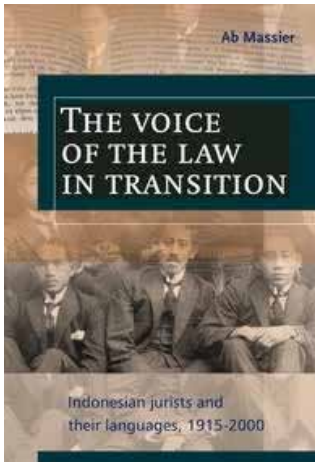


## BOOK REVIEW

### THE VOICE OF THE LAW IN TRANSITION



There is no doubt that law is tightly related to language. We can see how language works in law since it comes from the idea of being enacted and enforced. This is why language has a significant role in legal process. This article will review a book written by Ab Massier which assumes at least three linguistic aspects of law: practicing law is acting by means of language as a lingual activity, which is based on texts and results in texts.

The main issue in this book is based on the problems of Indonesian language of the law which replaced the Dutch language. Massier criticizes the instrumental approach to language and the impact of Dutch in Indonesian law language. His analysis refers to James Boyd White's statement about the translation of authoritative texts as the primary feature to define law itself. It is the perspective of practicing law as a lingual activity that consists of communicating, speaking,

and writing. Almost all legal processes produce texts, and therefore the text means the authority of the law.

To strengthen his argument, Massier cites Gierke's famous notion that language is not the law but it is its very body. This principle is important to all jurists to understand. Unfortunately, this language issue did not get any attention from jurists. They focus merely on avoidance of ambiguity and on 'precise formulation' of legal texts and assume that language has specific meaning and reflects single interpretation. However, it is a fantasy to uphold ideal texts with a single meaning.<sup>1</sup>

Massier underlines the situation where the non-player in a legal process should refrain and accept its implication and result of the law. He uses a theory from Mikhail Bakhtin, the Russian thinker and theoretician of literature that describes language as a sign of plurality. In chapter I and chapter II of the book, Massier analyzes Bakhtin's theory of genre as an important theme to investigate the legal language of Indonesia.

This book starts by examining the language of law in Indonesia from the Dutch colonial era. Massier has pointed out the enactment of the Indonesian Criminal Code (KUHP) in 1915 which was adapted from the Dutch Criminal Code (Wetboek van Strafrecht) as a critical phase in the development of law in Indonesia. A number of Indonesian legal scholars, such as Sudarto, conclude that the Dutch Language, which used in the official text of the Indonesian Criminal Code (WvS), is practically unsuitable with the Indonesian language.<sup>2</sup> Similar to Sudarto, R. Iwa Kusuma considers the

<sup>1</sup> Ab Massier, *The Voice of The Law in Transition* (Leiden: KITLV Press, 2008), p. 43.

<sup>2</sup> Yesmil Anwar and Adang, *Pembaruan Hukum Pidana* (Jakarta: Gramedia Widiasarana Indonesia, 2008), p.18.

colonial origins of the Criminal Code, which contains many unsuitable elements with the situation nowadays.<sup>3</sup>

Although a number of legislative products have used Indonesian language, the influence of Dutch language in legal texts as well as in law schools is still significant. To illustrate, some legal scholars seem more comfortable using Dutch language instead of *bahasa Indonesia* for the legal terminology. There is also disinterest among legal scholars in applying Indonesian language.

The problems of language and law have been discussed at the national level since the beginning of 1970 in which jurist scholars and linguists organized a conference on Language and Law in North Sumatra. They tried to enhance the uniformity of legal language and terminology. Nevertheless, many years later there is still very limited attempt to address questions about the process of language transition and how the law can be more accessible.<sup>4</sup>

It is hard to argue that legal texts and terminologies have significant confusion in terms of clarity. Legal texts contain too many synonym and homonym meanings, which tend to engender multi-interpretations. Hence, this problem will lead to legal uncertainties. Another problem is about the quality of its grammar, which is essential not only for uniformity but also for the quality of legal texts. Hence, it is obvious that the language that is used in most legislation processes in Indonesia, even in a basic law like the Criminal Code (KUHP), is not easy to understand by ordinary people, and thus the meaning is not clearly stated. Practitioners like Todung Mulya Lubis recognizes that the confusion of Indonesian law raises arrogance within the legal profession among public ignorance.<sup>5</sup> Yet, people can only accept the law since there is a principle in which everyone is considered to know all the law (*presumptio iures de iure*), and all nesciences cannot be pardoned (*ignorantia jurist non excusat*).<sup>6</sup>

Speaking of the application of law in Indonesia, this book also describes the dynamics of law as a game through rules and players. This 'law as a language game' concept refers to Willem J. Witteveen's explanation that the jurist's job is to create a world in which they work through their texts and lingual acts.<sup>7</sup> To explain how the game works, Massier also states his opinion about the legal community as follows:

*Just as the world of the game is evoked through rulers and prayers, so jurists, through their texts and (primarily) lingual acts, create the world in which they work. It is law's language game that spawns the legal community and maintains its cohesion, not so much because of the geographical places where the game is played, but because of the 'social location' in which it gives birth to.*<sup>8</sup>

Massier refers to Benedict Anderson's theory of an imagined community to describe a situation that creates a 'social location' and defines the community of jurists. Furthermore, language has a role and nature to create this imagined community. In Indonesia, Dutch language used to be a middle-class language during the colonial era,

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<sup>3</sup> *Ibid.*, p. 29.

<sup>4</sup> Massier, *op. cit.*, p. xxi.

<sup>5</sup> Lilis Hartini, *Bahasa & Produk Hukum* (Bandung: Refika Aditama, 2014), p. 10.

<sup>6</sup> *Ignorantia juris non excusat* means ignorance of the law is no excuse, i.e. no defence against criminal or other proceedings arising from its breach. See Elizabeth A. Martin, ed., *Oxford Dictionary of Law, 5th edition*, (Oxford: Oxford University Press, 2003), p. 240.

<sup>7</sup> Massier, *op. cit.*, p. 62.

<sup>8</sup> *Ibid.*, p.65

but language lessons for “inlanders” were never really done seriously.<sup>9</sup> This statement is probably related to the situation about how messed up Indonesian law language was after the colonial era. I also refer to the statement that the use of language by other members of one’s linguistic community is supposed to play a role in determining the meaning of one’s words and there are significant indeterminacies concerning what one’s linguistic community is.<sup>10</sup>

In general, I agree with Massier’s argument that working in law will lead us to work with language too. This is why we need to give more attention for discussions about the language of law. The weakness of this book is that there is not much discussion about the relation of language and interpretation of law. In my opinion, the problem of Indonesian legal language is not only a matter of debate about the problem of terminology. It is also about how the jurists perceive the language as an essential aspect in interpreting the law inside the book into the reality.

Title : The Voice of the Law in Transition  
Language : English  
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Author : Ab Massier  
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Reviewer : Rafiq Qurrata A’yun

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<sup>9</sup> Anderson, Benedict. *Imagined Communities; Reflections on the Origin and Spread of Nationalism*, (Yogyakarta: INSIST & Pustaka Pelajar, 2001), p. 201.

<sup>10</sup> Horowitz, Amir. “Legal Interpretation, Morality, and Semantic Fetishism,” *North American Philosophical Publications Vol. 37 No.4* (October 2000): 348, accessed 20 April 2015, URL: <http://www.jstor.org/stable/20010009>.