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Research Article

Legal Transplants in Indonesia: Bridging Tradition and Modernity

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Abstract

Legal transplants, the adoption of foreign legal principles into a domestic legal system, have significantly influenced Indonesia's legal development. As a country characterized by legal pluralism—comprising state law, customary law (adat), and Islamic law—Indonesia has historically relied on legal transplants to modernize its legal system, bridge legal gaps, and harmonize conflicting traditions. This study examines key cases of legal transplantation in Indonesia, including the adoption of anti-money laundering laws based on FATF recommendations, the integration of constitutional injury principles into the Constitutional Court's procedural norms, and the application of the proportionality principle in judicial review. Furthermore, the incorporation of Islamic family law through the Compilation of Islamic Law, the regulation of endowments under Law No. 41 of 2004, and the development of Shariah economics through KHES illustrate how traditional Islamic concepts have been adapted to align with modern legal frameworks. While some legal transplants involve direct adoption with minimal changes, others require modifications to fit Indonesia's socio-cultural and legal context. Despite challenges such as potential conflicts with local traditions and legal inconsistencies, legal transplants remain essential for Indonesia's legal evolution. By carefully integrating foreign legal norms while preserving local values, Indonesia can continue to strengthen its legal system to meet the needs of its diverse and dynamic society.

Keywords

Legal Transplants, Legal Pluralism, Indonesian Law, Money Laundering, Constitutional Law, Islamic Law

1. Introduction

In the context of legal pluralism, the link between multiple legal systems results in a variety of outcomes. One of the most common is legal transplant [17]. Legal transplant, also known as legal borrowing or legal diffusion, is the process of adopting or transferring legal principles, concepts, rules, and institutions from one legal system to another. It entails the intentional transfer of legal ideas and practices from one jurisdiction to another in order to fill legal gaps, improve legal systems, or promote legal reform. It can range from certain laws or clauses to entire legal systems. It may be promoted through formal mechanisms such as laws, treaties, or constitutional amendments or through unofficial procedures like court rulings, legal research, or business meetings.

Although it existed previously, the term "legal transplant" was coined for the first time in the 1970s by the Scottish legal scholar W. A. J. Alan Watson in his book *Legal Transplants: An Approach to Comparative Law*. He defines it as "moving a rule or a system of law from one country to an-

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other or from one person to another" and cites the reception of ancient Roman law as an example [109]. Watson contends that transplanting is the most fruitful source of legal evolution since it can occur not just between various countries but also between different individuals. The mechanical process of legal transplant is embodied in the borrowing, adoption, or translocation of law from one place, country, or nation to such an extent that the law implemented in a new place is blended with prevailing laws.

Legal experts typically use the phrase "legal transplant" to refer to a state's policy of adopting foreign law for use in the home nation. So far, numerous phrases have been used to characterize this practice, ranging from borrowing foreign law, adopting law, migration of law, translocation of law, and colonization of foreign law. The terms legal reception and legal borrowing or legal adoption were advanced by Loukas A. Mistelis and Moh. Koesnoe, before Alan Watson, began to use the phrase legal transplants, while Katharina Pistor used the phrase "legal migration," Galanter used "legal colonization," and Antony Allot introduced the concept of "translocation of law." Other researchers such as Loukas A. Mistelis promoted the term "legal surgery," Esin Orucu used "legal transposition," and Haim H. Cohn put forward the notion of "legal change" [86]. Such diverse terms demonstrate that legal transplants are required everywhere; whenever we wish to transplant law, a term will be developed to identify it.

Legal transplants occur in Indonesia when modernity is applied to a country's legal system, especially in a developing country undergoing political upheavals. It is thought that adopting well-established legal frameworks from more industrialized nations will help to accelerate legal changes. Legal transplant refers to the process of transplanting laws, legal concepts, institutions, or systems from a foreign nation, jurisdiction, or legal tradition into the country. In other words, legal borrowing occurs when a country accepts or absorbs foreign legal concepts or frameworks in order to reform, modernize, or develop its own legal system, making the evolution of the law a reality. Legal transplants take place in a pluralistic society like Indonesia, where several legal systems coexist and interact. With over 17,000 islands, multiple ethnic groups, and a variety of officially recognized religions, Indonesia's legal system reflects its heterogeneous culture. This system integrates state law, customary law (adat), and religious principles, particularly Islamic law (Shariah), all functioning simultaneously within municipal legislation. However, these may sometimes clash with national human rights laws or gender equality provisions. Similarly, adat practices can contradict modern legal standards or constitutional protections. Indonesia's decentralized approach and cultural diversity [63] have fostered the coexistence of various legal systems [53]. Legal transplantation could serve as a means to address these challenges.

This paper argues that the use of legal Western law over the last transplant should not be disregarded in situations where the plurality of law has resulted in unavoidable conflict between multiple legal regimes. The transplant is performed to avoid a stalemate, so that acceptance of some foreign law in a new scenario might pacify the issue [50, 31]. Some examples of legal transplants will be provided later to demonstrate how they can reduce friction between different legal entities. Here, the argument for legal transplant to prevent antagonistic relationships between various laws might be made using a social identity theoretical framework developed by Henri Tajfel and John Turner (A Social Identity Theory, SIT) [98, 99]. They argue that conflict frequently results from intergroup dynamics and group identities, with someone favouring their own in-group over other groupings. Finding common ground and encouraging intergroup ties are necessary to resolve these disputes. SIT offers valuable insights into the dynamics of legal conflict in pluralistic societies like Indonesia. Legal systems, as part of people's identities, can create group-based conflict when they are perceived as incompatible. However, through dialogue and efforts to find shared legal values, such as human rights, legal cooperation and harmonization can be achieved. Legal transplants, when done thoughtfully and contextually, have the potential to unite different legal systems, rather than creating division, by encouraging intergroup ties and shared legal principles. The conflict mode instrument developed by Kenneth W. Thomas and Ralph H. Kilmann, which specifies five conflict resolution approaches—competing, cooperating, compromising, avoiding, and accommodating—also lends credence to this hypothesis [102, 103]. Understanding and utilizing these various types, according to Thomas-Kilmann, can result in more successful conflict resolution.

Utilizing a juridical-normative approach that examines legal principles, doctrines, and statutory regulations relevant to legal transplants in Indonesia, this study emphasizes the constructive role of legal transplants in instances where specific legislation is needed. In this context, legal transplants are viewed as an indispensable mechanism for formulating legal solutions to resolve issues, as illustrated by cases related to money laundering, constitutional challenges, and aspects of Islamic law. The paper initially explores the two factions—those in favour of and those opposed to legal transplants—and the historical background of their influence in Indonesia, before delving into current examples of legal transplants.

2. Against the Negative Views

According to Roscoe Pound, "[h]istory of a legal system is largely a history of borrowings of legal materials from other legal systems and assimilation of materials from outside the law" [76]. He used the term "assimilation of materials from outside the law" to allude to a succession of legal transplants. However, the transplants are not without complications. Although research suggests that legal transplants are beneficial, some scholars may disagree and have a negative view of transplants.

Mr. W. C. Van Den Berg, a Professor of Legal Science from Delf Universiteit, during the administration of the East in the early 1900s, proposed a theory called "Receptio in Complexu," [73] the phrase "Islamic legal transplant into customary law." Berg stated that customary law accepted all Islamic laws [95, 101]. In the context of legal transplants, he used the term receptions. Unless contradictory to original teachings, indigenous law would follow religious law. Hazairin, on the other hand, argued that not all customary regulations were transplanted from Islamic laws [42], but agreed with Berg on the Receptio in Complexu theory, which holds that Islamic law gives power to customary law. In this situation, Hazairin appears to be more pessimistic about legal transplants of Islamic law on customary law, which Berg's thesis relies on.

Friedrich Carl von Savigny opposed legal transplantation. This German lawyer, heavily influenced by 19th-century Romanticism, emphasized the origins of German people and their distinct ethos, or Volksgeist ("the spirit of a people") [79] and highlighted the need for legal change in order to protect the continuity of the Volksgeist while also providing a pre-Darwinian view of juristic evolution. However, this understanding of juristic growth did not incorporate ideas like legal transplantation and law diffusion. Pierre Legrand, a Franco-Canadian comparativist, a current legal academic, strongly opposes legal transplants, arguing that "[i]n any *meaningful sense* of the term, 'legal transplants', therefore cannot happen. No rule in the borrowing jurisdiction can have any significance as regards the rule in the jurisdiction from which it is borrowed" [55].[1] In other words, legal transplants have no positive effect on the law and may even destroy the borrowing law they are undertaken.

Nevertheless, a well-known earlier critique of Watson's theory by Richard Abel claimed that "[p]erhaps the most serious problem with Watson's theory is that it is not at all a theory" [1]. Rodolfo Sacco, head of the Italian Guild of Comparative Law, prefers the expression legal formants, this being an attempt to capture the social, economic, political and doctrinal elements of a particular legal system [81]. Meanwhile, Gunther Teubner a renowned German legal sociologist, proposes legal irritants, which cannot be transferred from something unfamiliar into something familiar but instead will trigger an evolutionary dynamic in which the meaning of the external rule will be reconstructed and the internal context will undergo fundamental change [100].

Thus, two views of legal transplants have been provided; one supports transplants, while the other takes a negative view. The advantages of transplants include the possibility of legal harmonization, access to best practice, and the capacity to learn from the experiences of other legal systems. The alternative point of view is that legal transplants are more difficult to implement because of variations in cultural, social, and economic situations, as well as the possible clash between transplanted laws and existing legal traditions or principles.

1 Italics mine.

Various scholars have provided interpretations of Watson's definition of legal transplant which appear to enhance the position of pro-legal transplant groups. Legal transplant, for example, is analogous to the concept of "transplant" in medical science and mechanical engineering, according to Kahn-Freund. Human organ transplantation is a medical term, while in engineering, the term transplant refers to the act of swapping components from one engine to another. The first is referred to as "organic," and Kahn-Freund refers to the second as "mechanical" [28]. Organic transplants in the legal system are strongly related to people's livelihoods, social structures, and community values. Constitutional issues, for example, are included in organic legal transplant since the constitution specifies the distribution of power among government entities and mandates the protection of citizen rights.

Indeed, legal transplantation can occur for various reasons, including a country's desire to update its legal system, fill legal gaps, or align its laws with international standards. It may also occur because of historical, cultural, or political factors, when a country adopts the legal system of a former colonizer or neighboring jurisdiction. As a result, the process of legal transplantation entails researching and analyzing the legal principles and institutions of a foreign legal system, establishing their compatibility with the domestic legal system, and making any required adaptations or modifications to meet the local context.

There are various reasons why legal transplantation occurs. One is to avoid legal vacuum [52]. When a legal system lacks specific laws or regulations to meet new or emerging concerns, legal transplant might be utilized to import suitable legal provisions from another jurisdiction. In some circumstances, a legal system may lack particular laws or regulations to handle new or emergent challenges. Second, legal transplant can encourage legal reform. Countries may pursue legal transplant as part of broader legal reforms to modernize their legal systems, increase efficiency, or reinforce the rule of law. Borrowing legal concepts, institutions, or practices from other jurisdictions can aid in the accomplishment of these reform objectives [111, 43]. Third, legal principles or institutions from other systems may be adopted by jurisdictions if they are considered more effective, efficient, or appropriate for handling specific legal challenges [33]. Fourth, historically, legal transplant has occurred as a result of colonization, when the legal system of the colonizer was imposed on the colonized region [90, 61]. Similarly, legal systems can be impacted by the legal concepts and institutions of more powerful states. Fifth, legal transplant can be used to achieve legal harmonization [10]. It can be employed in the context of regional or international integration to harmonize laws across different jurisdictions to improve cooperation and create consistency, particularly in the setting of regional or international integration. The five variables listed above may influence legal transplants.

Some logic can be applied here to explain why legal transplant is necessary in the context of legal diversity. It supports

cross-jurisdictional learning in various ways [62]: First, it provides a means of comparison. Comparative legal studies entail a thorough examination of legal systems, principles, laws, and institutions from various jurisdictions. Second, it makes legal scholarship and study easier. Legal scholars and researchers play an important part in the legal transplantation process. They research and analyze legal systems, statutes, and jurisprudence of many countries, identifying areas for improvement or adaptation, and recommending legal reform. Third, legal transplant advances judicial precedents. Judicial decisions, especially those from higher courts, can be valuable sources of legal inspiration and guidance for other jurisdictions. Fourth, it enables legislative reform and model legislation. When developing new laws or launching legal reforms, legislators and policymakers frequently look to other jurisdictions for guidance. They could look at laws and regulations in other jurisdictions that address similar concerns or challenges. Fifth, legal transplant affords opportunities for professional exchange and cooperation. Professional exchange, conferences, workshops, and collaboration among legal professionals — including judges, lawyers, and academics — foster knowledge sharing, dialogue, and mutual understanding.

Legal transplant enables jurisdictions to benefit from the experiences, expertise, and innovations of other legal systems, resulting in the improvement and development of their own legal frameworks through these numerous avenues of learning and exchange. Indeed, it provides various advantages that can aid in the development and enhancement of legal systems [33]. It is however important to note that while legal transplant offers significant benefits, its success relies on careful adaptation to the local context. Legal principles borrowed from other jurisdictions should be tailored to the specific needs, cultural norms, and legal traditions of the adopting jurisdiction to ensure effective implementation and acceptance by the local population. To guarantee that legal reforms in a new jurisdiction are effective, politicians and legal professionals must carefully evaluate and adapt legal solutions to the specific social, cultural, historical, and economic setting [57]. A more context-sensitive approach to legal reform recognizes each jurisdiction's distinctiveness and the need to address local needs and conditions.

3. The History of Legal Transplant in Indonesia

The history of legal transplantation in Indonesia is complex and multifaceted, shaped by a variety of historical, political, and cultural factors. The incorporation of laws, legal principles, and institutions from other jurisdictions into the Indonesian legal framework has been influenced by the nation's colonial history, the period following independence, and ongoing efforts to adapt and modernize its legal system. Indonesia has shown a willingness to embrace and modify these influences in response to evolving circumstances. Nevertheless, the country strives to balance these external influences with its unique cultural, social, and political context. Legal transplantation in Indonesia is an ongoing process, reflecting the nation's commitment to updating its legal system to address the needs of its diverse and dynamic population.

Some essential historical developments that have led to legal transplantation in Indonesia need to be understood. The first relates to the Dutch colonial era. For several centuries, Indonesia was known as the Dutch East Indies. During that time, the Dutch established their legal system which was based mostly on Roman-Dutch law [4]. Various parts of Indonesian law, including civil law, commercial law, and criminal law, were impacted by Dutch colonial laws. Since its arrival in the region, the *Verenigde Oostindische Compagnie* (Dutch East India Company, VOC) maintained a significant monopoly on Dutch trade with Asia [29].[2] It achieved a significant foothold on the Indonesian islands, primarily for the spice trade and other valuable commodities. The VOC increased its power, establishing commercial centres and colonial holdings throughout the archipelago and eventually acquired control of much of Indonesia. The Dutch built colonial administrations, imposed their laws, and profited economically from local resources (Anonymous, no page). Here, we may identify two variables that have influenced the history of Dutch policy: the agricultural system (1830-1870) and the ethical policy (1901-1942) [90]. The Dutch obliged Indonesian farmers to devote a portion of their land to the production of cash crops for export, such as sugar, coffee, and indigo, during the agricultural system [24].[3] This system resulted in widespread exploitation and hardship for Indonesian farmers. While the Dutch used ethical policy to better the living conditions of the local population in the early twentieth century, it nonetheless maintained substantial economic difference between the Dutch colonizers and the indigenous population. The enormous gap between the two widened unabatedly [20].

In addition to unfavorable social and political circumstances, Indonesia experienced legal transplantation. The three Dutch substantive laws imported into Indonesian law were *Burgelijk Wetboek* (BW), *Wetboek van Koephandel* (WvK), and *Wetboek van Strafrecht* (WvS). With *Staatsblad* No. 23 of 1847, implemented on May 1, 1848, BW and WvK, which were merely translations into Dutch of two French legal codifications—the *Code of Commerce* and the *Code Civil des Francais*—began to take effect. With *Staatsblad* 1915 No. 732, the WvS (the Criminal Code) went into effect. With the passage of Law No. 1 in 1946, the Criminal Code was formally established in Indonesia. These three pieces of legislation marked the end of the legal transplantation process and the means of satisfying both the substance and structural requirements of the legislation. Despite the fact that the three

2 VOC was a powerful company, possessing quasi-governmental powers, including the ability to wage war, imprison and execute convicts.

3 "[A] monopoly on all Dutch trade east of the Cape of Good Hope and west of the Straits of Magellan"

laws had always been challenged by Islamic and customary law, their endurance indicated their capacity to withstand enormous strain.

When the Dutch military was replaced by a Japanese force during World War II, colonialization continued under a new colonizer. Despite the short duration of the Japanese occupation in Indonesia, it had a significant influence on the country's society and fueled nationalist sentiments [59]. Japan imposed its legal system and made several legal modifications during World War II that had an impact on Indonesia's legal system, including the application of Japanese civil, criminal, and administrative law [87]. The legal and administrative framework of the Indonesian archipelago likewise saw considerable disturbances and resulting changes. We may conclude that although the Japanese attempted to fully apply their legal system during the occupation of Indonesia, they were only partially successful. The primary explanation, in our opinion, is that the Japanese occupation of Indonesia from 1942 to 1945 was comparatively brief and that the circumstances were complicated and difficult [12]. The Indonesian citizenry fought back against Japanese rule and the implementation of Japanese laws. The Japanese struggled to fully establish their legal authority in some places due to pockets of armed resistance throughout the archipelago. The Japanese government acknowledged and implemented parts of Indonesian adat law (customary law) to win local support and legitimacy, in addition to serving as a symbolic protest against Dutch law. In certain areas, Japanese law and adat law coexisted as a consequence, creating hybrid legal systems. In addition, the application of Japanese legislation was hampered by the language barrier. Because so many Indonesians could not speak Japanese, it was difficult for them to understand and follow the new legal restrictions. As a result, in terms of successfully influencing law, Dutch legislation continued to be more important for ordinary people.

During the three and a half years under Japanese rule, it was difficult to properly build a thorough judicial system over the large archipelago. Hence, the legal application of the Japanese occupation remained constrained and mostly regional [91]. The Japanese were unable to completely replace the existing Dutch colonial legal system in Indonesia or impose their legal system universally throughout the country. Following Japanese capitulation in 1945, Indonesia gained independence and started the process of re-establishing its judicial and political systems. Following independence, the country's legal system was shaped by a combination of Dutch colonial traditions, Indonesian adat law, Islamic law in some areas, and other international legal norms. Although Japanese occupation had a significant impact on Indonesia's legal growth, particularly in various labour and land-related legislation, its overall influence was short-lived [91]. Due to the Dutch colonization over several centuries, Indonesia now has a new system of law with Dutch law predominating in such a pluralistic culture [56]. The incorporation of the Burgelijk Wetboek, Wetboek van Kophandel, and Wetboek van Strafrecht into Indonesian law is proof that the success of the transplant is dependent on constant legal migration. In stark contrast to the brief Japanese rule, the Dutch's prolonged survival in the region significantly influenced their legal acceptance abroad. The Japanese during occupation changed these three Dutch laws but this endeavor failed since many Japanese laws were ineffective in resolving social problems [74].

A third historical development that led to legal transportation from the 1950s to the 1970s was legal changes to modernize and adjust its legal framework to the demands of a newly independent country [70]. These changes intended to balance national law with adat law and Islamic law. Changes to the constitution were made in 1950 and 1959, reflecting the underlying struggle over whether Indonesia should choose a unitary or a federalist system. The Old Provisional Constitution, which concentrated authority and transformed the nation into a unitary state, superseded the 1950 Constitution which had established Indonesia as a federal state with extensive regional autonomy. The previous 1945 Constitution came to life once more in 1959, when Western nationalism and republicanism served as the foundation of the nation's legal system. Another example of transplant related to land reform, a key initiative to address difficulties with allocation and ownership of land. With the goal of eliminating inequality and fostering the growth of agriculture, the government enacted several programs to transfer land from huge estates to peasant farmers. Thus, the long-established value of common land ownership was eventually replaced by private ownership. Land may be owned jointly with the state or it may maintain ultimate ownership of land resources due to the government's involvement in the administration and management of land. Natural resources and certain types of terrain, such as woods and beaches, are particularly examples. Another example of legal changes was the marriage legislation in 1974. The protracted argument between nationalist seculars and Muslims over the marriage legislation was an anti-climax, with eventual agreement to adopt rules from both adat and Islamic law.

The fourth legal change was the Reformation Era from 1998 onwards. After the autocratic and centralized Suharto administration fell in 1998 as a result of huge demonstrations and demands for political reform, Indonesia undertook substantial law reforms to enhance democratic institutions and advance human rights [86, 88]. These changes included the approval of international human rights treaties as well as adjustments to the 1945 Constitution. Following the Suharto dictatorship, several important political, economic, and legal reforms materialized. There were initiatives to modernize the legal system, human rights safeguards, and the nation's political structures. During this Reformation Era, Indonesia's new legal system was shaped by importing legal doctrines, customs, and institutions from other nations.

Examples of legal transplants during the Reformation included human rights law, whose principles are mostly derived from international human rights conventions and treaties [104, 40, 68]; a Freedom of Information Act, taking cues from laws of a similar sort in other countries, to promote transparency

and accountability in governmental operations (Hapsari and Pratiwi, no. page); the investigation and prosecution of corruption cases involving high-ranking officials became the responsibility of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK), which was founded in December 2003 and modelled after anti-corruption bodies in other countries [54]. Other democracies served as a model for modifications to election laws and practices, such as the implementation of proportional representation and direct presidential elections. Decentralization which was implemented based on federal systems in other countries, its goal was to provide local governments more discretion in governance and decision-making [60].[4] The relaxation of media control and the advancement of press freedom were influenced by legal changes in other countries that respect freedom of speech [96]. Labour reforms were implemented in accordance with international labour rules and practices while taking into consideration the experiences of other countries [16]. The establishment of truth and reconciliation commissions and attempts to redress previous human rights crimes were influenced by comparable organizations employed in post-conflict and transitional justice settings in other countries [11]; and guidelines were offered for the development of legislation that supports gender equality and defends women's rights by international legal frameworks and practices [77]. These reforms indicate the necessity of legal transplants in the development of Indonesia's legal system. The substance and culture of foreign laws can be adopted into the national legal system to assist the state in emerging from setbacks and stagnation.

4. Current Cases of Legal Transplant

Legal transplanting has been a popular trend in several nations, including Indonesia, in the evolution of law. However, legal transplanting as part of a country's legal politics depends on its political will; that is, if the country requires a relatively short policy to modify law, then a legal transplant becomes one of the required policies. Thus, the state initiates legal transplanting so that people are not cut off from global trends.

The transplanting of law in Indonesia, which essentially began during the Dutch East Indies regime, continues to this day. The distinction is that in the Dutch East Indies, government law transplantation was enforced, whereas today law transplantation is optional. However, this does not imply that all types of transplants performed today are voluntary. The overwhelming dominance of industrialized nations in the international economic system, as well as the strong influence of the supra-state, has resulted in the Indonesian government being "forced" to transfer the legislation [110]. The Dutch colonial authorities, recognizing the potential for resistance in Indonesia, reached a compromise when implementing the Regerings Regulation of 1854, especially Article 75, which embodied European liberal ideologies. This compromise included two main aspects: 1) permitting indigenous laws (customs) to remain in effect temporarily as long as they did not conflict with European (Dutch) legal principles; and 2) gradually introducing European law (from the Netherlands). Consequently, legal transplantation became a practice during Dutch colonization, a tradition that persists in Indonesia today and serves as a means of addressing legal challenges.

The three cases presented below serve as illustrative examples of how various transplantation models operate within the Indonesian legal system. They demonstrate how certain adaptations can occur to legitimize foreign laws in the host country.

4.1. The Crime of Money Laundering

Money laundering has been recognized as a white-collar crime since 1867. However, it emerged when Al Capone, one of the biggest mafia figures in the United States, opened a Laundromat in 1920 [93, 5]. Money laundering was not a criminal offence prior to 1986. As a result, the G7 nations created the Financial Action Task Force (FATF) in 1989 with the goal of developing and implementing rules for the prevention and elimination of money laundering offenses. The FATF has established policies in regulation, finance, and law enforcement, which are contained in 40 + 9 FATF recommendations [7]. The FATF then sued the countries to eradicate money laundering and mentioned: 1) a country should have implemented legislation making money laundering a criminal offence; 2) Financial Service Providers must be able to recognize and report suspicious financial activity; and 3) every country should have its own financial intelligence unit [23].

As a result of FATF recommendations, the abolition of money laundering activities in Indonesia began with the enactment of Law No. 15 of 2002 on Money Laundering Crime, which was subsequently revised as Law No. 25 of 2003, and then Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Crime. The introduction of anti-money laundering law in Indonesia cannot be separated from the effect of international anti-money laundering standards, and aims to remove Indonesia from the list of nations that are not cooperative in combating money laundering crime. Money laundering is essentially a form of transplantation of international standards that must be implemented to eradicate and prevent money laundering in Indonesia, as a member of FATF. Furthermore, the development of money laundering legislation in Indonesia is inextricably linked to growing international pressure for legal unification of all countries, because crime actors operate in various ways, making it difficult to establish a link between crimes committed and losses suffered by the state [23].

4 "Law No.22/1999, which guided the process of devolution and local autonomy, was endorsed by the Parliament in 1999 and implemented in 2004, and the latest version was passed by the Parliament in 2014. The revised law, known as Law No.23/2014 describes a clear division of the responsibilities between all government levels. This gives certainty to the local governments regarding their responsibilities."

Eradication of money laundering in Indonesia was previously at a standstill, due to the country's long-standing legal structure being violated by money laundering. The criminal justice system was more concerned with "following the suspect" than "following the money." In Indonesia, the concept of "follow the suspect" referred to the procedure by which investigators, prosecutors, and judges approached the task of enforcing the law. This process established a paradigm that states that assets connected to criminal activity, referred to as "Criminal Assets," can only be seized or taken into custody once the main suspect has been found guilty of a crime [22]. If the focus of law enforcement remains on the perpetrator, then any policy regarding the proceeds of crime cannot be implemented until the predicate crime—referred to as the crime of the original case in the context of money laundering—is criminalized. If the criminal in the case origin is not punished, then nothing related to the asset, including foreclosure, can be done. Given that any legal action on criminal assets must await criminal prosecution, it may limit the attainment of criminal and criminal aims [48].

Because anti-money laundering is completely independent of criminal prosecution, pursuing the suspect in the criminal law system in Indonesia has impeded integration of anti-money laundering law. Hence, the money laundering legal system has moved away from a "follow the money" approach to punishment, so that the imposition of a criminal process does not have to wait for the imposition of a criminal prosecution against the source of the money laundered. If the "follow the money" approach is an asset, then the ownership of the supposed asset is the outcome of criminal conduct. Consequently, under the money laundering procedural system, the defendant is given the chance to establish that his or her property was legitimately acquired and not the product of a crime. The money-focused money laundering regime is distinct from the criminal law's approach, directed at the suspect involved in the disclosure of a criminal act. Follow the money's orientation is to concentrate on assets, so disclosing the crime of money laundering does not begin with criminal incidents and then tracing the assets produced by the crime, but rather can begin with the assets that are discovered, and determine whether or not they were obtained legally. Technically, it is the defendant's burden of proof to establish if they were obtained legally.

Indonesia introduced international money laundering with Law No. 25 of 2003, which was then revised as Law No. 8 of 2010 [36]. Incorporation of such international standards into Indonesian law does not happen automatically when legislation is ratified; rather, the transplantation of money laundering laws began with drafting legislation and taking into account any international standards, regulations, or norms that have been referred to in Law No. 25 of 2003 on the crime of money laundering and Law No. 8 of 2010. Law No. 15 of 2002 on Crime of Money Laundering was adjusted to the development of criminal law on Money Laundering and international standards (Law No. 25 of 2003 in Letter a), as well as Law No. 8/2010, Letter c, states that Law No. 15 (2002) on Crime of Money Laundering as amended by Law No. 25 Year 2003 needed to be adjusted to the development of international law enforcing the prohibition of money laundering.

The following paragraphs provide examples of FATF recommendations that have been incorporated into Indonesian law:

1) "Countries should criminalize money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention). Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences" [9].

This principle has now been implemented in Law No. 8/2010 Article 2 Paragraphs 1 and 2.

2) "Countries should ensure that: a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances. b) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons. This should not preclude parallel criminal, civil or administrative proceedings with respect to legal persons in countries in which such forms of liability are available. Legal persons should be subject to effective, proportionate and dissuasive sanctions. Such measures should be without prejudice to the criminal liability of individuals" [9].

These have now been incorporated into Law 8/2010, Articles 3, 4, 5 and 7 and 10, Article 30 paragraphs (1), (2), (3), (4) and (5) and Article 35 paragraph (1) (and (4).

3) "Countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties. Such measures should include the authority to: (a) identify, trace and evaluate property which is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the State's ability to recover property that is subject to confiscation; and (d) take any appropriate investigative measures. Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to

confiscation, to the extent that such a requirement is consistent with the principles of their domestic law" [9].

These principles have now been adopted in Law No. 8/2010 Article 69, 70, 71, 79 Paragraph (4), (5). (6), and Article 81.

4.2. Legal Transplants in the Constitutional Court

Since its inception in 2003, the Indonesian Constitutional Court (*Mahkamah Konstitusi*) has used legal transplants in its judicial decision-making process. Zhang investigated reference to foreign laws in Court judgments, and discovered 813 references in 62 decisions [113]. The number depicts the Court's willingness to turn to foreign laws in order to resolve constitutional problems [14]. This might be expected, as justices in a new court must be prepared to hear a large number of constitutional issues. The Constitutional Court's open stance appears to be informed by the realization that constitutional law does not exist in a vacuum, but rather in the practice of laws by the community in domestic or foreign countries. Respect for other countries' laws may lead to reciprocal relationships and a significant prospect of unification or as Mark Tushnet put it "constitutional convergence" [105].

The readiness of a constitutional court to embrace legal transplantation is influenced by various factors, such as its jurisdiction, legal traditions, and the unique constitutional needs of the country. Legal transplanting refers to the process of adopting or borrowing legal principles, concepts, or entire legal systems from other nations to modify or enhance the domestic legal framework. The degree to which a constitutional court is amenable to legal transplantation varies greatly. Some of the elements that may impact on a constitutional court's decision on lawful transplantation include: 1) Constitutional Structure: a country's constitution is critical in deciding the extent to which legal transplantation is permissible. Some constitutions may explicitly allow or restrict the application of foreign legal concepts, while others may be silent on the subject [92, 34]; 2) Legal Tradition: a country's legal tradition is an important component. Legal transplantation occurs more commonly in common law countries than in civil law countries. Common law systems are more likely to rely on judicial precedent and to absorb legal ideas from other common law jurisdictions [13]; 3) Historical Context: a court's openness to legal transplantation can also be influenced by historical considerations. Countries with a colonial history may have legal systems influenced by their colonizers. Furthermore, post-conflict or transitional countries may use international legal systems to construct new legal orders [49]; 4) Legal knowledge: The legal knowledge of a constitutional court's judges is critical. With their comparative and international law experience, they may be more open to examining and applying foreign legal notions [107]; 5) Public Opinion and Political Considerations: they can have a considerable impact on how a constitutional court views legal transplanting. Courts may be more or less accessible, depending on public and political leaders' perceptions of the acceptability of foreign legal ideas [32]; 6) Judicial Philosophy: a constitutional court's general judicial philosophy, as well as its propensity to interpret the constitution in a dynamic manner, can influence its susceptibility to legal transplantation [36]; 7) International Treaties and Conventions: some countries may sign international treaties and conventions requiring them to match their legal systems with particular international standards and norms [72]. In circumstances involving international responsibilities, constitutional courts may be more amenable to legal transplanting. To summarize, a constitutional court's openness to legal transplanting is influenced by a combination of legal, historical, political, and practical factors. Some courts actively participate in legal transplanting as a means of adapting and evolving their legal systems, but others may take a more conservative or conventional approach. It ultimately depends on each country's unique circumstances and legal system.

Foreign laws are used by the Constitutional Court for more than just judicial decision-making; they are incorporated into its procedural rules. For example, a Constitutional Court Law (Law Number 8 of 2011 on the Amendment to Law Number 24 of 2003) requires parties to justify their qualifications and claims of constitutional injury during the admissibility process. The term "constitutional injury" is not defined in the legislation. As a result, the Court establishes constitutional harm requirements that the parties must meet. The Court translated the constitutional injury standards from other constitutional jurisdictions into its formulation. Indeed, Article 51 of Law No. 8 of 2011 on the Constitutional Court includes a section on the Court's procedural law. It governs the parties who are permitted to file a judicial review lawsuit. According to this article, a petitioner is a party who believes their constitutional rights or powers have been violated. Thus, the definition of petitioner has two components: (i) parties and (ii) impairment to constitutional rights/powers. Article 51(1) defines "parties" as (a) individuals, (b) indigenous communities, (c) public/private legal entities, and (d) governmental agencies [14]. The question of what constitutes "constitutional rights/authorities' injury" emerges. According to article 51(1) of the Indonesian Constitutional Court Law, constitutional rights are "the rights mentioned in the 1945 Constitution." Furthermore, article 51(2) of the Law requires the parties to describe and prove their injuries. Although the explication and Article 51(2) of the Law establish a description of constitutional injuries, the scope of what defines "constitutional injuries" remains ambiguous.

The Court developed the standards for constitutional injury two years after its formation [14].[5] Later, various changes

5 The formulation of constitutional injuries criteria was introduced in the Decision of the Constitutional Court Number 006/PUU-III/2005 on the Review of Law Number 32 of 2004 on Regional Government, where the Constitution stated that the criteria of injuries must include that: a) a constitutional right of the parties; b) the right is infringed by the Law under review; c) the injuries must be specific and actual or have the potential to be occur; d) there is a causal relationship (causal verband) between the injuries and the Law; e) there will be remedy if the case is granted by the Court.

were made to the initial formulation. Two adjustments were the insertion of the phrase "powers" to the first criterion to accommodate government institutions, and the Court's amendment to the criterion's *en masse* nature. The *en masse* or cumulative nature of the requirements means that failure to meet even one of them would result in a ruling that the petitioner lacked standing to bring a judicial review action, which is known as a "inadmissible" ruling [25]. The five criteria can be divided into two groups based on their structural components: (i) elements and (ii) measurements. The term "elements" means that the parties must explain and demonstrate (i) that their rights and powers are guaranteed by the constitution and (ii) the harms they have experienced. The need to "measure" is that they pass the following evaluations: (i) the harm must be concrete, actual, or at least very likely to occur; (ii) there must be a connection between the harm and the law being reviewed; and (iii) if the law is overturned, there will be a remedy or at the very least the rights won't be violated [14].

A closer look indicates that the type of test used to determine whether constitutional injuries have occurred is akin to the "standing doctrine" in the US which comprises injury-in-fact, cause of effect, and redressability. Justice Maruarar Siahaan, who was on the Court when the criteria were first introduced, acknowledged that the standing theory and the standards for constitutional damage are comparable, especially in terms of how they are measured [14]. In determining injuries in the Indonesian environment, Siahaan remarked that the doctrine is not totally transplanted. A modification that sets the criteria apart from established doctrine is adding "elements" to them. The Court's legal transplant is not just a copy-and-paste operation, but a "synchronization-harmonization" [30] that considers the circumstances around the Indonesian Constitutional Courts.

Legal transplantation is also found in the use of the proportionality test, a strategy to evaluate different points of view on competing rights or when a court must choose whether to protect individual rights or state interests. It determines which interests should be prioritized and supports judicial decision-making by offering an analytical framework for judges to consider. The idea of an Indonesian proportionality test was taken from German legal system where historically administrative courts had developed this structure. A concept of proportionality that was testable in law was first developed in the High State Administrative Courts (German: *Oberverwaltungsgericht*) in Germany in the late 19th century, to review actions by the police [108, 75]. The proportionality test originated systematically with the jurisprudence of the Federal Constitutional Court, the *Bundesverfassungsgericht*. The administrative court first tested the police power policy in the *Polizeirecht* case. Such cases often involve situations where law enforcement agencies restrict individual freedoms or take preventive measures to address potential threats. For example, the use of police powers to disperse a crowd, conduct searches, or impose restrictions on movement might be subject to the proportionality test. *Polizeirecht* encompasses the legal framework governing the powers and actions of police to maintain public order and ensure public safety. When legal issues arise in *Polizeirecht* cases, courts often employ the proportionality test to assess whether the actions taken by law enforcement authorities are justified and proportionate [106].

The adoption of the proportionality criteria also results in legal transplantation, an approach used to weigh conflicting rights or when a court must decide whether to safeguard individual rights or governmental interests. It determines which interests should be prioritized and aids judicial decision-making by providing judges with an analytical framework to consider [18]. As discussed earlier, the idea for an Indonesian proportionality test came from the German legal system. This test has been applied to constitutional issues since 1949 when the German Basic Law was passed. The Basic Law includes provisions that act as a list of citizens' rights which it is unconstitutional to violate.[6] The Constitutional Court used the proportionality analysis for the first time in the Drug Store case, which was determined in 1958. The proportionality analysis is not solely created by the Court. Academic articles written by German researchers were often cited by German courts significantly advanced the proportionality test. As a result of the German experience, the proportionality test gained acceptance and spread throughout Europe. It has been approved by constitutional courts in Central and Eastern Europe.

The proportionality concept in judicial review is well-known in constitutional courts across the world. This theory has gained popularity and is now regarded a universal principle that assists constitutional courts in deciding situations involving the loss of people, limits on rights, and open legal systems. Germany, Canada, Israel, India, and South Korea are among the countries that have accepted the proportionality concept. The idea of proportionality assists judges in their efforts to offer legal consideration to the policies under test to determine proper, needed, and beneficial policies. There are steps that must be passed while using this theory. First, establish if the goal of the policy being examined is legitimate under the constitution. Second, appropriateness is determined by assessing if the policies evaluated between the policy objectives have a connection that promotes their achievement. Third, it is necessary to determine if the policy being evaluated has the least losses when compared to other policy choices. Fourth, in a restricted sense, balancing to determine whether the measures being assessed have benefits and advantages that

6 Here's how the principle of proportionality is generally understood and applied in the German legal system: (1) Legitimate Aim (Legitimitätsgebot): any government action or interference with individual rights must have a legitimate aim, such as the protection of public safety, national security, or the rights of others; (2) Suitability (Geeignetheitsgebot): the means chosen to achieve the legitimate aim must be suitable or appropriate for reaching that goal; (3) Necessity (Erforderlichkeitsgebot): the government action should be necessary, meaning there should be no less restrictive means available to achieve the legitimate aim; and (4) Proportionality in the Narrow Sense (Angemessenheitsgebot): the benefits of the government action in achieving its objective should outweigh the disadvantages or restrictions imposed on individual rights. The interference should be proportionate and not excessive.

outweigh the losses [80]. The presence of the proportionality principle in judicial review demonstrates its importance in assisting judges in providing legal considerations not only to interpret or quote articles, but also to elaborate the basis of the petition more deeply, namely the loss of citizens that underpins the application for judicial review itself [69].

In Indonesia, many requests related to citizen loss, restriction of rights, and open legal policies such as the death penalty policy for drug convictions, labour-related policies, and the People Assembly's open legal policy in determining the Presidential Threshold, have been submitted to the Constitutional Court. The question is whether the Constitutional Court embraced and applied the notion of proportionality while considering these issues. This must be examined in order to determine how fairly and equitably the Constitutional Court ruled on the matter. Using the proportionality test, we must compare Indonesia and Germany in this analysis. Germany was chosen because it is a country whose proportionality principle in theory and experience grows dynamically in its application. An examination of the two nations' theory and practice found there were parallels and variations in the principle of proportionality in the constitutional court. First, the commonalities were that neither the Constitution nor the 1949 Grundgesetz directly govern the proportionality concept. Second, this idea is expressly stated in Article 28J paragraph (2) of the Constitution, as well as in Article 1 paragraph (3) and Article 2 of the 1949 Grundgesetz. Third, constitutional judges are not required to use the proportionality standard in judicial reviews. Although neither is necessary for the third similarity, there are discrepancies in practice.

The first difference between the proportionality principle in Indonesia and Germany is the boldness of judges in applying it. Although not required in Germany, it has become a widely recognized general guideline. Judges are free to use this concept, and every time a court delivers legal considerations connected to citizen losses, rights limitations, and open legal policies, the judge applies the proportionality principle. But the Indonesian Constitutional Court has not applied this approach in every judicial review case. The second distinction is the phases of testing. There are just three in Germany —appropriateness, need, and balance — in the restricted sense. However, there are no such testing factors in Indonesia. Third, in Germany the subject's scope has evolved not only the state vs the people, but also the interests of citizens among themselves. But there has been no progress in Indonesia. Fourth, the notion of proportionality has advanced fast in theory and practice in Germany. Meanwhile, because the Indonesian Constitutional Court did not initially embrace these ideas, there has been no growth of these concepts.

Thus, while the Constitutional Court has not necessarily accepted the idea of proportionality, the number of requests for judicial review relating to citizen losses, rights limits, and open legal policies is rising. This has increased the Court's urgency in requiring that justices do more than interpret or paraphrase parts of the Constitution, but also investigate more closely the losses as the foundation for the petition. Thus, court evaluations of citizen losses, limits on rights, and open legal policies may be decided equitably, and citizen loss can be rectified. To assist the Constitutional Court in adopting the concept of proportionality as a tool in every trial, it is critical that this proportionality principle is accommodated in the Constitutional Court's Laws and Regulations as an alternative variation to judges in judicial review.

4.3. Legal Transplant in Islamic Law

Islamic law, or Shariah, has a significant impact in Indonesia, the world's largest Muslim-majority country. However, it is critical to note that Indonesia is not an Islamic state; rather, it is a secular state with a diverse population of many ethnicities, religions, and cultural traditions. Because of the country's diverse cultural and religious heritage, it is important to remember that the application and interpretation of Islamic law in Indonesia may vary by region. Furthermore, due to the fluidity of Indonesian culture, the relationship between Islamic law and other legal systems is always shifting.

In Indonesia, there has been a significant legal transplant from the classical Islamic legal tradition into the modern legal system under the framework of Islamic law. Indonesia is a varied country with a Muslim majority, and Islamic law has played an essential role in shaping the legal framework. It is important to note, however, that Indonesia has a legal system that is a combination of customary law, Roman-Dutch law, and Islamic law. The country's legal system is not primarily based on Islamic law. The application of Islamic law may be seen of as a way of bringing Islamic legal content into the Indonesian legal system. In Indonesia, the application is not considered as a challenge, but rather as a method of applying Islamic law where there is a legal vacuum of specific standards or a plurality of norms that may lead to legal problems. As a result, the incorporation of Islamic law into society might reduce legal issues produced by differences between different laws. It is true that the implementation of Islamic law may be perceived in numerous ways, and views may change based on people and communities' viewpoints and settings.

Here are some popular viewpoints on the implementation of Islamic law: First, in terms of cultural and religious identity, many Muslims consider Islamic law as a means of preserving cultural and religious identity [46]. It offers a framework for people and communities to live their lives in accordance with Islamic ideals. Second, Islamic law is frequently seen as a source of moral and ethical advice [82]. Its use is seen as a way to foster ideals like justice, compassion, and integrity in personal and societal behaviour. Third, in Islamic law, the emphasis on charity (zakat) and social welfare is viewed as a tool for fostering social fairness [2]. The implementation of these principles attempts to eliminate economic inequities and help the less fortunate. Fourth, some people may regard the implementation of Islamic law as offering a clear and consistent legal framework that handles numerous parts of life, such as

personal, familial, and economic problems, for the sake of legal certainty [83]. Fifth, there is still an ongoing controversy concerning its integration with the current legal system [37, 65]. Many countries have the issue of striking a balance between traditional Islamic values and current legal rules. It is critical to note that people's ideas on the implementation of Islamic law vary, and they may differ based on their cultural, religious, and ideological origins. The continuous dispute within Muslim communities and in the larger global environment highlights the complexities of understanding and applying Islamic legal concepts in modern Indonesia. In this case, we may presume that the application of Islamic law in Muslim culture is motivated by jurisprudential and sociological principles as well as theological objectives.

When studying Islamic law as a legal transplant, it entails the introduction or absorption of Islamic legal ideas into legal systems that are not historically Islamic [58]. This process can occur in a variety of ways, with varying consequences depending on the legal, cultural, and political setting. Islamic family law, for example, which encompasses regulations governing marriage, divorce, and inheritance, is frequently incorporated into the legal systems of nations with a sizable Muslim population. This may result in parallel legal systems, with Islamic family courts coexisting with civil courts. While the principles of Islamic banking, which forbid usury (*riba*) and encourage profit-sharing and risk-sharing, have been transferred into financial systems in several non-Muslim-majority nations. Islamic banking and finance institutions have been formed to serve Muslims who desire Shariah-compliant financial services. In rare situations, nations with largely Muslim populations or those undertaking legal reform may include elements of Islamic law into their constitutions. This might include recognizing Islam as the state religion or requiring that legislation adhere to Islamic precepts. It is critical to recognize that the implementation of Islamic law as a legal transplant is a dynamic and continuous process. The amount to which Islamic legal ideas are incorporated into a legal system is determined by elements such as the country's legal tradition, the level of religiosity in the people, and the political and social forces at work [51]. Furthermore, conflicts about the rightful role of Islamic law in legal systems are shaping these changes.

In the instance of Indonesia, incorporating Islamic family law of marriage, inheritance, and waqf into one act of the Compilation of Islamic law by Presidential Instruction No. 1 of 1991 is the ideal strategy to applying the core principles of family law in the Indonesian legal system. This indicates that with the Compilation, the Islamic legal transplant in the realms of marriage, inheritance, and waqf may be accomplished with the assistance of government hands [71]. This is done in the early 1990s, when the essence of Islamic law is already ubiquitous in people's lives. The purpose of the Compilation is primarily to demonstrate that the legal transplantation of Islamic law principles into the life of society has been preceded by legal practice, although informally. Thus, the government's primary purpose is to provide formality to the observance of religious law. Such legal transplanting is widespread in many legal systems where Islamic law application requires official institutions. Egypt, for example, has a civil law system that also serves as the country's primary legal system. The Egyptian Personal Status Law (Law No. 25 of 1929) governs the majority of family legislation in Egypt. This legislation, also known as the Personal Status Code, governs family concerns such as marriage, divorce, child custody, and inheritance [3]. Legal transplants from ancient Islamic law had also been assimilated into Egypt's modern system. Algeria is another case in point. In Algeria, family problems are frequently handled by Islamic law, particularly in areas such as marriage, divorce, and inheritance. The country has a family code that tackles personal status problems. This rule, often known as the "Family Code," was adopted in 1984 and has been revised to reflect both Islamic ideals and current legal requirements [15]. The incidence has also been reported in Pakistan, Jordan, Morocco, and other countries.

The Compilation of Islamic Law, which is primarily founded on the notion of Syafi'i madhab, seeks to unify and standardize diverse legal laws pertaining to Islamic law, notably in the domain of family law. The Compilation has its origins in Dutch colonial law. During the colonial period, Dutch officials permitted the application of Islamic law to Muslims in the Dutch East Indies in aspects of personal law [27]. After Indonesia got independence, this practice persisted. The Compilation's major focus is on family law problems such as marriage, divorce, inheritance, and other related topics. It intends to establish a complete collection of laws and regulations that control various aspects of personal status. The regulations in the Compilation apply exclusively to Indonesia's Muslim people. In terms of personal law, non-Muslims are mainly subject to the national civil code. The following are some of the Compilation's most essential components: The Compilation states the elements that must be satisfied for a lawful marriage, including both parties' agreement, the absence of banned connections (mahram), and financial competence. It also tackles the notion of dower (mahr), which is the amount of money or property that the groom pledges to provide to the bride as part of the marriage contract. The Compilation provides guidance on the processes for divorce (*talaq*) and the conditions under which it can be granted, including the waiting time (*iddah*). In terms of financial duties, it stipulates the husband's financial commitments during and after the divorce, such as alimony (*nafkah*). In inheritance (*Faraid*) matters, the Compilation gives standards for the distribution of inheritance among heirs based on Islamic principles given in the Quran. Specifies the heirs' portions, including spouses, children, and other relatives. It also outlines the preparation of a will in order to donate a portion of one's fortune to certain persons or causes within the parameters established by Islamic law. In terms of family law, it covers child custody concerns, outlining the factors to examine when determining custody and guardianship following di-

vorce. It also defines guidelines for the financial upkeep and support of family members. These are only a few examples of how, via the positivization of Islamic law, the path to Islamic legal transplantation may be paved efficiently in order to make it a rule that is followed by all Muslims in Indonesia [47].

Law No. 41 of 2004 on Waqf (endowment) is also the best example of how Islamic law of waqf may be totally translated into the Indonesian system. The Law is a legal framework that governs waqf operations throughout the country. Waqf is an Islamic term for endowment or charity contribution in which assets are allocated to religious, educational, or social objectives. The purpose of the Law is to provide principles and regulations for the formation, administration, and use of waqf assets. Some significant issues in the law all pertain to the teaching of Islamic waqf law and how it should be applied in Indonesia [97]. The law defines waqf as the commitment of specific assets, whether physical or intangible, for religious, educational, social, or other charity reasons. The fundamental goal is to improve social welfare and benefit the community as a whole. The Law specifies the procedures for creating waqf, including the circumstances and requirements for making a legitimate waqf dedication, in the formation of waqf. Specific buildings, monies, or other assets may be involved. Furthermore, the Law No. 41 establishes criteria for the management and administration of waqf assets. This involves appointing trustees or administrators to manage the waqf and ensure its aims are realized. The Law also stipulates the authorized uses of waqf assets, with an emphasis on activities that promote the intended charity aims, such as education, healthcare, and social welfare initiatives. To guarantee conformity with the legal framework, the Law sets procedures for the supervision and control of waqf operations. Waqf management may be overseen by government officials or related entities. Finally, the Law might address the tax consequences and legal status of waqf holdings. Certain perks or exemptions may be offered to promote charitable waqf activity [45].

The Law established certain goals aimed at creating a legal framework for the formation, management, and usage of waqf assets. First, explaining waqf processes. The legislation intends to offer people and entities desiring to create waqf with clear and standardized processes, ensuring that the process is well-defined and accessible. Second, guaranteeing legal recognition and protection; the legislation attempts to offer waqf assets legal recognition and protection, ensuring that they are legally separate entities with legal rights and safeguards. Third, promote social well-being. The Law stresses waqf's charity and social welfare aims, promoting the donation of assets for the benefit of the community, including education, healthcare, and social welfare. Fourth, managerial guidelines are provided. The law specifies policies and procedures for the proper management and administration of waqf assets. This involves the selection of trustees or administrators to manage waqf activities. Fifth, promoting the correct use of waqf assets. The legislation specifies the legal uses of waqf assets, ensuring that they are consistent with the charity reasons intended. This helps to avoid abuse and ensures that waqf assets benefit society. Sixth, ensure Islamic precepts are followed. Because waqf is an Islamic idea, the law seeks to guarantee that waqf operations adhere to Islamic principles and values. The seventh goal is to facilitate economic development. The law may stimulate appropriate investment of waqf assets to create revenue, so promoting economic development and sustainability. And the eighth step is to create regulatory monitoring. The legislation establishes systems for the supervision and control of waqf operations, guaranteeing compliance with legal requirements and preventing misuse or mismanagement [44].

The law incorporates legal transplanting as well as local ingenuity to give a good and distinct translation of the traditional waqf [78]. We may discover a new idea of waqf in Law No. 41 of 2004, which was formed based on the local understanding of waqf. For example, Article 16 of the Law specifies waqf on land or plants that grow on the land. There are also some new understandings of waqf that have emerged as a result of the influence of modernity, such as waqf of money (Article 16 Para 3 and Article 28), which have emerged as a result of the massive discussion between traditionalist and modernist views of fiqh. At the time, not all ulama agreed on the formation of waqf money because it involved intangibles. However, most other ulama disagree, believing that money can be generated as an item of waqf. Nowadays, any asset, physical or immaterial, can become the object of waqf; it all depends on the aim behind the waqf, which often functions to exploit the potential and economic advantages of waqf assets for worship and to promote general welfare. For this reason, the waqf should be handled by a formal person or entity, who should be accountable to the ministry of religious affairs or the Indonesian Waqf Board (Badan Wakaf Indonesia) (Art. 14).

Another example of legal transplanting is the Sharia Economic Law Compilation (*Kompilasi Hukum Ekonomi Syariah*) as mentioned in the Supreme Court Regulation Number 2 of 2008. This Compilation is one example of positivization of Islamic law, with several modifications to the current context under the framework of the Unitary State of the Republic of Indonesia. Through Supreme Court Regulation No. 2 of 2008, which is one of the authorities of religious courts based on article 49 letter i of Law Number 7 of 1989 concerning Religious Courts, it is a legal umbrella and guideline for religious court judges in examining, deciding, and resolving sharia economic cases. This is the most successful legal transplant approach for peacefully applying Islamic economic concepts [66, 94]. Material rules relating to sharia economics that Religious Court judges require are still spread throughout multiple fiqh sources, ulama fatwas, and Bank Indonesia Regulations (PBI). As a result, accumulating this sharia economic legal information is something that judges in religious courts are highly interested in. The Compilation of Sharia Economic Law (KHES) might be considered the solution to the aforementioned problems. KHES, by definition, is a compilation gathered from many sources in fiqh literature. The Majallatu

al-Ahkam al-Adliyah, a civil law code written during the Ottoman era and subsequently modified to current and Indonesian settings, was one of the materials used to create this KHES [64]. KHES can be regarded as a sort of positivization of Islamic law that has been modified to fit the modern Indonesian setting.

KHES was established with the release of Law No. 3 of 2006 amending Law No. 7 of 1989 concerning Religious Courts. This law broadens the power of Religious Courts to reflect legal advancements and the actual demands of Indonesian Muslims [21]. With this expansion of authority, Religious Courts now have the authority not only to resolve disputes in the fields of marriage, inheritance, wills, grants, endowments, and sadaqah, but also to handle adoption requests and resolve disputes over zakat, infaq, and other property and civil rights disputes between Muslims, as well as sharia economics. Law Number 3 of 2006 clarifies that sharia economics refers to any actions or business ventures that are conducted in accordance with sharia principles. These include sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia medium-term bonds and securities, sharia financing, sharia pawnshops, sharia financing, and sharia business. Since the enactment of Law Number 3 of 2006, there has been a pressing need for Religious Courts to have access to applied legal resources in the area of sharia economics [67]. This is why KHES is so important.

KHES, which consists of four books, is regarded as effectively assembling all Shariah economics issues that society need. The four books—which cover law and property, contracts, almsgiving and grants, and shariah accounting—all represent the principles of shariah economics as they are understood from the fiqh works that the Compilation cites. *Al-Fiqh al-Islami wa Adillatuh, Al-Fiqh al-Islami fi Tsaubihi al-Jadid, Al-Mu'amalat al-Madiyah wa al-Adabiyah, Al-Wasith fi Syarh al-Qanun al-Madani al-Jadid, Al-Muqaranat al-Tasyri'iyyah bayna al-Qawanin al-Wadh'iyyah al-Madaniyah wa al-Tasyri' al-Islami*, and *Durar al-Hukkam: Syarh Majallat al-Ahkam* are among the books used in the compilation of the shariah economics [26, 35, 41, 85, 112, 114]. [7] The majority of those Arabic works dealt with *Majallatu al-Ahkam al-Adliyah*, while some recent, contemporary economics situations were included as examples. The Compilation also cites the book *Himpunan Fatwa Dewan Syari'ah Nasional-MUI*, which was issued by National Sharia Board-Indonesian Ulema Council and the Bank of Indonesia, in relation to these recent instances [6]. This is simply to ratify the formal implementation of Shariah economics into the Indonesian legal system. The process of transplanting exhibits a synthesis of ancient and contemporary economic perspectives. The ancient economic principles inherent in the old fiqh are then blended with and rejuvenated by the new notion of contemporary law. The new regulations, however, are only new interpretations of existing rules as viewed in the current context. This means that certain sharia economic regulations are just new interpretations of previous norms.

For example, in the law of contract (Book Two, Chapter 1-29), it appears that the Compilation mentions the entire concept of Shariah economics. The Compilation includes everything from historical substances like trade (*al-Bai'*), *syirkah, mudharabah, muzara'ah*, and so on, to more recent substances like shariah bonds, capital market, shariah mutual funds, shariah bank account, and shariah pension funds. It is in these areas that we may find the fusion of ancient and current fiqh ideas. While Book Three is mainly concerned with the traditional concept of almsgiving and grant, Book Four is concerned with the modern concept of shariah accounting. There are five issues in this shariah accountant: Receivable accounting, financing accounting, liabilities accounting, investment accounting bound, equitas accounting, and *zis* and *qardh* accounting. It is in this case that the Compilation performs a type of legal transplantation by combining ancient and contemporary legal ideas, demonstrating the country's distinctive transplanting.

Although the world's biggest Muslim population nation was regarded to be somewhat late in paying attention to Islamic economics, Indonesia is undeniably catching up with other nations in the development of the sharia economy [19]. The world's fourth most populous country has recognized the need to capitalize on the sharia economy's potential. With a population of 271 million people, nearly 90 percent of whom are Muslims, Indonesia is the world's largest market for numerous shariah-related products. Indonesia, refusing to remain a simple market, is committed to play a larger role in the sharia economy, both nationally and worldwide, by focusing on four areas: halal industry, sharia finance, sharia social finance, and sharia entrepreneurship [8]. As a result, the incorporation of Islamic economics into the Indonesian legal system is an absolute necessity. However, this is accomplished not by refusing to include many new economic principles into the law, but by making it more receptive to many modern economic norms.

5. Conclusion

Legal transplants have played a fundamental role in shaping Indonesia's legal landscape, bridging the gap between tradition and modernity. As a country characterized by legal pluralism—incorporating state law, customary (adat) law, and Islamic law—Indonesia has long relied on foreign legal principles

77 books quoted by KHES: 1. Wahbah al-Zuahili, Al-Fiqh al-Islami wa Adillatuh (Damaskus: Dar al-Fikr, 2006); 2. Mustafa Ahmad Al-Zarqa, Al-Fiqh al-Islami fi Tsaubihi al-Jadid (Damaskus: Dar al-Fikr, 2006); 3. Ali Fikri, Al-Mu'amalat al-Madiyah wa al-Adabiyah (Egypt: Mustafa al-Babi al-Halabi, 1948); 4. 'Abd Al-Razaq Ahmad al-Sanhuri, Al-Wasith fi Syarh al-Qanun al-Madani al-Jadid (Beirut: Dar al-lhya' al-Turats al-'Arabi, nd.); 5. Ali Haidar, Al-Muqaranat al-Tasyri'iyyah bayna al-Qawanin al-Wadh'iyyah al-Madaniyah wa al-Tasyri' al-Islami (Mesir: Dar al-Salam, 2001); 6. 'Ali Haydar, Durar al-Hukkam: Syarh Majallat al-Ahkam (Beirut: Dar al-Kitab al-llmiyah, 1991); and 7. Anonymous, Himpunan Fatwa Dewan Syari'ah Nasional-MUI (Jakarta: DSN-MUI dan Bank Indonesia, 2006).

to modernize its legal system, harmonize conflicting legal traditions, and address gaps in governance. Through historical phases, including Dutch colonial rule, Japanese occupation, post-independence reforms, and the Reformation Era, Indonesia has continuously adopted and adapted foreign legal concepts to suit its evolving legal and socio-political needs.

In the case of money laundering, Indonesia has incorporated a legal norm based on FATF recommendations into its legislation with minimal modifications. This approach is commonly taken when the jurisdiction adopting the legal transplant recognizes the effectiveness of a legal principle or institution in other contexts. Similarly, the Constitutional Court applies the concept of constitutional injury not only in judicial decision-making but also in shaping its procedural norms by integrating international legal principles. The Court establishes constitutional damage criteria for the parties involved, drawing from constitutional injury standards used in other legal systems. However, regarding the adoption of proportionality requirements, the Court appears to favour an indirect legal transplant approach. In this instance, legal principles or systems are adjusted to align with the receiving jurisdiction's legal and cultural framework, which may involve modifying certain aspects to better reflect local customs, legal traditions, or societal values. Additionally, the incorporation of Islamic family law through the Compilation of Islamic Law, the regulation of endowments under Law No. 41 of 2004, and the introduction of Shariah economics through KHES exemplify an effective method of integrating Islamic jurisprudence into Indonesian law. In all three cases, the process of legal transplantation has seamlessly incorporated many traditional Islamic legal concepts while adapting them to align with modern legal frameworks.

Despite its advantages, legal transplantation is not without challenges. Critics argue that legal borrowing can lead to inconsistencies, conflicts with local traditions, and a lack of public acceptance. However, the success of legal transplants ultimately depends on their adaptability to Indonesia's socio-cultural framework and the willingness of legal institutions to integrate them effectively. In conclusion, legal transplants are not only inevitable in Indonesia's legal development but are essential for ensuring legal effectiveness in a diverse and dynamic society. By strategically incorporating beneficial foreign legal principles while preserving national identity, Indonesia can continue to modernize its legal system without compromising its unique legal heritage. Future legal reforms should focus on balancing international legal standards with local traditions to create a cohesive and effective legal framework that serves the needs of all Indonesian citizens.

Abbreviations

SIT	A Social Identity Theory
VOC	*Verenigde Oostindische Compagnie* (The Dutch East India Company)
BW	*Burgelijk Wetboek* (The Dutch Civil Code)
WvK	*Wetboek van Koephandel* (The Dutch Commercial Code)
WvS	*Wetboek van Strafrecht* (The Dutch Penal Code)
KPK	*Komisi Pemberantasan Korupsi* (Corruption Eradication Commission)
FATF	The Financial Action Task Force
CC	Constitutional Court (*Mahkamah Konstitusi*)
KHI	*Kompilasi Hukum Indonesia* (The Islamic Law Compilation)
KHES	*Kompilasi Hukum Ekonomi Syariah* (The Sharia Economic Law Compilation)

Author Contributions

Ratno Lukito is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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