

Limitations of Law and Language: A Study of Legal Metaphors

By

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Language in the form of text plays a role in maintaining of meaning, in order to be in harmony with the value and purpose of the law. The text within its role is dealing with the diverse reality through interpretation. This condition is influenced by changes in text into autonomous entities which is no longer possessed by creators. The variety of language references has also been an influential aspect of the sequence of possible meanings. When the diverse reality can be in harmony with the value and purpose of the law through interpretation, it can enrich the repertoire of legal development. But behind the diversity, it should be noted the problem of law and language limitations. In the dialectics of law and language, problems of ambiguity and vagueness of meaning often arise and become a crucial factor of interpretation. This limitation, if it can not be predicted through the structure and understanding space of language, then the purpose and value of the law can be reduced or even cause social damage. Efforts to overcome the limitations can be done with the strategy of positioning the legal metaphor as an object of study. Legal metaphors are conceptual representations, instruments of purpose achievement, or role as a new meaning of a condition or entity. For example *negara hukum*, *hutan adat*, *perangkat daerah*, and various other metaphors that create new meaning in society. This paper uses a socio-legal approach with the hermeneutic method. The results of the assessment found that understanding the legal metaphor, will be able to unravel the issue of reference variations that affect the construction and interpretation of the law. On the other hand, attention to legal metaphors is also to find the gap of meaning that arises in relations of text and discourse.

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Introduction

Discourse about formality of law reflected and recognized through the language. Language have a role to express the character of norm. Character of norm viewed by Scott Shapiro as guidance of action and standar of behavior.³ In express the normativity claim, construction of language can be decisive the degree of certainty. The reason which in view of legal positivism centered for realizing the value and purpose of law. Law as the problem of prediction, explanation, and deterministic.⁴ The chance that interfere the social engineering of norm, will reduced with due regard to social facts in the legal content. Social facts as legal content should be drawn with only one principle.⁵ This is done by relying on descriptive content in legal norm. Language role in very urgent in power of description and affirmation of the understanding space. Language must be able to ensure that understanding does not deviate from the meaning agreed upon in the law.

The position and the need for the language of the law is stipulated in law, namely the text of law, forcing the language as a technical instrument. This condition even raises its own term for a special language, known as legal language. But naming as a legal language is not just a need to distinguish common language and language for the law. The legal language is so named because of its characteristics. Andrew Halpin mentioned that the character of the legal language as follows:

So, the basic characteristic of legal language found in both the crude and sophisticated forms of legal propositions is that it expresses a requirement of conduct from a person. It tells people what to do. With some degree of authority.⁶

The substance of the norm can be said to be effective when the direction of behavior is affirmed through coercion, as well as the affirmation of power relations. The legal text becomes a container reflecting the accuracy of the language in the clause and the choice of diction. In the legal texts, commonly there are the variety of special metaphors that are claimed to belong to legal studies and are able to reflect precisely directed behavior. Terms such as lawsuits, suspects, defendants, and appeals are words that represent the needs of the judicial system. The existence of various metaphors in the law is expected to reduce the diversity of

³ Scott Shapiro, *Planning Agency and the Law*, dalam Stefano Bertea, and George Pavlakos ed, *New Essay on Normativity of Law*, Hart Publishing: United Kingdom, 2011, page 25. See also Satjipto Raharjo, *Ilmu Hukum*, Pt Citra Aditya Bakti: Bandung, 2014, page 32.

⁴ Widodo Dwi Putro, *Kritik terhadap Paradigma Positivisme Hukum*, Genta Publishing: Yogyakarta, 2011, page 256.

⁵ Scott Shapiro, *Legality*, Belknap Press of Harvard University Press: United State, 2011, page 47.

⁶ Andrew Halpin, *Language, Truth and Law*, dalam Michael Freeman dan Fiona Smith, *Law and Language Current Legal Issue Volume 15*, United Kingdom: Oxford University Press, 2013, page 64.

meanings that can be present when dealing with social realities. The demand to build the language of the law, even encouraging the birth of a legal dictionary such as the Black Law Dictionary compiled by Bryan A Gardner.

The conceived meaning will always be challenged through a fluid interpretation. The reason of legal positivism as the capital of preparation and legal orientation, cannot handcuff the possibilities and opportunities born from the dynamics of society. The social authority which exists and grows according to Alexander Somek is forgotten.⁷ Its existence seems to have been lost when the state in the legal norms validates and claims social phenomena. The exercise of positivism that ignores social phenomena outside the law, is fatal to the assimilation of the rights of the vulnerable and makes the law the veil of dominant power and capital.

In the context of legal language, coercion of content explanation or legal context, precisely making the embodiment of law through language resulted in failure to understand discourse in society. Although it has been based on literal meanings derived from dictionaries, statutory provisions, or the interpretation of state institutions such as the Constitutional Court, still the desired meaning can be very fluid. Our legal language based on Law No. 12 of 2011 on the Establishment of Laws and Regulations, is forced to be very rigid by: 1) using exclusive sentences; 2) imposed grammatical structures, and 3) restricted terminology.⁸ Language Development Agency even explicitly mentions the failure of legal language in Indonesia such as: word formation, sentence composition, and writing techniques, which potentially lead to ambiguity and ambiguity become neglected.⁹ The opportunity of accommodating the variety of meanings is limited by the dominant reference. This condition may lead to disconnection of communication within the law, and neglect of casuistry. The law becomes rigid and separate from the reality of society.

Failure to build an ideal legal language to meet the understanding sphere of society and minimize ambiguity does not end inattention to syntactic or grammatical aspects. Languages in legal and linguistic relationships generally position the language only as an instrument or tool. The attention of language as an instrument reduces the discussion between text and discourse to dissect the legal context in society. This condition will not be able to unravel the positivist reason

⁷ Alexander Somek, *Stateless Law: Kelsen Conception and Its Limits*, Oxford Journal of Legal Studies, Vol. 26, No. 4, 2006, page 768

⁸ H.S Tisnanta, dkk, *Article Impact Assessment Mendorong Perda yang Memihak si Miskin*, Bandar Lampung: Indepth Publishing, 2013, page 23

⁹ <http://badanbahasa.kemdikbud.go.id/lamanbahasa/artikel/1525> Accessed on March,1, 2018

and the rigidity that binds the discourse in society. Language should serve as the object of study.¹⁰

In the idea of language as an object, the scientific consequence is to understand the relation of language and law as an interdisciplinary study. From the very beginning law and language should be understood as coherent and holistic correspondence, rather than putting law and language in a separate and dependent degree. Thus the study of law and language is not only on syntactic or grammatical aspects, but it touches on the deeper aspects of legal meaning. One of the strategies in realizing that approach is done by studying the metaphor. Deconstruction on metaphors will find the text-discourse relation and the variety of meaning references, hidden in positivist reasoning and legal language formalities. The study of legal metaphor on the practical side, as a matter of legal development through responsive legal interpretation in order to realize social justice of society.

¹⁰ Peter M Tiersma, *What is Language and Law? Does Anyone Care?*, Legal Studies Paper No. 2009-11, March 2009, Layola Law School, page 16.

Language, Law, and Doubts on Universality Understanding

In modern law, the existence of the text becomes the highest articulation and expression, which is required by law. Oral can be full of emotions, tricks, and uncertainties when expressed. The position and authority of the speaker will greatly influence the direction of behavior if the law is based on oral. In its textualization according to Tiersma, the law becomes more transparent, away from manipulation, rigid and if it wants to be changed must follow the process.¹¹ There are records in the text that can not simply be changed, according to the feelings of the heart and the interests of the text interpreter. Expectations on very large texts and their type of language expression, as if negating different understandings.

The power possessed by the text is on claims, predictions, and autonomy. The text is considered unaffected by external conditions that can disrupt the substance and expression of meaning. Discussions of values, goals, and orientations have been agreed upon when setting through text. With the validity of the truth of correspondence and coherence, a process of criticism has been completed. When the text is considered contradictory and inconsistent with the dynamics of society then the process of formal change becomes an option. Reason being used as it is in the natural sciences, the reader only describes the phenomena that occur in the text. The consequence is that all are considered to have a universal understanding of the text. In this case, the provisions of the literal meaning provision become the factor that determines the meaning of the law (legal meaning) or justifies certain results.¹² The existence of this literal meaning can be found for example in the dictionary, general terms, notes on the preparation of legal texts (academic texts) or in judicial decisions. In this understanding, only text can be used as a means of translating the meaning of the text, the text is returned and only to the text.

The text of the law can set limits and reach of meaning because it has a legitimacy that comes from the state. Systems and structures that keep the meaning up to suit the purpose of its formation. John Kertzer mentions in law and literature the agreement has been secure and does not require unanimity, as it depends on a legally recognized institution.¹³ The role of legitimate institutions (states) in various levels and shapes, resolving debates on the source of meaning interpretation.

¹¹ Peter M Tiersma, *Textualization of Precedent*, Notre Dam Law Review, Volume 82, Issue 3, 2006, page 1188.

¹² Brian Flanagan, *Revisiting the Contribution of Literal Meaning to Legal Meaning*, Oxford Journal of Legal Studies, Vol 30, No 20, 2010, page 256.

¹³ Jon Kertzer, *Literature and Law: Consensus and the Art of Disagreement*, University of Toronto Quarterly, Volume 85, No 2, spring 2016, page 3.

The challenge for the preparation of the text is not only to question the formal legitimacy. Meaning must first be recognized by the community. Objects, where meaning applies, must be identified first to be able to apply meaning.¹⁴ Meaning that does not recognize is meaning that does not apply. For example before the digital era, phrases such as electronic documents and electronic transactions have not been recognized and do not represent any meaning. The words "document" and "electronic", are already known but not as meaningful phrases. The development of the times becomes a reflection to define and use new meaning, in the development of law through its text. As for the introduction of new meanings, it can be done with the creation and introduction of shared systems. For example the phrase civil state apparatus, in lieu of the phrase civil servants. But in some degree do these two phrases really have the same meaning? In its development need adjustment to the space of understanding, the following coverage and acceptance in society.

The text in the legal view is a product of reason and purpose, consequently, the literal meaning cannot be the only foundation. The legitimacy of the state can not guarantee the meaning are truly effective, and efficient in the realization of its goals in society. The literal meaning undergoing formalization is only the initial foundation of understanding meaning. The text of the law is only a lifeless piece of paper, and it requires the existence of a human being to give it meaning. Meaning is not in the word but the meaning is in the mind, the word only becomes a stimulus to the mental process of meaning formation.¹⁵ Text cannot be fully controlled. Construction of existing meanings only anticipates and predicts the possibility of meaning. The literal meaning is not the end of the interpretation, the meaning that develops outside the text also influences the mind of the interpreter. The uniformity of meaning is thus an imaginative and liberating discourse

Formality in the text as a medium that affirms the rights of citizens in relation to the state. Law and formality are as integrated systems. Robert S Summer asserts the position of the legal system as a whole structure in degrees, which centralizes and is based on the hierarchy with the objective of legal implementation.¹⁶ The construction of the meaning of the text, therefore, does not close the opportunity to the dynamics and context of society. The structure and

¹⁴ Aude Bandini, Meaning and the Emergence of Normativity, *International Journal of Philosophical Studies*, Vol 18 No 3, 2010, page 426.

¹⁵ Lihat Steven L Winter, *Frame Semantic and The Internal Point of View*, dalam Michael Freeman dan Fiona Smith, *Law and Language Current Legal Issue Volume 15*, United Kingdom: Oxford University Press, 2013, page 117. Lihat juga Marcel Danesi, *Message Sign and Meaning: A Basic Book of Semiotics and Communication Theory*, Canadian Scholars Press Inc: Toronto, 2004, page 18.

¹⁶ Robert S Summers, *How Law is Formal and Why it Matters*, *Cornell Law Review*, Volume 82, Issue 5, July 1997, page 1199.

procedures contained in the text will always be sued. The structure will be questioned its legitimacy while the procedure will be questioned its validity. Answering and questioning processes in formalities are needed to find a precision or precision that in the pragmatic view is needed to answer the problem.

The text has autonomy when formed and frees itself to be interpreted by anyone. The authority of creator is limited to control meaning to the understanding of society. The text has a semantic autonomy upon itself because it has escaped the creator when it was formed.¹⁷ Autonomy does not mean the text is free from the influence of the diversity of meanings from the outside. The text dichotomy with the creator is interpreted as an opening opportunity to enrich the meaning of the meaning, which can support the needs and interests contextually.

The historical claim to the text can be interpreted in a limited and flexible way. Reality does not recur with claims derived from history. Assessment notes such as notes of formulas, academic texts, or historical records, do not stop a new understanding of the text. Historical claims are not meant to restore meaning as the time of meaning is structured, with all the phenomena and social phenomena present. The historical claim is precise to reinforce socio-cultural identity in interpretation. But the search of history attempts to find the basic idea of value and purpose of a text. Hans George Gadamer revealed that truth flows as truth born from different fusion horizons, but united by the tension of alienation and familiarity.¹⁸ As an example of the current interpretation of religious blasphemy in Indonesia, it develops not because of history but socio-political understanding also influences the interpretation of meaning.

Social phenomena as a continuing reference to the understanding of meaning should be understood as social capital to reinforce a responsive and holistic interpretation. The outside references are not subjective, and emotional. Reference constructs are built on the experience and social turmoil that are constantly evolving. Semantic differences in variations are not subject to subjectivity but are social based patterns.¹⁹ The construction of meaning within the text will continue related to meanings outside the text. Formality does not stop the interaction of meaning but gives a general idea of prediction and anticipation of meaning. A text which postulated as law in favor of the interests of investors, and contrary to the UUDNRI 1945 so as to negate the interests of the people. Interpretation with only by historical reference will certainly be different from the interpretation that combines history, contextual, and intention in the text.

¹⁷ Poespoprodjo, *Hermeneutika*, Pustaka Setia: Bandung, 2004, page 123.

¹⁸ F. Budi Hardiman, *Seni Memahami Hermeneutik dari Schleiermacher sampai Derrida*, Yogyakarta: Kanisius, 2015, page 200-202.

¹⁹ Marcel Danesi, *Opposition Theory and the Interconnectedness of Language, culture, and cognition*, Journal Sign Systems Studies, Volume 37, Issue 1/2, 2009, page 21.

Interpretation only with historical references, in the process will only restore the meaning of capitalism on the trajectory of history, such as notes or books that list the thinking of the founders of the nation. On the other hand, interpretations with various references will be more clear, in understanding and explain the meaning of capitalism, with a more contextual and holistic approach.

Human consciousness dissolves in reference to both the reference of the text and the social environment when it cannot be aware of the influence of the constructing mental and mind references. Reference to the knowledge that gives choice, and keeps the interpreter out of doubt. References help explain the work of communication, and communication is a crucial aspect of faith in words.²⁰ Individuals (interpreters) with a lack of awareness of reference, will be trapped on references controlled by the interests of the elite. Awareness of reference is very important to the awareness of position in reading the meaning.²¹ Awareness of the next position demands on a view that goes beyond reference and meaning relations. Deconstruction of the text has not been exact without a critical and radical strategy, dissecting each element that has the power to influence the existence and orientation of meaning.

²⁰ Allan Gibbard, *Meaning and Normativity*, United Kingdom: Oxford University Press, 2012, page 150.

²¹ the knowledge gained leads to self-awareness, that they are subjects as well as objects of knowledge. See Bruce Moghtader, *Foucault and Educational Ethic*, (Hampshire United Kingdom: Palgrave Macmillan Publisher, 2016), page 94.

Study on Metaphors: A Strategy of Responsive Interpretation

The text becomes a fragile structure when it closes itself from references to deep-rooted meanings, but opening itself to references is not enough without awareness of position. The process of finding the right position awareness must be the fundamental element or variable that builds meaning. In this section will be discussed again the problem: the position of language, interrelationship in the meaning, and strategies to build dynamic and responsive reasoning.

Language is a representation of reality, but what about the legal language does represent the law. It was mentioned that the position of language in the law is as an instrument for the realization of value and purpose. Through the form of text then thoroughly been the problem of claims, predictions, and autonomy. In fact, the projection is decimated by the variety of meanings present from various references. The reason that when traced is a manifestation of the spirit of objectivization of legal positivism. But there seems to be consistency to stay in favor of objective truths, very strong and institutionalized in the setting of language specific to the law.

Legal language is mentioned as a language that contains technical rules, with a degree that can keep the meaning intact in the community space. In the attachment of Law No. 12 of 2011 on the Establishment of Laws and Regulations, the legal language mentioned has 6 (six) characteristics: 1) straightforward and certain; 2) patterned efficiently; 3) objective; 4) raw; 5) definition or meticulous limitation, and 6) singular or plural singular words are formulated in a single form. The description of the six characteristics of legal language, as if attempted to avoid the influence of subjectivity and absurdity in manipulating meaning. Straightforward and sure as a representation of legitimacy, validity, and authority. Patterned efficiently is considered to reflect a commitment to realizing the efficiency and effectiveness of goals. In an objective characteristic, it is intended as an attempt to avoid partiality on either side. As for the standard features reflect the choice of language in accordance with the rules of good and correct language. In the defining or careful definition, it is intended to provide the status of certainty, to the range and scope of meaning. Finally on the type of word formulation, intended for the obscurity of subject and object of law.

The way of seeing law through legal language is too naïve if it is meant that all can be controlled through universality and objectivation. As part of the epistemology of legal language is placed as a valid, objective, and predictive so as to avoid the deviation of meaning. This condition is not possible because the compiled legal language can be treated differently since basically, the legal language will face a variety of meaning references. References are born from 1) differences in one's insight;²² 2) the issue of agreement on the choice of words or terms;²³ 3) the approach to the law will be done with a variety of methods of interpretation and construction;²⁴ 4) the development of science and technology.²⁵ The process of understanding meaning through language is not a process with mathematical logic. The involvement of authors and interpreters alone has been the proof of the ending of objective truth claims as the basis of the legal features of Indonesian law.

Language as a means of being realized again is only a means of transforming meaning, and can not guarantee uniformity of meaning. The attempt to establish a particular form is not completed by postulating the general features of the language. Rigid forms precisely limit the response to the dynamic social phenomena in society. In the context of comparison for Indonesia, the formulation of American legal language tends to be described as more flexible and contextual. The American Bar Association mentions at least 4 (four) provisions: organizes for reader's convenience, uses straightforward and easy-to-understand language, writes in short sentences and uses active sentences, and uses auxiliary viewers (question and

²² Fathur Rokhman, dan Surahmat, *Politik Bahasa Penguasa*, Jakarta: Gramedia, 2016, page 190.

²³ A benchmark in assessing the extent to which the position of meaning is appropriate is a form of social agreement, not an objectification process as in the natural sciences. Agreement between individual constructed references, and social references in the community. The process towards the agreement of meaning must be considered about individual references and social references produce equations. See Adrienne Lehrer, *A Theory of Meaning*, Journal Philos Studie, volume 161, issue 1, 2012, page 106.

²⁴ Richard H Fallon mentions that currently, there are 5 (five) types of legal interpretations: literal, contextual, real conceptual, intended meaning, reasonable meaning and interpreted the meaning. See Richard H Fallon, *The Meaning of Legal "Meaning" and Its Implications for Theories of Legal Interpretation*, University of Chicago Law Review, Volume 82, Issue 3, 2015, page 1244-1251. While the construction of law is classified by Widodo Dwi Putro in: 1) analogy; 2) legal refinement; and 3) argumentum a contrario. See Widodo Dwi Putro, *Kritik terhadap Paradigma Positivisme Hukum*, Genta Publishing: Yogyakarta, 2011, page 158-159. Compare with the rules of exegesis that exist on the interpretation of the Al Qur'an, which according to M Quraish Shihab there are: 1) Tahlily / Analysis; 2) Ijmaly/Global; 3) Muqarin; 4) Maudhu'i/Tematik. See M Quraish Shihab, *Kaidah Tafsir Syarat, Ketentuan dan Aturan yang Patut Anda Ketahui dalam Memahami Ayat-Ayat Al-Quran*, Tangerang: Lentera Hati, 2013, page 378-385.

²⁵ Peter M Tiersma gives an example, in the case of Wikipedia were given the freedom to not only compile information but also to edit the information contained within. See Peter M Tiersma, *Dynamic Statutes*, dalam Lawrence M Solan, Janet Ainsworth, dan Roger W Shuy, *Speaking of Language and Law*, Oxford: Oxford University Press, 2015, page 185.

answer format, tables, vertical lists, and facilitates clarity).²⁶ Attention to the language of the law, even reaching the level of ethical and practical. The reader is expected not only to find a clear and precise meaning, but readers are given comfort in reading. Convenience in question for example by not selecting words and phrases that discriminate against the condition of a particular individual or society. In the experience of the formulation of laws in Indonesia, we have used the term “penyandang cacat” for almost 10 years before being replaced as “penyandang disabilitas” based on Law No. 8 of 2016 on persons with disabilities. Finally, the formalities and customs of the Indonesian legal language feature become paradox with the aim of ease of understanding, effective and objective. Weakness in the legal language becomes a loophole for ambiguity, the subjectivity of dominant power, to the potential abandonment of citizens' rights due to its very rigid form.

The weakness that is present in the Indonesian legal language, must be overcome by changing the worldview beyond formalities. Firstly, the formal aspect is preserved but it is not necessary to follow the rigidity in the attachment of Law No. 12 the Year 2011. The Indonesian legal language is *Bahasa Indonesia*, therefore returning to the preparation of a good and correct *bahasa Indonesia* is a more appropriate choice. The language of the law does not need to be postulated as a legal language, it is enough in *Bahasa Indonesia*. In this aspect, the drafter must learn well, effective and efficient language rules by considering the syntactic, grammatical and systematic elements of the legal concept to be regulated.

Second, take into account the semantic and pragmatic aspects of language, by considering the choice of words, phrases and metaphors. Each choice of words, phrases and metaphors should take account of the implications of meaning in society. The implications are not merely expressing the will of the rule of law. But attention to choice, also in the realm of recognition of the identity and language rights in the region. The problem of Indonesian legal language, reflected by Sajipto Raharjo as follows:

So far, *Bahasa Indonesia* has only become a complement to translate modern law with all paraphernalia into *Bahasa Indonesia*. *Bahasa Indonesia* has not yet become king in the realm of law. Bahasa Indonesia is still forced to translate the conceptions of modern law, which in fact comes from the clump of European languages. *Bahasa Indonesia* has not been able to push its social and cultural character to be the capital of Indonesia's legal system development²⁷

Attention to the socio-cultural aspects, furthermore not only with respect to the recognition of the identity of the nation. An understanding of Bahasa Indonesia's

²⁶ Dapat diakses dalam <http://www.plainlanguage.gov/populartopics/regulations/aba.cfm>

²⁷ Sajipto Raharjo, *Hukum dan Bahasa*, Bahan Bacaan Mahasiswa Doktoral Ilmu Hukum UNDIP, Pleburan, Jawa Tengah, 2007, page 9.

potential for exploring socio-cultural values is also to find the accuracy of the language for the law. The accuracy of the practical needs of social engineering social behavior, and on the other hand the philosophical needs as called B Arief Sidharta that is to reflect the Philosophy of the Nation of Indonesia.²⁸

Third, looking at the preparation of language as a thematic and contextual case. Drafting of the text of law should not rely solely on scientific and objective attitude by only seeking the accuracy of universality. The text of the law has an orientation and purpose that will be different from each other, although it will always be connected as a unity of the legal system. The principle of legality, for example, in criminal law cannot be equated with what is in the administrative law. The criminal law requires an unlawful act if there is no law governing it. In the administrative law, the focus of reflecting the principle exists on the legitimacy of government action. Classification of themes and contexts can help to find a fundamental understanding of the proper preparation of language. Awareness of themes and context can unravel the problems and needs in the preparation of texts.

The construction of language and law in texts requires deconstruction to dismantle structures that impede the freedom of meaning and conceal weaknesses. Truth is not a goal to be found in deconstruction, but it is an ongoing process. Deconstruction seems to trap like a never-ending process that leads to nihilism. The deconstruction that Derrida introduces seeks to move from the establishment and the view of certainty. Certainty and reliability as the element of truth actually deceive the reality of the text. Binary opposition models such as subject / object, true / false, high / low, black / white, text / discourse or people / rulers. The range and dichotomy of words and their meanings cannot be ascertained the truth. The conflicting meaning that arises is a consideration of the context and references that lie behind it. The use of discord as an understanding of the truth can also be doubted. For example, putting that everyone who kills is definitely punished. This ignores the fact that there is a process of proof or the possibility that murder cannot be generalized and to the same degree. Methods only justify the process not the result of the truth.

The variety of references that should be allowed to flow and provide a view to enriching the opportunity. Interpreter fluctuations are often the dominant reference fog. Historical, cultural, community and political pressures affect the interpreter, thus losing their needs and goals. In today's digital age, submission to public opinion such as mainstream media will result in citizens drifting into engineering that potentially distorts itself from identity and ultimately loses the right to self-expression. Deconstruction invites in the process of transcending self

²⁸ B Arief Sidharta, *Bahasa Hukum Indonesia: Krisis Bahasa di antara Pakem dan Frasa (wawancara)*, dalam Jurnal Jentera Edisi 1 Tahun 2002, page 81-82.

and announcement, which deceives the process of discovery of meaning.²⁹ Deconstruction is a liberation from the boundaries of direct referrals and radicalizing the potential that can be found. The meaning interpreted from the text is an interesting process of reference. The text in question is not interpreted as written text. Material outside the written text is also mentioned as a text considering its existence contains meaning. Derrida suspends meaning when the emergence of possibilities, so understanding cannot be ascertained.³⁰ Understanding the meaning with this will continue to flow and can not be claimed as a result but as a process.

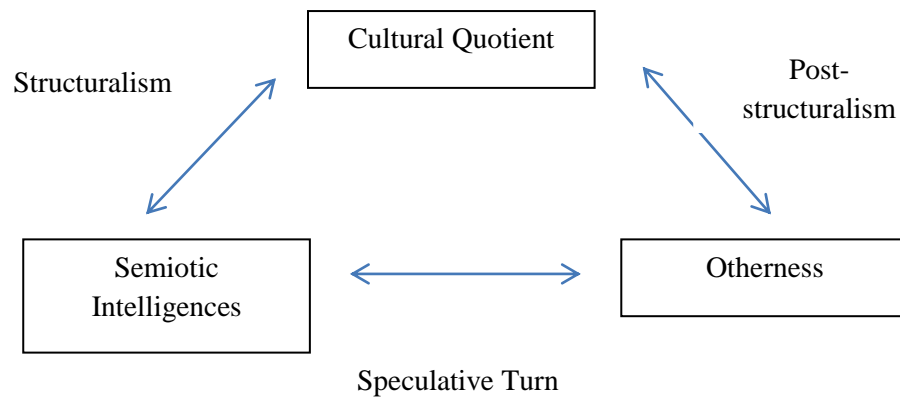
The real process of understanding keeps the final and rigid truth claims. The structure which is seen to be able to preserve the meaning of it is instability itself. Meanings outside the structure cannot be limited to interact with the structure. The offer of Derrida by suspending meaning and looking at the possibility of a plural reasoning. The general agreement in the built social pattern is not always the only way of expressing and affirming meaning. Wandering is not regarded as a deviation from meaning. Otherness is another way of view, which can enrich references and orientations about meaning. Even people who have a homogeneous culture will always present opportunities and possibilities beyond the general agreement. There will be a black swan in the middle of a white swan. In terms of different subject and point of view is fairness, given the different knowledge to understand each individual.

A general agreement or cultural quotient cannot stand alone as capital in interpretation. Construction owned by the general agreement is only one part of the element that supports understanding. The existence of cultural quotient also should not be eliminated. Even deconstruction that sues the constancy in the meaning of the text, requires acceptance of the applicable principle.³¹ The deconstructed strategy leads to an attempt to radically dissect the connecting element in understanding meaning. Even Derrida started surgery on elements, from the shape of the letters. The consequence of understanding radicalism is to discover the division of each element while discovering the integration between them. The rhetoric below may help the imagination of the relationship between elements, which can support the understanding of meaning.

²⁹ Muhammad Al Fayyadl, *Derrida*, Yogyakarta: LKiS, 2005, page 116-117.

³⁰ F. Budi Hardiman, *Seni Memahami Hermeneutik dari Schleiermacher sampai Derrida*, Yogyakarta: Kanisius, 2015, page 306.

³¹ Jon Kertzer, *Opcit*, page 5.



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Cultural quotient in the middle will face the otherness and semiotic intelligence. In relationships between elements, it can be understood not always starting from a cultural quotient. A cultural quotient is just a general standard of understanding, which can shift and change at any time when fundamental structure collapses. Each element described in the figure has the opportunity and possibility to be developed as a capital of meaning understanding. Understanding the meaning through the sign thus can be viewed also from the element of semiotic intelligence and otherness. Not with the intent to postulate the right beginning, but as a sign of initiating understanding.

Semiotic intelligence as a means of disclosure, as well as related to cultural quotient and otherness in understanding. The basis of semiotic intelligence can be said is the accumulation of travel and one's experience in dealing with signs and meanings. The junior and senior judges will have a different accuracy in measuring the truth of the legal facts, and the sentencing of the accused. Stability of meaning choices is influenced by the accumulated experience. In recognition of the existence of elements of semiotic intelligence, subjects are acknowledged to have a role in understanding, rather than being thrown into the current of common and more common social phenomena. The process of transition of signs and meanings of semiotic intelligence also provides a picture, about the possibility of partisanship. Semiotic intelligence directed at cultural quotient tends to reinforce the general structure of understanding. In this position, the practical function of semiotic intelligence is to validate beliefs about the suitability of the systems and structures that have been built. Semiotic intelligence directed at otherness has a point of view that is speculative. An otherness even not infrequently turned into an agreed upon in general.

Semiotics is thus a speculative venture, which sustains to seek precision about an understanding of meaning. In speculative turns, otherness seeks to find materialization.³² Alignment as an orientation encourages understanding not to stop choices at one pole. Otherness poles also have the potential to turn into a cultural quotient. Alan Badiou points out that: We must break out of the two frequent correlations in thought, and destiny in philosophy divided into poles, such as dividing in analytic and phenomenological philosophy.³³ As an interpreter who wants to deconstruct the text, the absolute dichotomy should be avoided because it is very dangerous and deadly for the potential of the variety of meanings. The strategy built from deconstruction, by dissecting the interlaced elements in the understanding of the text, has not been completed. Awareness to postpone understanding promotes a radical search process, for wider opportunities and possibilities.

The relation of semiotic intelligence, cultural quotient and otherness must be acted upon as contextual relations. In legal texts, cultural quotient elements are represented by literal meaning, and otherness is represented by figurative meanings. Can also cultural quotient represented by text, while otherness represented by discourse. The division of the role demands at meetings and negotiations linked by imaginative elements. This imaginative element is intended to dissect formal boundaries and provide an opportunity for meaning to develop. But the focus of the imaginative element is concerned, not on the semiotic intelligence rooted in the experience and ability of the subject. Attention is transferred to elements that can represent meaning, namely metaphor.

Metaphors in textual turmoil have an imaginative position, which lies through literal meaning, figurative meaning, experience, even interpretive and construction. The metaphorical element in the structural notion is greatly avoided because it has the potential to break down the argument. Actually, the argumentation is an instrument of power that is threatened by its legitimacy. But it is a big mistake to look at the metaphor, as an element that can radically uproot all constructed constructs. Similarly, in deconstruction that still requires structure, this condition also applies to metaphors. The old structure still has a role as a reference but renewed the point of view of its meaning. Metaphors offer substitutions rather than just comparing.³⁴ Through metaphor, the text is not taken into the realm of general agreement. But the text is unimaginatively dismantled by not postulating

³² Yasraf Amir Piliang dan Audifax, *Kecerdasan Semiotika Melampaui Dialektika dan Fenomena*, Cantrik Pustaka: Yogyakarta. 2017, page 378.

³³ Alain Badiou dan Ben Woodward, *Interview* dalam Levi Briant dkk, ed, *Speculative Turn Continental Materialism and Realism*, Re-Press: Victoria, 2011, page 19.

³⁴ David Gurnham, *Law's Metaphor: Introduction*, *Journal Law and Society*, Volume 43, no 1, March 2016, page 1.

the truth on either side, either cultural quotient or otherness. In a stretch of reality-concepts, texts and discourses, as well as construction and interpretation, the position of the metaphor of an impression on the complexity of the metaphor can be simplified through the following rage.

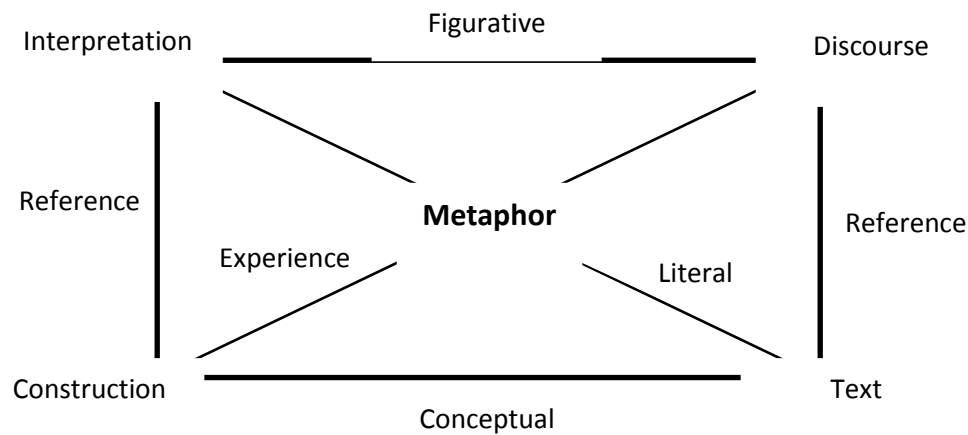


Figure: Dynamic and intersect of metaphor

The metaphor in this position is expected to be an alternative strategy to reasoning about the text. The above phrase confirms that the position of metaphor, is in the meeting: text-construction, discourse construction, text-interpretation, and discourse-interpretation. In the point of construction, the disclosure of meaning through metaphor is judged from the conceptual and experiential aspects. Metaphors play a role in constructing concepts for certain topics, as well as constructs of human experience.³⁵ The concept is constructed in the text, without prejudice to the aspects of experience built into the discourse. In the interpretive view, the metaphor is found through the process of the disclosure of literal and figurative meanings. The process of unveiling literal and figurative meanings for Paul Ricoeur is a productive tension that keeps the dynamic effects of metaphors.³⁶ Interpretation cannot take any meaning, and then stop access or claim the final truth. This is considering the involvement of elements that make up the limited meaning, to be revealed only from one side only. Each interpretation, construct, text, and discourse will reference each other, to find a precision that is responsive to the diversity of potential meanings.

³⁵ Carel Smith, *The Vicisitudes of Hermeneutic Paradigm in The Study of Law: Tradition, Form of Life and Metaphor*, *Erasmus Law Review*, Volume 4, Issue 1, 2011, page 36.

³⁶ Morny Joy, Paul Ricoeur: From Hermeneutics to Ethics, *Journal of Chinese Philosophy*, Volume 42, March-June 2015, page 134.

The strategy of text deconstruction through metaphors requires the law to contextualize meaning appropriately in social space. The workings of meaning in the text of law are not the same as the workings of meaning in society. The complexity of human activity will potentially challenge the constructed understanding within the text. In this case to describe the intertextuality that occurs in the metaphor, taken from the example of the interpretation of the smoking ban and listening to music while driving. deconstruction of the text will be done with regard to elements that are related to the metaphor, among others: literal meaning, figurative meaning, experience, concepts, text, and discourse.

Beginning in March 2018, Indonesians were puzzled about the prohibition of smoking, listening to music and using Global Positioning System (GPS). while driving. Awakening understanding about the smoking ban, listening to music and GPS begins with the statement of Head of Sub Directorate of Legal Development, Directorate of Traffic Polda Metro Jaya AKBP Budiyanto.³⁷ This opinion immediately spreads and constructs the public's understanding of driving safety issues, which come from smoking, listening to music and viewing GPS. Though these three activities, cannot be released as the habit of Indonesian driver overcome saturation and various other personal reasons. Why does this come up? The development of understanding emerges can be remembered in reinterpretation, Law No. 22 of 2009 on Traffic and Road Transport (hereinafter referred to as the Law on Traffic and Road Transport)

Law on Road Traffic and Transportation explicitly does not mention the prohibition of smoking, listening to music, and the use of Global Positioning System (GPS). Article 106 of the Law on Traffic and Road Transport states that: Every person driving a Motor Vehicle on the Road shall drive his vehicle fairly and concentrated. AKBP Budiyanto's statement gives a new orientation that is a threat to the violators. The orientation that although not yet finalized and re-clarified, through the statement of Metro Jaya Police Dirlantas Kombes Halim Pagarra, which explains the use of GPS is not a violation of Traffic.³⁸ But this discourse has evolved as a precedent of threats to the violating driver. This threat is based on Article 283 of the Traffic and Road Transport Law, which states: Every person who drives a Motor Vehicle on the Road is unfair and carries on other activities or is affected by a situation which results in a disturbance of concentration in driving on the Road as referred to in Article 106 paragraph (1) shall be subject to a maximum imprisonment of 3 (three) months or a maximum fine of Rp750,000.00 (seven hundred and fifty thousand rupiah). Music listening, smoking, and use of GPS are

³⁷ <https://megapolitan.kompas.com/read/2018/03/01/13141081/merokok-atau-dengarkan-musik-saat-mengemudi-hukumannya-3-bulan-penjara>. accessed March 8, 2018

³⁸ <https://nasional.kompas.com/read/2018/03/07/23194231/klarifikasi-polri-soal-larangan-merokok-dan-mendengarkan-musik-saat>. accessed March 8, 2018

classified as driving in an unnatural way. In the formulation of Article 106 of the Law on Road Traffic and Transportation, it can be noted that there are 2 (two) metaphors that support the concept of driving a motor vehicle, which is "wajar" and "penuh konsentrasi"

Wajar and penuh konsentrasi becomes the focus of study, in the deconstruction of meaning through metaphor. These two phrases are classified as metaphors because of their meaning, providing powerful imaginative implications. In this case, raises various references through various elements that have the potential to construct meaning. The literal meaning reflected in the explanation of Article 106 of the Law on Traffic and Road Transport states that: "Concentration" means any person who drives Motor Vehicles attentively and uninterruptedly concerned by illness, tiredness, drowsiness, using the telephone or watching television or video attached to the Vehicle, or drinking a drink containing alcohol or drugs so as to affect the ability to drive the Vehicle. Smoking, listening to music and using GPS is not explicitly mentioned as a form of activity that interferes with concentration. In listening to music and the use of GPS, most likely reflected as one of the activities of telephone usage. This is then categorized as a disorder of concentration.

But as a metaphor, the meaning of "wajar" and "konsentrasi penuh" is very complex. The rejection that occurs in society, is a panic response to a threat arising from activities that they normally do while driving. Rejection is a form of reflection on the figurative meaning, which has been repeatedly understood as the result of the interpreter's experience. For example, listening to songs while driving is understood as an idea to reduce stress even sleepiness when driving. As for another example, the need for the use of GPS is very high, in line with the presence of online transport. The rejection response is only part of the interpretation based on the discourse of the cultural quotient and is present because of the reactionary urges of the information media. On the evident side of the offense, how the police as law enforcement prove improper and concentrated drivers. Perhaps in the context of drug use and alcohol consumption, it can be monitored from the driver's conscience when the police observe it directly. Whether in the event of an accident or when there is an orderly operation of traffic. As for the meaning of "wajar", whether the vehicle with excessive modification and disturbing the performance can be said to deviate.

Understanding the meaning of "wajar" and "penuh konsentrasi" can not only be understood as a discourse of prohibition and threat. Discourses that arise and influence understanding can vary. "wajar" is understood on the basis of Big Indonesian Dictionary, as according to the circumstances; as it should be. Can also be understood as feasible. This "wajar" measure is a reflection of the general agreement, which is in the community. In this case, the potential to reflect a

fairness may vary. Motorcyclists in the village for example, rarely use helmets because the trip is not too far away and this is considered as fair for them. In the Bali, motorists are not violated when driving without a helmet for the purpose of worship.³⁹ On the other hand, a metaphor "penuh konsentrasi", meaningful attention concentration as a whole. In this case driving, but personally if observed a rider can have different concentration disorders. Prohibition to listen to music, using GPS, or smoking can not necessarily be categorized the same in each rider. There are drivers who are distracted because of drowsiness, not because of smoking.

The placement of "wajar" and "penuh konsentrasi" in one article, can even intertwine with the discourse of freedom. Reasonable reflects a commonly understood condition in society. The consequence of this meaning is that on the other hand there are conditions classified as deviations from general conditions. Things that deviate from reasonable standards, can also be considered to affect the concentration in driving. For example, if a fair context directs a general understanding of a rider, physically without any disability, then this condition seizes the rights of people with disabilities to drive. Physical boundaries do not necessarily create limits on awareness and concentration. In this sense, the meaning of "wajar" and penuh konsentrasi, may limit the rights of persons with disabilities if reasonable interpretation as a general condition of society based on physical health. Though driving could be the urgent issue for people with disabilities, in an effort to keep moving and produce the works in their lives.

Metaphors contains broad and complex references must be understood as delays of meaning. Absolute simplicity and universality of meaning is a dangerous undertaking and has the potential to abandon the right. The variety of viewpoints becomes a force that can be extracted from metaphors in response to social reality. But the variety of meanings in metaphor is not nihilistic effort. the metaphor is just a medium that reflects a sustainable and responsive in process. The text can be interpreted on the basis of its contextuality and reinforces its preference for the rights of citizens.

³⁹ <http://bali.tribunnews.com/2017/10/31/ingat-operasi-zebra-dimulai-besok-bertepatan-galungan-pengendara-pakai-udeng-dapat-dispensasi-ini>

Conclusion

The law through legal texts builds an understanding space that lies in the variety of references. Strategies to ensure the meaning of text consistency, depending on formality, undermine the variety of opportunities and possible meanings. The text then turns into an instrument that sides with the elite and ignores the rights of people. The study of metaphor is an alternative deconstruction of meaning. In the search for metaphors, it can be found that the position of the metaphor is very important, in explaining the relation of the variety of meaning references. The workings of understanding the meaning of social space of society, are very complex beyond formality, literal meaning, and cultural quotient. On the other hand, the deconstruction of the metaphor to reveal the network of meaning, the attempt to strengthen the position and forwards awareness as social capital builds a responsive and equitable interpretation.