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Plain English in Writing Legal Correspondence

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Plain English in Legal Correspondence

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A. Importance of Legal Correspondence

Legal correspondence can be done at any time and from any location, whether offline or online, using diverse media like as postal services, couriers, excursions, and internet media such as e-mail. Correspondence via online media is a common means of communication in current digitalization era. Correspondence is an essential element of the daily lives of law school graduates in their professional activities, especially since the pandemic situation.

Legal communication skill indicates a law scholar's capacity to express knowledge and the outcomes of their thinking in an organized and clear manner, in addition to being a major part of everyday work. Law scholar needs to enhance their communication skill

Legal correspondence can also be used as evidence in a judicial process.¹ Letters are recognized as valid evidence in both criminal and civil procedural law,² as is well known. Furthermore, with the passage of the Electronic Information and Transactions Law, electronic letters or correspondence are now admissible as legal evidence.³ It is expected that the explanation above will assist in determining the outline of legal correspondence and its usefulness to the legal profession.

B. Common Mistakes in Legal Correspondence

Recognizing the importance of legal correspondence also means that vocabulary, wording and grammar are important when writing emails or letters to partners or clients. This may seem obvious, yet written communication can lead to many misconceptions. Thus, using proper language is a precautionary measure to keep these things from happening.

¹ Baker J, "Legal Process as Reported in Correspondence" in Matthew Dyson and David Ibbetson (eds), *Law and Legal Process: Substantive Law and Procedure in English Legal History* (Cambridge University Press 2013)

² Article 184 (1) of the Indonesia Criminal Procedure Code

³ Article 5 (1) of Electronic Information and Transactions Law



a. Using the word “problem” and request a solution

To Mr. Moris

I have reviewed the contract between PT X and PT Y, but I saw a problem in Article 6 of the Contract, where PT Y does not contain a paragraph regarding its obligation to make payments to PT X within a particular amount of time, which can be damaging to PT X. According to Mr. Moris, what should we do now?

Regards,
Amel

There are two reasons why submitting letters to client such as the one above, is not justified. The first approach is to use the phrase problem and request a solution. You could take the example correspondence from the example below for a more exact example of correspondence, as follows:

To Mr. Moris

We have reviewed the contract between PT X and PT Y. We note that there is no obligation for PT Y to make payments to PT X for the purchase of goods made by PT Y from PT X. If it is possible, we advise to amend the contract to include payment obligation as mentioned earlier, among other things.

Regards,
Amel

In the second example, a solution was provided in the correspondence, namely by using the word challenge instead of a problem and providing a solution to the problem. Furthermore, if we do not know the solution to a problem, we can advise our client that we will conduct



research first, and then, after conducting research, we can discuss with the client directly or via email in a more informal way.

b. Informing Client Who Does Not Understand the Law

Explaining legal issues is not something that a layperson might easily understand. As a result, we must clarify these legal phrases clearly so that they can be understood. Use of a plain English in legal correspondence is growing in this modern era – as opposed to the earlier era where legal scholars tend to use legalese terms. These are the Examples of sending correspondence to clients who understand the law and clients who do not understand the law are provided below :

Example 1

(Understanding the Law)

"The prenuptial agreement made by A and B must be made in the form of a notarial deed."

Example 2

(Does Not Understand the Law)

"The prenuptial agreement made by A and B must be signed before a notary."

The two examples above show that the first uses legal terms, namely notarial deed, whereas the second does not use legal language so that clients who do not understand the law can easily understand it.

C. Legal Correspondence Types

There are several types of legal correspondence, but the following are the most common:

1. Correspondence with the client to convey information or a client letter

- Providing information to customers
- Informative correspondence (good, neutral, or bad news)



- Confirmation Letter (explanation of information requested by the Client from relevant agencies such as courts, ministries, and others)

2. Correspondence to the Counterparty on Behalf of the Client

- Remind the parties involved not to ignore their obligations or responsibilities.
- Obtaining responsibilities
- Avoid legal dispute

Another type of correspondence is a legal opinion or legal memorandum, but the format will not be explained in this material because a law firm's correspondence with a client can contain information that can be conveyed in the form of a legal memorandum, for example, if the client asks about the legal basis, the law firm can respond with a legal opinion or legal memorandum in accordance with applicable laws and regulations. The format used in correspondence can vary depending on the type of correspondence, but in general, the structure is opening, contents and summary.

D. Criteria of Effective Legal Correspondence

It is essential to understand the substance of legal correspondence after learning about the structure. There are three important criteria in the submission of correspondence when it comes to the method of delivery:

i. Professional

To make it look professional, consider using the company's official letterhead or the company's official email domain and company signature, as well as sending letters or emails correctly by ensuring grammatical compatibility. Grammarly is one example of a platform for checking grammar. It is also necessary to be careful when writing and sending emails so that there are no errors that cause confusion, particularly when attaching documents. Try to send correspondence as soon as possible and on time. Always send in accordance with the Client's deadline.



ii. Ethical

When writing legal correspondence, it is expected to use polite language; the level of formality can be adjusted depending on the recipient. Always begin correspondence with a formal greeting. Make certain of greeting sentences such as Sir, Madam, Ms and Mr, which are appropriate. Furthermore, avoid sending correspondence to unauthorized parties, and avoid decrease or increasing the contents of correspondence without the consent of the parties involved. The final simple tip is to always send legal correspondence during the recipient's working hours.

iii. Safe

Always use precaution when opening an attached document to ensure that e-mail correspondence remains secure. If any possible, ensure that the attachment does not include any viruses or malware. Avoid responding to spam emails from company domains. Besides of distribution, the criteria for effective correspondence must also be considered in terms of substance. The following are the requirements for an effective correspondence substance:

- **Informative and Accurate**

Check that the information you've submitted is accurate and up to date. We can also include references to information sources to support the validity of the material given, allowing the recipient to cross-check the documents that have been received.

- **Concise and Clear**

State the purpose of your correspondence at the beginning of the letter or email, then elaborate on the contents of the correspondence, unless the information conveyed is bad news. In order for correspondence to be concise and clear, you must understand the purpose of the correspondence and the parties who will receive and read the correspondence. It is important for us to position ourselves as readers. To avoid succinctness, avoid using long paragraphs. Use numbering, bold, underline and bulleting features to help make correspondence more



concise and clear. Use effective grammar. In the context of writing in English, the term for the grammar is known as plain English.

E. Plain English in Legal Correspondence

In the age of globalization, English is a language that is frequently used to communicate. As a result, it is necessary that we understand the many concepts of writing in plain English. Plain English is a language designed to be straightforward and concise, and effective legal writing is written in plain English. We need to understand the following principles in plain English: ⁴

- **Omit the Surplus Words**

In an English sentence, there are two types of words, namely working words or words that give meaning in a sentence, and glue words or words that assemble a collection of working words into good words. The underlined words in the example sentences below are examples of working words, while those that are not underlined are glue words [BSH: yang mana yang underline?]:

"When entering into an agreement regarding the settlement of a claim made by client, a lawyer must not offer or agree to a provision that imposes a restriction of the right of the lawyer to practice law, including the right to undertake representation of or take particular actions on behalf of other clients or potential clients with similar or different claims."

By knowing the working words, the sentence above can be changed into the following sentences:

"In settling a client's claim, a lawyer must not offer or make an agreement that restricts the lawyer's right to practice law, including the right to represent or act for other persons."

⁴ Cheryl M Stephens. Plain Language Legal Writing : Part III – Mastering Modern Legal Correspondence. The Canada Bar Association : 2014. <https://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Plain-Language-Legal-Writing-Part-III-%E2%80%93-Mastering>. Accessed 20 February 2022.



We can see from this example that we can convey a meaning more effectively with a few words. There are various derived rules connected to the principle of "omit the surplus words," the first of which is to avoid compound constructions or constructs that use 3-4 words and can be simplified in 1-2 words. The table below is a differences between compound construction and simple construction.

Compound Construction	Simple Construction
By means	By
For the purpose	To
With reference to	Concerning
In the event that	If
At that point in time	Then
In relation to	Regarding
For the reason that	Due to

The second derived principle is focus on the actor, it is important to know who is doing what to whom in the sentence. Examples are as follows:

*“It is possible for the **judge** to **call** the **witness**”*

The subject in this sentence is court, the action is modify and the object is judgment, by knowing these three elements, the sentence above can be changed to be more concise as follows:

“The judge can call the witness”

- **Use Short Sentences**

Because large phrases can be confusing, removing unnecessary words results in a more concise sentence that is clearer. Use one main idea with no more than 25 words each sentence while writing brief sentences. However, this does not imply that every phrase formed just uses short



sentences; in order to be fascinating, there must be a variety of short, medium, and lengthy sentences.

- **Choose Active Voice than Passive Voice**

The active voice is shorter than the passive voice, as seen by the following example:

Active : 8 words

The House of Representatives made the energy law

Passive : 10 words

The energy law was made by the House of Representative



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