby providing a comprehensive understanding of contract drafting as a means to achieve legal certainty and protection (Daskarata et al., 2025).

3. Results and Discussion

3.1 Results

A. Legal Contracts as Instruments of Legal Certainty.

Legal contracts hold a very important position in the civil law system because they serve as a means of creating legal certainty in the relationship between the parties. Essentially, a contract is a concrete form of an agreement that gives rise to legal consequences; thus, its existence not only reflects the will of the parties but is also legally binding (Ariani; et al., 2025). From the perspective of Indonesian civil law, the principle that a validly entered into agreement is binding on the parties as provided in the Civil Code demonstrates that contracts

possess normative force that ensures the enforcement of rights and obligations. Legal certainty is one of the primary objectives in the formation of contracts. A well-drafted contract provides clarity regarding the rights and obligations of the parties, the scope of the agreement, as well as the mechanisms for implementation and dispute resolution. This clarity is essential to prevent differing interpretations that could lead to conflicts in the future.

In the context of contract law, legal certainty is reflected in the fulfillment of the requirements for a valid contract as stipulated in Article 1320 of the Civil Code. Drafting a contract that takes into account the elements of agreement, legal capacity, a specific subject matter, and a lawful purpose will strengthen the legal standing of the contract (Muslim, 2025). Thus, the contract can serve as strong evidence in the event of a dispute between the parties. A contract embodies the principle of freedom of contract as stipulated in the Civil Code (KUH Perdata), specifically Articles 1320 and 1338. Article 1320 sets forth the requirements for the validity of a contract, namely:

1. Consent of the parties;
2. Legal capacity of the parties;
3. A specific subject matter;
4. A lawful cause.

Although Article 1320 of the Civil Code has established four requirements for the validity of a contract (consent, capacity, a specific subject matter, and a lawful cause), in the implementation of modern business law, the requirements of “Lawful Cause” and “Capacity” often become weak points that trigger contract rescission.

1. Lawful Cause as a “Rubber Clause” in Contract Voidability

A lawful cause does not merely mean that it does not violate criminal law, but also that it must not conflict with public order and morality.

Analysis: In the business world, this loophole is often exploited by parties acting in bad faith to unilaterally void a contract on the grounds that its terms violate “public order” or newly emerging sectoral regulations (such as new OJK or BI rules).

Risk: If a contract is deemed to have an unlawful cause, it is null and void from the outset. This eliminates all legal protection for the party that has fulfilled its obligations (performance), as the agreement is legally deemed to have never existed.

2. Digital Signatures and the Challenge of the “Capacity” Requirement

In digital contracts, verifying the requirement of legal capacity poses significant risks.

Analysis: How does the system ensure that the party clicking the “I Agree” button is a legally competent entity under the law? The use of fake identities or unauthorized access to accounts by minors or unauthorized parties can create a loophole for one party to later seek contract cancellation.

3. Unclear Subject Matter (A Specific Thing)

In complex business contracts, such as technology Service Level Agreements (SLAs) or derivative contracts, the subject matter of the agreement is often not defined with great specificity.

Risk: This lack of clarity regarding the subject matter may result in the contract being voided, ultimately causing the legal instrument to fail in its role as a protective tool. The aggrieved party may be unable to seek damages because the court might deem the subject matter of the agreement “indeterminable.”

Meanwhile, Article 1338 affirms that all agreements made validly are binding as law upon the parties who made them. Thus, a properly drafted contract provides legal certainty because:

1. It clearly defines the rights and obligations of the parties;
2. It sets limits on liability;
3. It establishes dispute resolution mechanisms;
4. It reduces ambiguity in the implementation of the agreement.

Without systematic drafting, a contract risks creating legal loopholes that could disadvantage one of the parties.

B. Contract Drafting as a Form of Legal Protection

Contract drafting is, in essence, a form of legal protection that serves both preventive and protective purposes for the parties involved in a legal relationship. A contract serves not only as written evidence of an agreement but also as a mechanism to safeguard the legal interests of each party. When a contract is carefully drafted and meets the legal requirements for a valid agreement as stipulated in the Civil Code, it acquires

binding force that can serve as the basis for enforcing rights in the event of a breach (Martinelli et al., 2023). The drafting of legal contracts aims not only to create legal certainty but also to serve as a means of legal protection for the parties. Legal protection is realized through the drafting of balanced clauses that do not disadvantage either party and reflect the principles of justice and good faith.

Key clauses such as those regarding rights and obligations, breach of contract, force majeure, and dispute resolution must be drafted clearly and proportionately. These clauses provide the parties with legal protection in the event that one party fails to fulfill its obligations under the agreement. Some common challenges in contract drafting include:

1. An imbalance in the parties' bargaining positions;
2. Limited legal understanding;
3. The use of onerous standard clauses;
4. Failure to adapt the contract to regulatory changes.

Therefore, contract drafting ideally involves a comprehensive legal analysis and takes into account the social and economic aspects of the parties. Contract drafting is not merely an administrative formality but a strategic instrument for creating legal certainty and protection (Khairia et al., 2025). A professionally drafted contract can:

1. Ensure the stability of legal relationships;
2. Reduce the risk of disputes;
3. Provide investment certainty;
4. Support a healthy business climate.

Conversely, a contract that is not carefully drafted can lead to injustice and increase the potential for legal conflicts.

C. Legal Principles in Contract Drafting

The drafting of legal contracts must be based on the fundamental principles of contract law. The principle of freedom of contract allows the parties to determine the content of the contract in accordance with their interests; however, this freedom is limited by law, morality, and public order. The principle of good faith requires the parties to perform the contract honestly and responsibly (Bachsin; et al., 2025). The application of these principles in contract drafting will result in a contract that is not only legally valid but also fair and provides optimal legal protection. Thus, a contract can function as an effective legal instrument in regulating legal relationships and preventing disputes. Contract drafting must take into account several legal principles, including:

1. The Principle of Consensualism
A contract comes into existence upon the reaching of an agreement. Therefore, the negotiation process must be transparent and free from coercion, mistake, or fraud.
2. The Principle of Contractual Freedom
The parties are free to determine the content of the contract as long as it does not conflict with the law, public order, and morality.
3. The Principle of Good Faith
Contracts must be performed in good faith, both during the negotiation phase and during performance.
4. The Principle of Certainty and Balance
Contracts must not be one-sided. Unbalanced clauses may be voidable for violating the principle of fairness.

D. Contracts as a Means of Legal Protection

A contract is essentially a legal instrument designed to provide protection for the parties involved in a legal relationship. Its purpose is not only to serve as written evidence of an agreement but also as a normative instrument that details the rights, obligations, and responsibilities of each party. In Indonesia's civil law system, the binding force of contracts is affirmed in the Civil Code, which states that a validly entered into agreement is binding on the parties as law. This provision underscores that contracts play a central role in providing tangible legal protection. As a means of preventive legal protection, contracts are designed to anticipate potential risks and disputes that may arise in the future (Setiawan & Markoni, 2024). This protection is realized through the formulation of clauses that are clear, systematic, and unambiguous. Provisions regarding the scope of work, duration, payment procedures, risk allocation, and dispute resolution mechanisms are concrete manifestations of these protective measures. With this clarity, the parties have a definitive guideline for fulfilling their obligations, thereby minimizing the likelihood of breaches.

Contracts also serve as a means of legal protection of a punitive nature. In the event of a breach of contract or a violation of the terms of the agreement, the aggrieved party has a strong legal basis to demand performance or compensation for damages. Clauses regarding penalties, fines, termination of the agreement, and force majeure provide certainty regarding the legal consequences of any breach. Thus, a contract ensures that the parties' rights are not left in a vulnerable position in the event of a dispute. Legal protection through contracts is also closely tied to the application of the principles of good faith and balance (Najmifaza et al., 2025). The principle of good faith requires that contracts be performed honestly and reasonably, while the principle of balance ensures that no provision disproportionately disadvantages one party. A contract containing one-sided clauses without considering the balance of interests has the potential to cause injustice and reduce the effectiveness of legal protection itself. Contracts provide legal protection in two forms:

a. Preventive Protection

By including clear clauses, contracts help prevent disputes from arising.

b. Remedial Protection

In the event of a breach of contract, the contract serves as the legal basis for seeking damages or specific performance through the courts. In business practice, particularly in the agribusiness sector or business partnerships, contracts play a crucial role in regulating risk allocation, payment systems, product quality, and distribution mechanisms. Without a clear contract, business relationships are prone to conflict and uncertainty.

3.2 Discussion

Legal certainty requires that a contract meet the requirements for a valid agreement, namely: mutual consent of the parties, legal capacity, a specific subject matter, and a lawful cause. The fulfillment of these elements ensures that the contract is not only formally valid but also possesses substantive legitimacy. By meeting these requirements, the parties are assured that the terms of the contract can be legally enforced in the event of a breach. Legal certainty in a contract is reflected in the clarity of the clauses governing rights, obligations, implementation mechanisms, risk allocation, and penalties for breach of contract. Clauses that are systematically drafted and unambiguous will reduce the potential for differences in interpretation in the future. Therefore, contract drafting techniques are a crucial aspect, as imprecise wording can lead to uncertainty and even disputes (Azmi et al., 2025).

Contracts also serve as a tool for predictability in legal relationships. This means that the parties can anticipate the legal consequences of their actions based on the terms of the agreed-upon agreement. With certainty regarding payment procedures, timeframes, dispute resolution, and force majeure conditions, the parties can plan their activities more safely and with greater predictability. This demonstrates that contracts not only govern current legal relationships but also provide stability for future legal relationships. Furthermore, the legal certainty generated by contracts contributes to the creation of a healthy business climate and social relationships. In a business context, certainty regarding contract enforcement enhances trust among business actors. When contracts can be enforced and protected by law, the risk of loss due to unclear rules is reduced. Thus, contracts serve as the foundation for the creation of professional and integrity-driven legal relationships. Conceptually, a legal contract is not merely an administrative document but a binding normative instrument that provides clear direction for the parties' conduct. Through careful drafting, grounded in the principles of freedom of contract, good faith, and balance, a contract can serve as an effective tool in ensuring legal certainty. Therefore, the quality of contract drafting is crucial in determining the extent to which legal certainty is achieved.

Contracts are drafted to anticipate various potential risks that may arise during the performance of the agreement as a form of preventive legal protection. This protection is achieved through the formulation of clear clauses regarding the scope of work, duration, payment procedures, allocation of responsibilities, and dispute resolution mechanisms. With detailed and unambiguous provisions, the potential for conflict can be minimized because the parties have clear guidelines for fulfilling their obligations (Najwan et al., 2025). A contract also serves as a repressive legal protection instrument. This means that if one party breaches the contract or fails to fulfill its obligations as agreed, the aggrieved party has a strong legal basis to seek damages or specific performance.

Dispute resolution clauses serve as the "anchor" for the contract's enforcement function. If these clauses are drafted ambiguously (for example, failing to clearly specify the forum or procedures), the aggrieved party's right to seek damages or specific performance will be hindered by convoluted legal bureaucratic processes.

Why Do Modern Businesses Prefer Arbitration?

There are several fundamental reasons why, in business contracts (especially medium-to-large-scale and international ones), arbitration is considered more effective than state courts:

1. Confidentiality:
Unlike court proceedings, which are open to the public, the arbitration process is confidential. In the business world, maintaining reputation is crucial. Companies tend to avoid public disclosure of contract failures or internal disputes to prevent negative impacts on stock value or investor confidence.
2. Expertise of the Arbitrators:
Judges in court are often generalists who handle various types of cases (criminal, general civil, family). In contrast, in arbitration, the parties can select arbitrators with specific expertise in the subject matter of the dispute, such as construction experts, financial technology experts, or energy law experts. This ensures a more technically sound and commercially accurate decision.
3. Final and Binding:
Arbitration awards are final at the first and last instance. There is no mechanism for appeal or cassation, as in the court system. This provides faster legal certainty and prevents disputes from dragging on for years, which can drain a company's resources.
4. Neutrality and Ease of International Enforcement:
In cross-border contracts, arbitration avoids concerns about a "home court advantage" for one party. Furthermore, thanks to the 1958 New York Convention, international arbitration awards are far easier to enforce in other countries than foreign court judgments.

Clauses regarding penalties, fines, contract termination, and force majeure are crucial in providing certainty regarding the legal consequences of a breach. Thus, the contract ensures that the parties' rights are not left in a vulnerable position.

Legal protection through contract drafting is also closely linked to the application of the principles of contract law, such as the principle of freedom of contract, good faith, and balance. The principle of freedom of contract allows the parties to determine the terms of the agreement according to their needs, provided they do not conflict with the law, public order, and morality. Meanwhile, the principle of good faith requires that contracts be performed honestly and reasonably. The principle of balance ensures that there are no clauses that disproportionately disadvantage one party. The application of these principles serves as a crucial foundation for contracts to truly function as a fair protective tool. Professional contract drafting reflects an effort to harmonize the parties' interests in a balanced manner. Contracts drafted unilaterally or containing onerous clauses may lead to injustice and are potentially voidable. Therefore, meticulous care is required in formulating each clause to ensure that rights and obligations are regulated in a balanced, transparent, and accountable manner. Thus, contract drafting is not merely an administrative formality but a strategic process in building comprehensive legal protection. A contract formulated systematically, clearly, and in accordance with legal provisions will be able to maintain the stability of legal relationships, protect the interests of the parties, and provide certainty in resolution should a dispute arise.

The legal principles underlying contract drafting serve as the fundamental basis for determining the validity of an agreement and provide guidance for drafting contract terms that are fair and provide legal certainty. In Indonesian civil law, these principles are not merely theoretical but have practical implications for the binding force of a contract, as affirmed in the Civil Code. Therefore, a comprehensive understanding of the legal principles of contracts is a key requirement for drafting effective and functional contracts (Octavian, 2024). One of the main principles is the principle of freedom of contract. This principle grants the parties the freedom to determine whether they will enter into an agreement, with whom the agreement is made, and what its content and form will be. This freedom allows contracts to be tailored to the needs and interests of the parties. However, this freedom is not unlimited. The content of a contract must not conflict with laws and regulations, public order, or public morality. Thus, the principle of freedom of contract must be understood as a responsible freedom that remains within the bounds of the law.

The fundamental principle of consensualism holds that a contract is essentially formed upon the parties' reaching an agreement. This agreement forms the core of the legal relationship established. In contract drafting, this principle requires that the parties' intentions be clearly expressed and free from any element of coercion, mistake, or fraud. If an agreement is validly reached, the contract is binding and enforceable by law. The principle of good faith requires the parties to act honestly, reasonably, and with mutual respect during both the formation and performance of the contract. This principle serves as both an ethical and legal standard for evaluating the parties' conduct. In practice, good faith is reflected in the transparency of information, the absence of abuse of

circumstances, and a willingness to fulfill the terms of the contract in a proportionate manner. This principle also serves as the basis for judges in interpreting ambiguous clauses.

The principle of balance also plays a crucial role in contract drafting. A well-drafted contract must allocate rights and obligations proportionally so as not to place either party at an unfair disadvantage. This balance is particularly relevant in legal relationships involving unequal bargaining power. If a contract contains clauses that are overly burdensome for one party, this can lead to injustice and potentially result in disputes. In addition to these principles, there is also the principle of legal certainty, which requires that contracts be formulated clearly, unambiguously, and without room for multiple interpretations. Systematic and detailed drafting of clauses facilitates the implementation of the agreement and reduces the potential for differing interpretations. This legal certainty is crucial to ensure that rights and obligations can be enforced in the event of a breach. Overall, the legal principles in contract drafting serve as a normative framework ensuring that contracts are not only formally valid but also fair and effectively enforceable. By adhering to the principles of freedom of contract, consensualism, good faith, balance, and legal certainty, contracts can serve as instruments capable of protecting the interests of the parties while creating stable and equitable legal relationships.

The drafting of legal contracts plays a central role as an instrument of legal certainty and protection. By meeting the requirements for a valid agreement and properly applying the principles of contract law, a contract can provide both preventive and remedial protection for the parties. Therefore, contracts must be drafted in a systematic, clear, and balanced manner so that they truly function as a tool for legal certainty in civil and business relationships. A professionally drafted contract fosters stability in legal relationships. With certainty regarding implementation procedures and dispute resolution mechanisms, the parties can conduct their activities with a sense of security and trust. This not only protects individual interests but also supports the creation of a healthy business climate and social relationships (Ayuningsih et al., 2025). Overall, a contract is not merely an administrative formality but a legal instrument that plays a strategic role in protecting the rights and interests of the parties. Through careful, clear drafting in accordance with legal provisions, a contract can serve as an effective means of legal protection, both in preventing disputes and in resolving conflicts that may arise.

4. Conclusion

The drafting of legal contracts plays a crucial role as a strategic tool in ensuring legal certainty and protection for the parties involved. A contract formulated in compliance with the legal requirements for agreements as stipulated in the Civil Code, and grounded in the principles of freedom of contract, good faith, and balance, will be able to provide clarity regarding the rights, obligations, and responsibilities of each party in a clear and measurable manner. Through the drafting of structured and comprehensive clauses, a contract serves as a form of preventive legal protection to minimize the potential for disputes. On the other hand, a contract also functions as a repressive enforcement instrument in cases of breach of contract or violation of the agreement. Thus, a contract is not merely viewed as an administrative document, but as an essential legal tool in establishing fair, stable, and certain legal relationships. Therefore, the contract drafting process must be conducted carefully and professionally, taking into account legal aspects and the interests of the parties in a balanced manner, so that it can truly function effectively as an instrument of legal certainty and protection.

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