
A REVIEW ON THE TRANSLATION OF THE TERM AANSLAG TO MAKAR IN THE CRIMINAL CODE OF INDONESIA

Frans Rian
Universitas Prima Indonesia
Fransrian70@gmail.com

Rosalind Armelia
Universitas Pembangunan Panca Budi

Abstract

Dutch-Indonesian legal translation is under studied for the absence of equivalent terms on which requires constant comparison between SL (Source Language) and TL (Target Language) of each legal system. Legal translators come across numerous challenges, both on linguistic and cultural, as an outcome in their effort to draw a symmetry comparison between Dutch and Indonesian languages. Since Dutch and Indonesian languages have their own differences in linguistic elements, there is no one-to-one correspondence for Dutch and Indonesian legal discourse. As a result, a more advance effort from the translator as culture mediator on whom the responsibility to strive to understand Dutch terms conceptually rather than translate them literally is laid upon, is crucial. This study discusses the lexical terms in Dutch and Indonesian languages on “makar” and “*aanslag*.” It has lately been a topic in many debates since the term “makar”, which has multiple meanings, is used to translate the word “*aanslag*” in Criminal Code of Indonesia. This ambiguity questions its correct use and thus prevents its legal certainty from being guaranteed. The present situation with Criminal Code of Indonesia is that it neither define nor set limitations on “makar” acts, creating possible uncertainties. This paper reaches the conclusion that translating the lexical terms as mentioned above calls for linguistic knowledge and the languages of legal systems, professional training, and up-to-date electronic dictionaries. This paper uses Library Research Method adapted from Thomas Mann (Mann 1994). Data collections are collected from Published Sources, Online Databases, Government and Institutional Records, Publicly Available Data, and Past Research Studies.

Keywords: translation review, makar, aanslag, isomorphism

Introduction

Due to certain limitations, "isomorphism" or one-to-one correspondence, and its extreme unlikeliness to possibly be creative, the translation of legal documents is now facing the: (1) Inconsistency in legal terminology; (2) Legal system asymmetries; and (3) Diversity in legal cultures. The technical nature of legal language, its specificity, and the fact that legal language is not a universal language tied to the legal system of a particular national are all the factors that make legal translation challenging. Legal translation is a specialized form of translation that deals with the language which is used in law and legal procedures. Legal translation involves the conversion of legal documents from the Source Language to the desired Target Language (Cao 2010). When translating between Dutch and Indonesian, these limitations are especially evident.

Historically, the term *aanslag* was first used by the Dutch to apply to Indonesia (which was at the time a part of a Dutch colony called the Dutch East Indies) when the rebellion by the PKI occurred in 1926 in Semarang. Initially *aanslag* or treason was only intended for the Dutch Criminal Code, considering that in 1917 the propaganda of revolutionary communism in Europe was in full swing, which culminated in the outbreak of the Bolshevik revolution, which was also anticipated by the Dutch by enacting anti-revolutionary law through Staatsblad no. 619 *aanslag* which was included in Wetboek van Strafrecht (WvS) which then was adopted into the Criminal Code until today.

"Makar" is a translation of the Dutch *aanslag* contained in Article 104 of the Criminal Code which is a copy of Article 92 of the Dutch Criminal Code. Article 92 of the Dutch Criminal Code itself in the English translation version is under the title "Serious Offenses Against the Security of the State", which are:

"An attack carried out with the intention of taking the life or liberty of the King, the reigning Queen or the Regent, or of rendering any of them incapable of reigning, shall

be punishable by life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fine of the fifth category.”

Protection of state security is realized through the prohibition of *makar* in positive law which has been known for a long time as stated in the *weetboek van starfrecht vor inddische* which in fact is a product of the Dutch government's legislation which was implemented in its colonies. It is interesting to pay closer attention to the fact that the offense of treason has ensnared quite a few parties, where the offense seems to be used excessively and tends to be seen as threatening the right to freedom of speech.

Unlike UUPA, which includes the repeal of various Dutch inheritance laws, such as *Agrarische Wet*, *Domeinverklaring*, and *Koninklijk Besluit*, as well as Book II of the Civil Code relating to land, water, and natural resources, except for regulations regarding mortgages (Rian and Armelia 2023). After 100 years after implementing the Dutch-made Criminal Code, the Government and DPR eventually agreed to rewrite the Criminal Code. However, numerous updated draft articles have ignited debate.

The presence of the 2019 Draft Criminal Code apparently still brings problems. Offenses against state security are still maintained and clarify the crime of *makar*. The maintenance of offenses against state security is a form of protection for an interest in maintaining the safety of the state in achieving its ideals. The definition in the Draft Criminal Code of 2019 is that treason is defined as "the intention to commit an act which has been realized by the initiation of the commission of the act". This definition leaves irregularities because the implementation of the initial meaning triggers various interpretations and thus the meaning is bias. To guarantee certainty and avoid arbitrary attempts and guarantee the rights of the citizens from legal traps that are shrouded in uncertainty.

The concept of "*makar*" in the practice of criminal law enforcement in Indonesia is sometimes interpreted too broadly, thereby encompassing acts that should not be categorized as crimes that threaten the national security (Wulandari and Moeliono 2018). The translation of *aanslag* to *makar* brings a lot of ambiguity and doesn't have

one-to-one correspondence which leads to different understanding, it is crucial that the government establish an official definition or set limitations on Macar acts. This paper attempts to contribute thoughts regarding the idea of the offense of *makar / aanslag* which needs to be reconstructed in order to minimize ambiguity in its application.

Method

This study employs the Library Research Method, which is derived from Thomas Mann's work with the title "Library Research Methods: A Guide to Classification, Cataloging, and Computers" published in 1994. Data collections are obtained from sources such as published literature, online databases, government and institutional records, publicly available data, and previous research studies. The researcher seeks to acquire extensive and dependable information by utilizing a range of sources including published literature, internet databases, government and institutional records, publically accessible data, and previous research studies. The researcher recognizes the significance of refraining from engaging in direct plagiarism from these sources and emphasizes the role of scholars in offering help on information management throughout the research process. The researcher acknowledges the importance of avoiding outright plagiarism and will implement measures to guarantee that the gathered information is appropriately credited and referenced. Furthermore, the researcher will meticulously examine and integrate the collected data to develop a thorough comprehension of the subject matter. The utilization of the Library Research Methodology enables a thorough and dependable collection of information from diverse sources.

Findings

Isomorphism in legal translation

Translating legal documents from one language to another is a complex and challenging task that requires precision, attention to detail, and an in-depth understanding of both legal systems. This complexity is particularly evident when

translating Dutch legal code into Indonesian, as these two languages and legal systems have unique characteristics and nuances. In this essay, we will explore the concept of isomorphism in the context of translating aanslag into makar, examining the challenges and implications of achieving a meaningful isomorphism in this context.

Isomorphism, in the context of translation, refers to the principle of maintaining structural and functional equivalence between the source language (Dutch) and the target language (Indonesian) while adapting the content to meet the cultural and legal norms of the target audience. This means that the translated legal code should accurately reflect the original Dutch code, preserving the legal intent and purpose, while ensuring it is comprehensible and legally sound in the Indonesian context.

Achieving isomorphism or maintaining structural and functional equivalence between the source language (Dutch) and the target language (Indonesian), while adapting the content to meet the cultural and legal norms of the target audience, is the ideal objective. However, in practice, this ideal is not always attainable. This essay delves into the challenges and consequences of isomorphism failure in the context of translating Dutch legal code into Indonesian.

Cultural disparities pose an additional challenge in the field of legal translation. Law is a manifestation of the culture, and it is conveyed by legal terminology. As stated, each country has its own legal language that reflects the unique social realities of its specific legal system (Sarcevic 1985: 127). The concept of isomorphism was highly fruitful and valued in the fields of structuralism and generativism. Structural linguistics postulated the identification (methods) of the systematic and organized patterns of language (Varó 2009)

Article 92 of the Dutch Criminal Code itself in its English translation version is under the title "Serious Offenses Against the Security of the State", the complete provisions of which are: "An attempt made with the object of taking the life or liberty of the King, the reigning Queen or the Regent, or with the object of rendering any of them incapable of reigning, is punished by life imprisonment or a term of imprisonment or not

more than twenty years or a fine of the fifth category." From article 92 above it is clear that aanslag, translated as attempt or commonly called experiment. The question is, why is aanslag translated as attempt. Is it that difficult to find the right word which equivalents in English to translate *aanslag*, or is it because the common law tradition does not recognize the act of *aanslag*. Meanwhile, if referring to Article 104 of the Criminal Code, the provisions are as follows: "Makar (*aanslag*) which is carried out with the intention of assassinating the President or Vice President or with the intention of depriving them of their independence or making them incapable of governing, shall be sentenced to death or life imprisonment or temporary imprisonment for a maximum of twenty years."

From the provisions of the article above, there are two groups that provide interpretations of the treason articles in the Criminal Code, namely: the group of scientists who interpret it as an offense of attack, an act of violence, and the group who interpret it as an offense of incomplete attempt.

When isomorphism fails, the translated legal code may not accurately represent the original Dutch code. Misinterpretations and inaccuracies can arise, negatively impacting the legal landscape and creating legal gaps that can be exploited or misused. Translating Dutch legal code into Indonesian is a challenging task that requires careful attention on linguistic, cultural, and legal differences. Isomorphism, the ideal goal in legal translation, may not always be attainable due to these inherent complexities. Isomorphism failure can result in legal confusion, misinterpretations, inefficiencies, and a loss of legal consistency. Legal translators and authorities must be aware of these challenges and work diligently to minimize the risks of isomorphism failure while striving for accurate and culturally sensitive translations that uphold the integrity of the legal code in its new linguistic and legal context.

In order to achieve an accurate translation of the Dutch legal code into Indonesian, legal translators must confront the intricacies of language, culture, and legal frameworks. The phrase "*aanslag*," for instance, presents challenges when it comes to

translation. In Dutch, the term denotes an attempt or an experiment, although identifying a precise counterpart in English is not a simple task as identifying it in Indonesian, it should be researched thoroughly.

To ensure precise translations of legal rules, translators must depend on trustworthy sources and utilize efficient translation techniques. An effective strategy in legal translation involves utilizing authoritative interpretations offered by legal professionals and academics. These interpretations provide insight into the subtle distinctions and precise definitions of legal terminology, such as the phrase "*aanslag*" in Article 92 of the Criminal Code.

***Aanslag* is interpreted as an imperfect trial**

The meaning of the subtitle above is that *aanslag* is interpreted as an attempted offense without "the cessation of implementation not because of the perpetrator's wishes" or *vrijwilligeterugtrede*. So, it can be called *aanslag* by fulfilling only two elements, namely the existence of an intention/will and the beginning of implementation. Therefore, *aanslag* is derivative of the experiment, or *aanslag* an offense of attempted amputation. Other experts explained that *aanslag* when translated into English becomes "attempt" which means "trying". In the Indonesian-Dutch dictionary by Kramer Woordenboek, the word *aanslag* is defined as striking, meaning attack or attempt on manslaughter, namely trying to kill (Mahkamah Konstitusi Republik Indonesia 2017)

***Aanslag* is interpreted as an attack.**

In the Criminal Code, the term "treason" is defined as "*aanslag*" and also encompasses treason in the context of a "*coud'etat*," which refers to the seizure of governmental authority through violent or coercive means. However, the literal meaning of treason is an act of attack or aggression (Noviansyah and Siregar 2022).

Apart from being interpreted as an imperfect attempted offense, there are several experts who interpret *aanslag* as an attack. As expressed by P.A.F Lamintang, who stated the definition of *aanslag* as an attack, or *misdadige aanrading* (attack with bad intentions). However, self-attack in Dutch is called *aanval*, not *aanslag*. Paying

attention to this, *aanslag* means a severe attack (violent attack / fierce attack / onslaught). So in this case *aanslag* is not simply interpreted as an "attack" in general, but rather an "attack" in a special form that is severe.

Grammatical Meaning of *Aanslag*

The scope of the grammatical meaning of *aanslag*, as found in various dictionaries, is apparently varied. One thing that is relevant is its meaning is an attempt (to do something) and an attack. A synonym for the term *aanslag* is "ondernemen" or "ondernomen". Its equivalent in Indonesian language is effort (to do something). Associating it with committing a criminal act, the phrase "tot en feit" is added to the term *aanslag*. This conclusion or possibility is supported by the following explanation: moment waarop zich het voornemen van een daderdoor een begin van uitvoering (poging) heeft geopenbaard: Article 79 (The moment or moment when the intention or will of the perpetrator is realized through the beginning of the implementation (trial)

So, the word *aanslag* in the phrase "aanslag tot en feit" is translated into English as perpetration or to perpetrate (to commit an act) or in the translated version into English: attempt (to act or commit a crime). Thus, *aanslag* (ondernemen or ondernomen) in the context of *aanslag tot en feit* can be interpreted as committing a criminal act (*feit* here is defined as a criminal act).

Apart from that, *aanslag* can also be interpreted as an attack (violent attack- onslaught) which is interpreted as: a fierce or destructive attack or assault-battery. So, it can be understood why the term *aanslag* in Dutch is also interpreted as a tax bill that must be paid. The same page also provides the meaning of the word *aanslag* as: "handeling die erop gericht anderen van het leven of de vrijheid te beroven" (an act aimed at depriving another person of their life or freedom). In the context above, *aanslag* is interpreted (and translated) as an attack (or violent attack). Apart from that, still related to the various meanings that can be attached to it, *aanslag* can also be understood as a misdadig plan (evil plan).

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Makar definition

In The Great Dictionary of the Indonesian Language, the official dictionary of the Indonesian language compiled by the Language Development and Education Agency and published by Balai Pustaka, makar is defined as: 1 bad sense; deception; 2 acts (attempts) with the intention of attacking (killing) someone; 3 acts (attempts) to overthrow a legitimate government (KBBI n.d.)

The Indonesian Penal Code historically originated from the Wetboek van Strafrecht voor Nederlandsch Indie (WvSNI) which regulates crimes against state security in the first subchapter of the KUHP itself. The term "aanslag" in the Criminal Code of Indonesia refers to the crime of "makar" or "treason" against state security. Article 104, located at the beginning of Title I in Book II of the Criminal Code, encompasses the offense of treason. The term "treason" originates from the Dutch word "aanslag" (Wido Haruni and Dwiwiddy Jatmiko 2022)

The Criminal Code and other criminal laws do not provide meaning for aanslag or makar. The term "makar" has a historical background in the regulation of crimes against the president (and vice president) in Indonesia. The study of legal history reveals the traces of setting crimes against the president in the Criminal Code. This provides insights into the development and interpretation of the law related to makar in Indonesia.

The term "aanslag" in the Criminal Code of Indonesia refers to the crime of "makar" or "treason" against state security. Treason is the English version of the Dutch word "Aanslag," which can be understood as an attempt or attack (Fauzie 2019). Makar is a criminal act that threatens the security and safety of the Republic of Indonesia. The term "makar" has a historical background in the regulation of crimes against the

president in Indonesia. There have been judicial reviews regarding the treachery articles in the Criminal Code, providing an avenue for examining and potentially revising the provisions related to makar.

According to P.A.F. Lamintang, the word "aanslag" derives from the verb "aanval," which means "to attack," or from the verb "misdadige aanrading," which means "to attack with bad intentions" (Lamintang and Lamintang 2010). In fact, P.A.F. Lamintang is still unsure of whether the word aanslag actually derives from the words aanval or mistaken aanrading, and whether the two are even related to one another or entirely different words. Makar is also capable of being defined as a violent act, or at the very least a violent act attempt. However, they both assert that not all aanslags must be seen as acts of violence because there are many aanslags that take place without any prior violence. It is also being strengthened by examples of actions that want to change the direction of the state without resorting to violence.

Aanslag, may be defined as any actions carried out with the intention set forth in Article 104 of the Criminal Code, if the action is unlawful under Article 104 of the Criminal Code, if it has progressed beyond the stage of preparation and may be regarded as the start of an implementation action as set forth in Article 87 of the Criminal Code. A. Boers' Dutch-English Dictionary uses the makar translation instead of the original word aanslag. It is translated to attempt in English. Trying is the definition of an attempt. It is incorrect to translate aanslag with makar in this translation; it should be translated as "the first act of an action."

Furthermore, it is stated that treason must be considered in light of the proverb "felonia implicatur in quolibet prodicione", which translates to "the act of treason is a serious criminal act." Therefore, treason is not an attempted crime that is defined as a finished crime or a stand-alone crime; rather, the crime of treason is defined as such because it relates to state security, specifically the safety of the President and Vice President, undermining the legitimate government and state sovereignty.

There are two schools of thought among legal scholars regarding what constitutes an *aanslag*: the first group sees it as an attack offense, a violent act, and the second group sees it as an incomplete trial offense. *Makar* is unique in that it only occurs in Indonesian, so the creation of an official definition and limitation with clear meaning to guarantee legal certainty which would not trigger various interpretations on *makar* acts by the government is encouraged.

Discussion

A literary work is always translated as a compromise between two hierarchies of restrictions, or two literary systems. Patronage, poetics, the original and translated texts' native languages, in that order of importance, make up this hierarchy (Lefevere 1981). Language differences are the main factor, such as the use of words to translate the original text of the Criminal Code in Dutch into Indonesian which has implications for the inaccurate meaning and purpose of the text. For example, the word *aanslag* in several versions of the Criminal Code is translated as *makar*.

The formulation of the word *aanslag* in the Dutch Criminal Code at that time was motivated by the situation in the European region which saw widespread attacks to fight for power or even to overthrow the legitimate government. The problem with the word *makar* which is translated from the word *aanslag* in its application is that it is not in accordance with the aim of the original text.

Aanslag is a term that refers to a violent attack. *Aanslag* is a synonym for *onslaught*, in English meaning denoting a violent, fierce, or strong attack. At present, we acknowledge treason as an endeavor to topple the government. Despite its initial divergence, we must revert to the original term, specifically "*aanslag*," which denotes an attack or aggressive strike (Rambe 2019).

Often someone who does not carry out a physical attack is charged with the crime of *makar*, which is a translation of the word *aanslag* which means there must be an attack. Of course, this will result in the shackles of a person's freedom to express their right to

voice their opinion. Thus, the word *makar* in the 2019 Criminal Code Bill must at least be interpreted thoroughly and should not leave irregularities because the implementation of the initial meaning triggers various interpretations and thus the meaning is biased. To guarantee certainty and avoid arbitrary attempts and guarantee the rights of the citizens from legal traps that are shrouded in uncertainty.

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