



**LEGAL TRANSPLANT:
INFLUENCE OF THE WESTERN LEGAL SYSTEM
IN THE MUSLIM COUNTRIES**

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Abstract: This article discusses the influence of Western legal systems on Islamic law in Muslim countries, such as Turkey, Egypt, Iraq, Kuwait, Syria and Libya, Pakistan, Indonesia, and Malaysia. It uses the comparative law scholars' legal transplant theory to see the influence. The article may enrich the discourses in Comparative and History of Law. It may contribute to many scholars and reformers of law who choose the best model of Islamic law reforms according to the histories of the law of their countries. This study shows that the transplantation of Western law in Muslim countries has occurred since the colonialism period, World War I, and World War II. These legal transplants occur by taking part in a foreign legal system, namely the modern Western legal system, for overall such as in Turkey, as well as the majority of modern Western legal methods synthesized with local law, such as in Egypt, Indonesia, Malaysia, and other Muslim countries. There are three types of Muslim countries based on Islamic law reforms undertaken. They are the Muslim countries that apply Islamic law and traditional fiqh, with no legal transplant; the Muslim countries that adopt Western law. This is a legal transplant, and Muslim countries implement Islamic law using appropriate Western methods and procedures. Moreover, this is a partial legal transplant. The law reform in Muslim countries was carried out by intra-and extra-doctrinal reform, legislation (regulation), and codification methods. The last three methods are the partial legal transplant models.

Tulisan ini membahas tentang pengaruh sistem hukum Barat dalam pembaharuan hukum Islam di beberapa negara muslim seperti di Turkey, Mesir, Iraq, Kwait, Syria, Libya, Pakistan, Indonesia dan Malaysia. Kajian ini menggunakan metode perbandingan untuk melihat keterkaitan antara hukum di negara-negara muslim dan hukum Barat (*common law* dan *civil law system*). Artikel ini dapat memperkaya khasanah bidang kajian perbandingan hukum dan sejarah hukum, sehingga dapat memberikan kontribusi kepada para pemikir dan pembaharu hukum Islam tentang model pembaharuan hukum yang lebih baik sesuai dengan sejarah hukum negara masing-masing. Hasil dari kajian ini menunjukkan bahwa transplantasi hukum Barat ke negara-negara muslim telah terjadi sejak masa kolonial, perang dunia pertama dan kedua. Transplantasi hukum ini terjadi dengan mengambil bagian dari sistem hukum asing, yaitu sistem hukum Barat modern baik secara keseluruhan seperti di Turki, maupun mengambil sebagian sistem hukum

Barat melalui metode sintesis dengan hukum lokal seperti di Mesir, Indonesia, Malaysia dan negara-negara muslim lainnya. Terdapat tiga model negara muslim berdasarkan pembaharuan hukum Islam yang dilakukan, yaitu negara muslim yang menerapkan hukum Islam berupa fiqh tradisional dan tidak terjadi transplantasi hukum; negara muslim mengadopsi hukum Barat yang terjadi transplantasi hukum secara total; dan negara muslim yang menerapkan hukum Islam yang telah disesuaikan dengan metode dan prosedur hukum Barat. Ini merupakan model transplantasi hukum sebagian. Adapun metode pembaharuan hukum Islam di beberapa negara muslim yaitu melalui metode *intra* dan *extra doctrinal reform*, legislasi peraturan perundang-undangan dan kodifikasi. Ketiga metode terakhir ini merupakan model transplantasi hukum sebagian.

Keywords: *legal transplant; influence; western legal system; Muslim countries.*

INTRODUCTION

Legal transplant is a theory used in the field of comparative law.¹ This research investigated and proved that the legal transplant has occurred from Western colonial countries to Muslim countries.² Therefore, this study is interesting to conduct. Countries that obtained their independence after the second world war enforced many colonial legacy laws, either in whole, in part, or their judicial systems. Those countries included Muslim countries, such as Indonesia, Egypt, Pakistan, and Malaysia, that Britain and other European countries colonized. They then adopted the traditions and legal system of the colonial states. This made continental Europe (known as the civil law system) and the British legal system (known as the standard law system) spread to various parts of the world. These two legal traditions have colored the development and renewal of laws in various countries.³

Local legal traditions in the form of the Chthonic legal tradition and the legal traditions of religions in various developing countries have been replaced mainly by Western legal traditions, namely the continental European and the English legal systems. Likewise, the traditions of Islamic law in Muslim countries have inherited the traditions of the Islamic legal system. The Islamic legal tradition has been mingled with the western legal tradition, both civil and common laws.⁴

Islamic law is a translation of the term 'al-fiqh al-Islami,' which in Western literature is called 'Islamic Law' ⁵or 'Islamic Jurisprudence.' Therefore, the term Islamic law is ambiguous between *fiqh*⁶ and sharia.⁷ Islamic law is a divine law

¹ Syahriza Alkohir Anggoro, "Transplantasi Hukum Di Negara-Negara Asia: Suatu Perbandingan," *Indonesia Law Reform Journal* 1, no. 1 (2021): 19-31.

² A Muslim country is a country where the majority of the population is Muslim.

³ H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (USA: Oxford University Press, 2014), 153.

⁴ Werner Menski, *Perbandingan Hukum Dalam Konteks Global: Sistem Eropa, Asia Dan Afrika* (Bandung: Nusamedia, 2019), 330.

⁵ Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press, 1993), 1.

⁶ Abd al Wahhab Khalaf, *Ilmu Usul Fiqh* (Kairo: Dar Al-Qalam, 1978), 11.

⁷ Mahmud Syaltut, *Al-Islam Aqidah Wa Syari'ah* (Kairo: Dar Al-Qalam, 1966).

regulating human life. In Islamic law, there is no separation between morality and law.⁸ The distinctive feature of the Islamic law that does not separate law and morality is shown by the legal aspect of worship regulating the relationship between man and God, and *mu'amalah* regulating the legal relationship between human beings and humans and their environment. These are the differences between Islamic law as the divine law from legal positivism (positive law), which originated from the tradition of the Western legal system only ruling the social order in the relationship between one individual and another individual, or between individuals as citizens and the government.⁹

The mixing of laws occurred because those Muslim countries carried out Islamic law reforms through modern bureaucracies adopted from the Colonial West. This reform mainly started with personal and family laws, namely marriage and inheritance. After the end of World War I, many changes occurred in Muslim countries. In Turkey, Mustafa Kemal Atatürk established a secular state centered in Anatolia. The Arab territories began to be controlled by the League of Nations administratively under French and British mandatory. Iraq, Jordan, and Palestine were under the British, while Syria and Lebanon were under France. Iraq and Jordan were governed by Arab law under British control, and Palestine was directly under British control, while in Syria and Lebanon,¹⁰

John Anderson has explored the reform of Islamic law in Muslim countries.¹¹ Likewise, Tahir Mahmood has written various reforms of Islamic law in Muslim countries, incredibly personal and family laws.¹² Many studies have discussed the renewal of Islamic law in Muslim countries, including Nurul Ma'rifah's dissertation, "Renewal of Islamic Family Law in Indonesia and Tunisia: Actors, Politics and Religious Understanding," which discusses comparisons in Indonesia and Tunisia.¹³ In another publication, Nurul also wrote the *Positivization of Islamic Family Law as a Step to Renew Islamic Law in Indonesia: A Study of the Political History of Islamic Law*.¹⁴

⁸ Sri Wahyuni, "Konsep Hukum Islam, Hukum Romawi Jerman, dan Hukum Inggris (Sebuah Studi Komparatif)," *Jurnal Ilmu Syari'ah Asy-Syir'ah* 40, no. 2 (2006).

⁹ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 1996).

¹⁰ Herbert J Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Materials* (SUNY Press, 1975), 77.

¹¹ JND Anderson, *Hukum Islam Di Dunia Modern (Islamic Law in Modern World)* (Yogyakarta: Tiara Wacana, 1994).

¹² Tahir Mahmood, *Family Law Reform in the Muslim World* (NM Tripathi, 1972).

¹³ Nurul Ma'rifah, "Pembaharuan Hukum Keluarga Islam Di Indonesia dan Tunisia: Aktor, Politik dan Paham Keagamaan" (Yogyakarta, UIN Sunan Kalijaga Yogyakarta, 2019).

¹⁴ Nurul Ma'rifah, "Positivisasi Hukum Keluarga Islam Sebagai Langkah Pembaharuan Hukum Islam Di Indonesia: Kajian Sejarah Politik Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 243-57; Ma'rifah, "Pembaharuan Hukum Keluarga Islam Di Indonesia Dan Tunisia: Aktor, Politik Dan Paham Keagamaan."

Other writings regarding legal reform include Jefry Tarantang's Theory and Applications of Contemporary Thought in Renewing Islamic Family Law, which discusses several figures' contemporary thoughts applied in Islamic family law reform, such as the thoughts of Fazlur Rahman, Muhammad Syahrur, and Abdullahi Ahmed An Na'im.¹⁵ Writings related to family law in the Muslim world are those written by Muchammad Hammad, Urgency of Codification of Islamic Family Law in the Muslim World, which discusses codification in the renewal of Islamic family law in Muslim countries.¹⁶ As for legal transplants, the example is Syahriza Alkohir Anggoro writing Transplant Law in Asian Countries: A Comparison, which discusses legal transplantation in Asian countries.¹⁷

This article also discusses the renewal of Islamic law in Muslim countries, such as Turkey, Arab countries (namely Egypt, Iraq, Kuwait, Syria, and Libya), Iran, and Indonesia, especially in family law. However, this article emphasizes the influence of Western law in the renewal of Islamic law, mainly occurring after the intersection of civilizations in the colonial era. Legal transplant theory is also used in looking at the legal reform model to examine the influence of the Western legal system in reform and justify that legal transplantation (Western law to the law of Muslim countries) has occurred in the reform.

TRANSPLANT AS A COMPARISON LEGAL APPROACH

The term transplant is usually used in the scientific field of biology or medicine, namely the transplantation of plants or body tissues. In the Indonesian dictionary, transplantation is 'the transfer of a plant' or 'the transfer of body tissue from one place to another, such as covering an unskinned wound with skin tissue from another part of the body; and 'grafting.'¹⁸

The term Transplant may be relatively unknown when paired with the word 'law.' This discussion is part of the field of comparative law studies. What is meant here by the term legal transplant is the transfer of law from one country to

¹⁵ Jefry Tarantang, "Teori Dan Aplikasi Pemikiran Kontemporer Dalam Pembaharuan Hukum Keluarga Islam," *Jurnal Transformatif (Islamic Studies)* 2, no. 1 (2018): 27-46; Syaiful Bahri, "Kontribusi Pemikiran Qasim Amin Dalam Pembaruan Hukum Keluarga Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 6, no. 1 (2016): 15-28; Taufiqurohman Taufiqurohman Taufiqurohman, "Batasan Usia Perkawinan; Sebuah Tinjauan Sosiologi Hukum Dan Antropologi Hukum," *Ussratuna: Jurnal Hukum Keluarga Islam* 4, no. 2 (2021): 1-20.

¹⁶ H Syansuri Ahmad, "Pemikiran Syekh Muhammad Arsyad Al-Banjari Tentang Perpindahan Wali Dalam Kitâb an-Nikâh," 2015; Ahmad Rajafi, "The Renewal Movement of Islamic Family Law In Indonesia (Politics of Islamic Law from Old Order until Reformation)," 2017; Abdullah Al Mamun, "Islamic Law of Personal Status: Analysis of the Reforms of Islamic Family Law in Various Muslim Countries," *International Journal of Law, Humanities & Social Science* 1 (May 2017.): 16-22.

¹⁷ Anggoro, "Transplantasi Hukum Di Negara-Negara Asia: Suatu Perbandingan"; Andrew Harding, "Comparative Law and Legal Transplantation in South East Asia: Making Sense of the 'Nomic Din,'" *Adapting Legal Cultures* 5 (2001): 199; Binyamin Blum, "Doctrines Without Borders: The New Israeli Exclusionary Rule and the Dangers of Legal Transplantation," *Stan. L. Rev.* 60 (2007): 2131.

¹⁸ "pencangkokan," <https://kbbi.kemdikbud.go.id/entri/pencangkokan>

another. In other words, a country often adopts laws from other countries, either precisely or by changing certain parts according to local legal values. Therefore, the discussion of legal transplantation is closely related to comparative legal systems.

Legal transplantation here is one approach in comparative law. Legal transplant sees that the law of a country has the same as other countries or even a country takes the law from another country. Meanwhile, with comparative law, the laws in the world that have similarities can be seen as a legal family or legal family, which is then known as the legal system, so that with this comparative law, the laws of the world can be easily mapped.

Legal transplants, like organ transplants, will only work if they grow into their new body and become part of that body. The regulations or institutions will continually develop within the parent system.¹⁹ This legal transplant can occur in three categories: first, if a group of people move to a territory with a different civilization and they bring their law to that area; secondly, if a group of people moves to another territory that has a common civilization by bringing their laws to that area; Third, if a group of people voluntarily accept a large part of the system of others.²⁰

CIVIL LAW SYSTEM AND THE COMMON LAW SYSTEM AS LEGAL SYSTEMS WITH MANY INFLUENCES

The Roman-German legal system is also known as the civil law system.²¹ This legal system was used in Continental European countries (such as Germany, France, and the Netherlands) but was later brought to colonial countries such as Indonesia. The civil law system cannot be separated from ancient Roman law as its capital. However, it does not fully reflect the characteristics of ancient Roman law because, in the course of its evolution, it has undergone refinements to adapt to changing demands and needs of society. Roman-Germany law was formed on the European continent and began to emerge in the 13th century when European scholars again loved ancient cultures such as Greek and Roman culture.²² The civil law system then spread in various countries through colonialism. For example, the Netherlands adopted it from France when it became a colony, and then the Netherlands brought it to Indonesia as a colony.

This unification and codification is the hallmark of the Continental European legal system. This concept emerged strongly in the 17th and 18th centuries during the renaissance. This flow is not only a legal system but is an essential new

¹⁹ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press, 1993).

²⁰ Watson.

²¹ Ade Maman Suherman, *Pengantar Perbandingan Sistem Hukum (Civil Law, Common Law, Hukum Islam)* (Jakarta: Raja Grafindo Persada, n.d.); Tedy Nopriandi and Risky Fany Ardhiansyah, "Paradigm of Death Penalty (Comparative Study in Indonesia, Saudi Arabia and China)," *Lampung Journal of International Law* 2, no. 1 (2020): 57-68.

²² Rahardjo, *Ilmu Hukum*, 236.

political idea that is embodied in democracy, including the idea of the separation of judicial (judicative), legislative and executive powers. Also, to create a uniform law that mixes customary and local law with secondary sources of roman law. The concept of codification was also developed later in the 19th century because of the concept of the nation-state and national law, which was limited by the country's geographical area.²³

On the other hand, English law is formed with a distinctive style and is different from the continental European legal model. Initially, in England, the rule was customary law, but then unification was made in the 12th century, namely in administration and property. England adheres to a feudal model of government, so it is central. The land throughout the country belongs to the King. Lord as a landlord, is given the power to distribute land and territories to the people. They had to rent to God if they wanted to work the land by paying tribute to the King. After a long time, there was abuse and abuse of God's power.²⁴

The existence of these problems then led to the compilation of an English law book in order to realize legal certainty. The book was written in Latin under the title *Legibus Angliae*. Next, there is a centralization of the courts, namely the Royal Court, which not only uses local customary law as its basis but is also based on Common Law which is a unification of customary law that has been decided by judges (jurisprudence) as a source of law. In addition to the Royal Court, in its development, another court emerged, namely the Court of Chancery, which is referred to as the law of equity, namely natural justice, namely justice based on conscience, which cannot be granted by common law. It is the Church Leader or Lord Chancellor who administers this court.

Then the court reorganization was carried out in England in 1873-1875 by putting the Royal Court and the Court of Chancery under one roof.²⁵In English law, in addition to common law and equity law, there is statute law, namely written law, to complement the common law made by parliament because common law originating from jurisprudence is no less able to keep up with the times.²⁶This English law applies in England and all countries with political ties to Britain, such as the former British colonies and the British common well countries.

²³ Jan M Smits, *The Making of European Private Law: Toward a Ius Commune Europaeum as a Mixed Legal System* (Intersentia nv, 2002); Arnald J Kanning, "The Making of European Private Law: Toward a Ius Commune Europaeum as a Mixed Legal System," 2003.

²⁴ John Hamilton Baker, *An Introduction to English Legal History* (Oxford University Press, 2019); Percy H Winfield, *The Chief Sources of English Legal History* (Harvard University Press, 2013).

²⁵ William T Quillen and Michael Hanrahan, "A Short History of the Delaware Court of Chancery--1792-1992," *Del. J. Corp. L.* 18 (1993): 819; Penny Tucker, "The Early History of the Court of Chancery: A Comparative Study," *The English Historical Review* 115, no. 463 (2000): 791-811.

²⁶ FOB Babafemi, "Tracing Assets: A Case for the Fusion of Common Law and Equity in English Law," *Mod. L. Rev.* 34 (1971): 12; Lionel Smith, "Common Law and Equity in R3RUE," *Wash. & Lee L. Rev.* 68 (2011): 1185.

TRANSPLANTATION OF WESTERN LAW TO MUSLIM COUNTRIES

Legal transplants in Muslim countries occurred after the intersection of civilizations in these countries with the West. This was especially true in the era of colonialism, World War I, and World War II. The modern legal paradigm as legal positivism and written law passed by the state have influenced all these Muslim countries. The nation-state era began at that time.

Iraq became independent in 1932.²⁷ Syria and Lebanon also gained independence during World War II.²⁸ In 1949, Israel was formed in the territory of Palestine. Most of those living in Palestine became part of the Kingdom of Jordan, and a small portion along the Mediterranean known as the Gaza Strip was controlled by Egypt.²⁹ Egypt, made a British protectorate during World War I, became independent in 1939.³⁰ In Arabia, King Abdul Aziz ibn Saud who controlled Nejd and Hejaz, declared the formation of an independent kingdom of Saudi Arabia.³¹ Yemen was entirely independent of the Ottoman Turks. Aden, which became a British protectorate, also became independent in 1967.³² Also, Kuwait gained independence in 1961.³³

Legal reform in these countries began with Turkey after World War I. Iran followed suit under Reza Shah's arrangement in the late 1920s and 1930s. In Arab countries, the legal system reform took place during wartime under the influence of France and Britain. After World War II, legal reform in Arab countries continued by carrying out several legal legislations in various fields, and Turkey was the only country that implemented secular law.³⁴

The legal reforms in the Muslim country were carried out by adopting the modern western legal system. Initially, Islamic law in Muslim countries was only a school of jurisprudence adopted by most people. Then an Islamic legal system was formed in the context of a modern nation-state. This legal reform mainly also occurred in the field of family law.

²⁷ Peter Sluglett, *Britain in Iraq: Contriving King and Country, 1914-1932* (Columbia University Press, 2007).

²⁸ Götz Nordbruch, *Nazism in Syria and Lebanon: The Ambivalence of the German Option, 1933-1945* (Routledge, 2009).

²⁹ Mary Christina Wilson, *King Abdullah, Britain and the Making of Jordan*, vol. 13 (Cambridge University Press, 1990).

³⁰ John Darwin, *Britain and Decolonisation: The Retreat from Empire in the Post-War World* (Macmillan International Higher Education, 1988).

³¹ R Hrair Dekmejian, "The Rise of Political Islamism in Saudi Arabia," *Middle East Journal* 48, no. 4 (1994): 627-43.

³² William L Cleveland and Martin Bunton, *A History of the Modern Middle East* (Routledge, 2018); Victoria Clark, *Yemen: Dancing on the Heads of Snakes* (Yale University Press, 2010); Paul Dresch and Dresch Paul, *A History of Modern Yemen* (Cambridge University Press, 2000).

³³ Michael S Casey, Frank W Thackeray, and John E Findling, *The History of Kuwait*, vol. 2 (Greenwood Press Westport, CT, 2007).

³⁴ Casey, Thackeray, and Findling.

a. Turkey

A revolutionary legal reform was carried out in Turkey by Mustafa Kemal Atatürk in 1924 by canceling the implementation of Islamic law, including personal status law, and then replacing it with Western secular law. Turkey adopted the Swiss Civil Code and Code of Obligations in 1926, which was followed by the adoption of other European laws. In the field of criminal law from the Italian Penal Code, the Code of Criminal Procedure from Germany, as well as the code of Civil Procedure from Switzerland. Then the Swiss code of obligation was refined as a Commercial Code and finally adopted by Turkey, as well as the Code of Maritime Commerce from Germany in 1929.³⁵

Thus, Turkey is a Muslim country that replaces the entirety of Islamic law from the country's legal system. This was driven by Kemal Atatürk's ideas of secularization and modernization in the fields of law and administration. Law is an essential element in Turkey's modernization and westernization. Thus, difficulties arise due to the replacement of Islamic law and the adoption of foreign law in their legal system, especially in family law and land law.

b. Arab Countries

Since the second world war, in Arab countries, there has been much codification of Islamic and western law. There is a trend to synthesize between Islamic law and Western law, for example, in the field of contracts. An Egyptian judge, Dr. Abd al-Razaq Al-Sanhuri, famous for this synthesis work, made a civil legal drafting code in various Arab countries. He made legal drafts which were then promulgated in Egypt, Iraq, and Kuwait. The new civil code in Syria and Libya was also taken mainly from this Egyptian civil code. Thus, it can be said that the civil code family of Arab countries is more closely related to French law than the old Egyptian Islamic law formulated in Majallat.³⁶

c. Iran

The influence of modernization by Reza Shah in Iran also occurred in the realm of legal reform. Unlike Turkey, Iran has not entirely abandoned Islamic law. Iran's civil code is a synthesis between Islamic law and Western law, passed between 1928 and 1935, governing all areas as the continental European civil code, including family law and inheritance law. In this civil code, the content of Islamic law is still powerful. Modern western law is taken from the laws of France, Belgium, and Switzerland. Iranian law that follows Western law includes determining personal legal skills and registering marriages and divorces.³⁷

³⁵ Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Materials*.

³⁶ Liebesny, 2-3.

³⁷ Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Materials*; Nikki R Keddie, "Women in Iran since 1979," *Social Research*, 2000, 405-38.

d. Indonesia

Indonesia also adheres to the post-colonial Western legal system. Indonesia adopted law from the Netherlands, adhering to the Continental European legal system. Several laws in Indonesia were adopted from Dutch law since the colonial period such as the Criminal Code (KUHP) from WvS (Wetboek van Strafsrecht), Civil Code (KUH Perdata) from BW (Burgerlijk Wetboek), and the Commercial Code (KUH Dagang) from WvK (Wetboek van Koopandel).³⁸

Indonesia has also adopted the legal model from continental Europe, namely the existence of a legislative process in making laws and regulations. It can be said that the beginning of Islamic law reform in Indonesia adhered to the continental European model, namely by regulation and legislation. In its development, after the independence period, Indonesia made its own family law, namely with the enactment of Law Number 1974 concerning Marriage, then a Compilation of Islamic Law was made, which was socialized based on Presidential Instruction Number 1 of 1991, which contains material on marriage law in the book I, Law of the Republic of Indonesia. Inheritance in book II and waqf in book III. Further developments, the Indonesian family law system also adheres to a synthesis model between Islamic and modern law with legislation and regulations based on modern law.

e. Pakistan

Pakistan is a part of Hindustan India, the former Mughal Islamic dynasty. India and Pakistan became independent from Britain in 1947. Most Hindus are based in India, and most Muslims choose to become Pakistani citizens. The area formerly controlled by the British colonials has implemented a standard law system. Thus, the legal model in the Muslim country of the former British colony is a mixture of material Islamic law and common law as a judicial system, so it is called Anglo Muhammadan Law – as, in India, it is called Anglo-Hindu Law.³⁹ This Pakistani legal model applies some materials of Islamic law from the Hanafiyah school, but the judicial system uses the English model common law system.

f. Malaysia

Malaysia is a federal state, a former British colony, so common law is the model for its judicial system. The federal state's style is identical to each state's legal plurality. There are 14 countries or states in Malaysia, so there are 14 different laws that apply to their respective citizens. This legal plurality is combined with the common law system, making legal developments more flexible. On the other hand, Malaysia also has *kanun* or legislation such as the civil law system model.⁴⁰

³⁸ Partogi Natigor Hamonangan Simanjuntak, *Pokok-Pokok Hukum Perdata Indonesia* (Jakarta: Prenada Media, 2019).

³⁹ Menski, *Perbandingan Hukum Dalam Konteks Global: Sistem Eropa, Asia Dan Afrika*.

⁴⁰ Farid Sufian Shuaib, "Towards Malaysian Common Law: Convergence between Indigenous Nonns

LEGAL TRANSPLANTATION MODEL IN MUSLIM COUNTRIES

From the explanation of various legal transplants in Muslim countries above, it can be seen that some countries have adopted Western law directly, such as Turkey, which adopted the civil code from Switzerland. As for other Muslim countries, Islamic law reforms are synthesized with the modern Western legal system.⁴¹ For example, in the case of marriage registration. Preparing a codification and legislation also influences continental European law used in the Islamic legal system.⁴²

In line with this, in the book "Family Law Reform in The Muslim World," Taheer Mahmoud also divides Muslim countries related to the application of Islamic law into three groups, namely: 1) Countries that apply Islamic law from various schools they adhere to, and has not been modified; 2) Countries that have entirely changed Islamic law with modern law, regardless of their religion; 3) Countries that implement Islamic law that various modern legislative processes have reformed.⁴³

The first group, which applies traditional law from the schools they adhere to, is Saudi Arabia, which adheres to the Hambali school of thought. Islamic family law is based on the Qur'an, Sunnah, and the example of the companions of the Messenger of Allah. Likewise, in the State of Qatar. In Yemen, Islamic law is based on the Zaidi school. However, the population of South Yemen adheres to the Shafi'i and Hanafi schools. These laws are not codified and legislation. Meanwhile, in Bahrain, the Maliki, Shafi'i, and Shi'i schools are applied traditionally, without codification and legislation.⁴⁴Based on this, it can be stated that there is no legal transplant from Western law in these Muslim countries.

Turkey and Albania are the second groups of countries that have abandoned Islamic law and implemented modern law from the West. Civil code was adopted in this country to replace Islamic law - especially in Turkey after the fall of the Ottoman caliphate. Turkey implemented the Civil Code of Switzerland in 1926. Likewise, in countries with Muslim minorities, such as Tanzania, there are Muslim minorities in Zanzibar and Kenya. They apply modern Western family law.⁴⁵

and Common Law Methods," *Jurnal Undang-Undang Dan Masyarakat* 13 (2009): 158; Kwai Hang Ng and Brynna Jacobson, "How Global Is the Common Law? A Comparative Study of Asian Common Law Systems-Hong Kong, Malaysia, and Singapore," *Asian Journal of Comparative Law* 12, no. 2 (2017): 32.

⁴¹ Anderson, *Hukum Islam Di Dunia Modern (Islamic Law in Modern World)*; J Norman D Anderson, "Modern Trends in Islam: Legal Reform and Modernisation in the Middle East," *International & Comparative Law Quarterly* 20, no. 1 (1971): 1-21; J Norman D Anderson, "The Significance of Islamic Law in the World Today," *Am. J. Comp. L.* 9 (1960): 187.

⁴² Mahmood, *Family Law Reform in the Muslim World*.

⁴³ Mahmood.

⁴⁴ Mahmood, 5-6.

⁴⁵ Mahmood, *Family Law Reform in the Muslim World*.

The third group, countries that have reformed Islamic law with a modern legislative process, such as Cyprus, legislated and codified Islamic marriage and divorce laws in 1951. In five South and Southeast Asian countries, Islamic family law has also been reformed with modern legal legislation processes, namely in Brunei, Malaysia, Indonesia, Singapore, and Ceylon, which have Muslim minorities. Others are Lebanon, Jordan, Algeria, and Iran, which have reformed Islamic family law regarding material and regulatory aspects by adopting a modern legal system.⁴⁶Based on this, it can be stated that the reform model in these countries underwent legal transplantation and the influence of Western law in part.

From the category of legal reform and transplantation described above, what happened in Turkey was the category of transplantation in which a group of people received a system from a group of others. In this case, Turkey takes a foreign legal system. Meanwhile, in other Muslim countries that have experienced colonialism, there is a legal transplant in the category of a group of people who come to another territory with a different civilization, bringing the law. This is what happened in Indonesia. Meanwhile, other Muslim countries only participate in the modern Western legal system. Their reforms synthesize local Islamic law and the modern Western legal system. This is the case in Arab countries, namely Egypt,

In its development, due to differences in civilization and socio-culturalism, the transplanted law was adapted to local values. This has also happened in the renewal of family law in Turkey, from the Swiss civil code and then undergoing several amendments to suit the material of Islamic law and local customary law. Likewise, legal reform in other Muslim countries (such as in Arab countries, Iran, and Indonesia) still uses the modern Western legal system model regarding regulation, legislation, and codification. However, the material is Islamic law adapted to the demands of changing times and conditions.

METHODS OF LEGAL RENEWAL IN MUSLIM COUNTRIES

The existence of colonialism, where there was contact between Islam and the west, led to the renewal of Islamic law in Muslim countries, especially after independence.⁴⁷The responses and responses of Muslims when they come into contact with the west are different. First, some reject the west so that their renewal is the purification of Islam. Some groups have adopted the Western and left the

⁴⁶ Mahmood.

⁴⁷ Kholis Bidayati Kholis, Muhammad Alwi Al Maliki Alwi, and Suci Ramadhan Suci, "Dinamika Pembaharuan Hukum Keluarga Islam Di Negara Muslim," *ADHKL: Journal of Islamic Family Law* 3, no. 1 (2021): 51-68.

Islamic legal systems. For example, Turkey immediately dissolved the caliphate and transformed the Ottoman Empire into the Secular Turkish Republic, and adopted the Swiss civil code and the Italian penal code. In addition to the two response models, namely, those who return to Islamic teachings and accept the West directly, some groups are willing to adopt the excellent side that comes from the West and combine them with Islamic teachings.

According to Taheer Mahmood, the method of reforming Islamic law in Muslim countries consists of intra-doctrinal and extra-doctrinal reform, namely:⁴⁸

a. *Intra-doctrinal Reform*

In the early days of the formation of Islamic law, various schools of fiqh emerged because there were several Imams and Faqih, each of which had adherents, namely Imam Malik, Imam Abu Hanifa, Imam Shafi'i, and Imam Hambali, known as the Sunny school as well as There are various Shi'i schools of thought. The influence of these schools of fiqh is still strong in various Muslim countries today. Such as Muslim countries in North Africa, Algeria, Libya, Tunisia, Morocco, and so on adhere to the Maliki school of thought. While the Ottomans adhered to the Hanafi school; then this school spread in the Arab world; and was brought to the Mughal Dynasty by the Ottoman Turks so that the majority of Muslim communities in Afghanistan, Pakistan, and India also adhere to this school.

The reform of Islamic law with this intra-doctrinal method is a renewal of Islamic law based on the schools of Islamic law (*fiqh*). As in Indonesia, which adheres to the Sunny school and draws more from the doctrine of Imam Shafi'i, Egypt initially adhered to the Shafi'iyyah. After the Ottoman dynasty spread switched to the Hanafi school until today, an example of applying this intra-doctrinal reform method in Indonesia is the provision on marriage guardians who adhere to the Shafi'i school of thought.⁴⁹ As in Article 14-19 of the Compilation of Islamic Law.⁵⁰

b. *Extra-doctrinal Reform*

Sometimes the renewal of Islamic law in some Muslim countries comes out of the opinions of the schools of fiqh adopted by the people. For example, there is new ijtiḥad of the Islamic law that they are doing. This method is known as the different doctrinal method. In this extra-doctrinal reform method, foreign influences (including the West with a partial transplant or synthesis model between Islamic and western law) and local customs.

⁴⁸ Mahmood, *Family Law Reform in the Muslim World*.

⁴⁹ Rohmat Rohmat, "Kedudukan Wali Dalam Pernikahan: Studi Pemikiran Syāfi'iyah, Hanafiyah, Dan Praktiknya Di Indonesia," *Al-'Adalah* 10, no. 2 (2011): 165-78.

⁵⁰ Guardian becomes one of the pillars in marriage; see Articles 14-19 KHI

Examples of applying existing *ijtihad* are the mandatory will in inheritance law, prohibition of polygamy, and so on. There are differences in Egypt, Pakistan, and Indonesia in applying mandatory wills, for example.⁵¹In Egypt and Pakistan, mandatory wills are intended for substitute heirs such as grandchildren when the child has died. However, mandatory wills in Indonesia are intended for adopted children, adoptive parents, or siblings.⁵²Dutch law gives *ad-testamento* heirs (based on a will) not for blood-related relatives but adopted children, adoptive parents, or siblings.

Regarding polygamy laws, there are also differences in some Muslim countries. For example, Indonesia, Malaysia, and Egypt allow polygamy by applying strict conditions. In Turkey, polygamy is prohibited.⁵³Even in Tunis, it prohibits polygamy and punishes polygamists.⁵⁴This is the influence of foreign law on legal reform. As discussed above, Turkey implements a legal transplant as a whole by adopting Western law directly so that it does not adhere to polygamy and even prohibits polygamy. However, in Indonesia, Egypt, and Malaysia, some adopt the transplant model by adopting the model of Western legal regulations. Namely, polygamy must be legal before a court with certain conditions.⁵⁵

Other legal reform methods are Regulatory Reform, legislation, and codification. These methods are also partial legal transplant models, i.e., those that take only the model. In the development of Muslim society after coming into contact with the West, Islamic law is also influenced by various procedures in western law, such as various administrative regulations with a modern judicial system. For example, the registration of marriages adopted in various Muslim countries⁵⁶also applies this method. In *fiqh*, which does not recognize marriage registration, but *walimah* as an announcement, it is added to the marriage law regulation that marriages must be registered. This is to fulfill the formal legal principle of written deeds and the principle of publicity in the modern Western legal model. This judicial system differs between the common law and civil law models. This difference is visible in the legal transplantation in Muslim countries through colonialism. For example, Malaysia, Egypt, and Pakistan were formerly British colonies that used the common law judicial model, and Indonesia, a former Dutch colony, used a continental European civil law system.

⁵¹ See Gavin Jones and Bina Gubhaju, "Trends in Age at Marriage in the Provinces of Indonesia," 2008; Susan Blackburn and Sharon Bessell, "Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia," *Indonesia*, no. 63 (1997): 107-41; Muhammad Jihadul Hayat, "Historisitas Dan Tujuan Aturan Usia Minimal Perkawinan Dalam Perundang-Undangan Keluarga Muslim Indonesia Dan Negara Muslim," *Journal Equitable* 3, no. 1 (2018): 49-63.

⁵² Article 209 Compilation of Islamic Law

⁵³ Articles 8-9 The Turkys Family Law of Cyprus.

⁵⁴ Article 18 Code of Personal Status/ *Majallat al ahwal al Syakhsiyyah* Number 66 of 1956

⁵⁵ Articles 4 and 5 of Law Number 1 of 1974 concerning Marriage and Articles 55-58 of the Compilation of Islamic Law

⁵⁶ Article 2 (2) of Law Number 1 of 1974 concerning marriage.

Legislation is also a reform method adopted based on Western law's influence. Muslim countries that carry out Islamic law reform in this way include Pakistan, Indonesia, Malaysia, Brunei, Singapore, and so on. Here it is clear that there is a unique legal transplant, namely the cross legal system between common law and civil law. Legislation is a characteristic of adherents of the civil law system. However, Muslim countries' former British colonies that adhere to common law in the judicial system (judicial system) also legislate various laws, such as in Malaysia and Egypt.

Legal codification, namely the complete and systematic bookkeeping of legal materials, is known in the Western legal system, especially in Continental Europe. In the meeting between the Muslim community and the West during the colonial period, Muslim countries also adopted the influence of the Western legal system. Thus, various Muslim countries have made codifications by enacting various Islamic law materials to reform their Islamic law. Among the countries that have carried out such reforms are Lebanon, Jordan, Syria, Tunisia, Morocco, and Iraq, which made laws and regulations taken from traditional Islamic law without any changes. Likewise, Indonesia, Malaysia, Brunei, and Singapore make administrative regulations of Islamic law with a court system.

CONCLUSION

The above discussion concludes that the renewal of Islamic law in Muslim countries is mainly influenced by modern Western law. The transplantation of Western law into law in Muslim countries has occurred since colonialism, World War I, and World War II. This legal transplant occurred by taking part in a foreign legal system, namely the modern Western legal system, both in whole and in part, with modern Western legal methods synthesized with local law. Three typologies of Muslim countries based on the legal transplants and the renewal of Islamic law are Muslim countries using Islamic law as a traditional name (*fiqh*). In this country, there is no transplant of Western law and no colonialism as in Saudi Arabia; Muslim countries adopting Western law as a whole where the Western law is transplanted by direct adoption, such as Turkey; and Muslim countries applying Islamic law using methods and procedures similar to Western law. There is also legal transplantation of part of western law in the renewal of Islamic law, such as in Indonesia, Egypt, Malaysia, and Pakistan. The reformation of Islamic law in Muslim countries was carried out using intra-doctrinal and extra-doctrinal reform, regulation, legislation, and codification methods.

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