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The Influence of International and Islamic Law on Labor Laws in Indonesia and Morocco*

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Abstract:
Work agreements between workers and employers form the basis for determining rights and obligations. Employment agreements are influenced by the laws governing a country and its historical experience. This study aims to analyze the influence of international and Islamic law on labor law in two countries, both Indonesia and Morocco. The research method used is a qualitative research method with a comparative approach. The results of the study stated that by comparing the provisions of work agreements from three sources of law, namely Indonesian, Moroccan, and Islamic law, it was found that international law had an effect on national law. Islamic law has little effect on work agreements. The influence of Islamic law is found more in Moroccan regulations than in Indonesian regulations. Several different concepts regulated in the source of law include the concept of work agreements, restrictions on the age of children who can enter into work relationships, the object or work employed, and the designation of work areas. This research has implications for the openness of international work transactions or the acceptance of foreign workers due to the same arrangement although with certain restrictions according to a country's policy.
Keywords: Employment; Morocco; Indonesia

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Pengaruh Hukum Internasional dan Islam terhadap Hukum Ketenagakerjaan Di Indonesia dan Maroko

Abstrak :
Perjanjian kerja antara pekerja dan pemberi kerja menjadi dasar penentuan hak dan kewajiban. Perjanjian kerja dipengaruhi oleh hukum yang mengatur suatu negara dan pengalaman sejarahnya. Penelitian ini bertujuan untuk menganalisis pengaruh hukum internasional dan Islam terhadap hukum ketenagakerjaan di dua negara, baik Indonesia maupun maroko. Metode penelitian yang digunakan adalah metode penelitian kualitatif dengan pendekatan komparatif. Hasil penelitian menyatakan bahwa dengan membandingkan ketentuan perjanjian kerja dari tiga sumber hukum, yaitu hukum Indonesia, Maroko, dan hukum Islam maka didapatkan bahwa hukum internasional berpengaruh terhadap hukum nasional. Hukum Islam tidak banyak berpengaruh di perjanjian kerja. Pengaruh hukum Islam tersebut lebih banyak ditemukan di peraturan Maroko dari pada peraturan Indonesia. Beberapa konsep yang berbeda yang diatur di sumber hukum tersebut meliputi konsep perjanjian kerja, pembatasan umur anak yang bisa menjalin hubungan bekerja, objek atau pekerjaan yang dipekerjakan, dan pembidangan wilayah pekerjaan. Penelitian ini berimplikasi pada keterbukaan transaksi kerja internasional atau penerimaan tenaga kerja asing karena pengaturan yang sama meskipun dengan pembatasan tertentu sesuai kebijakan suatu negara.
Kata Kunci: Ketenagakerjaan ; Maroco; Indonesia

Влияние Международного И Исламского Права На Трудовое Законодательство Индонезии И Марокко

Абстрактный:
Трудовые соглашения между работниками и работодателями составляют основу для определения прав и обязанностей. На трудовые договоры влияют законы, действующие в стране, и ее исторический опыт. Это исследование направлено на анализ влияния международного и исламского права на трудовое право в двух странах, Индонезии и Марокко. В качестве метода исследования используется метод качественного исследования со сравнительным подходом. Результаты исследования показали, что путем сравнения положений трудовых договоров из трех источников права, а именно индонезийского, марокканского и исламского права, было обнаружено, что международное право оказывает влияние на национальное право. Исламский закон мало влияет на трудовые договоры. Влияние исламского права больше проявляется в марокканских правилах, чем в индонезийских. Несколько различных понятий, регулируемых в источнике права, включают понятие трудовых договоров, ограничения возраста детей, которые могут вступать в трудовые отношения, объект или выполняемую работу, а также обозначение рабочих мест. Это исследование имеет значение для открытости международных сделок по трудоустройству или приема иностранных работников по той же схеме, хотя и с определенными ограничениями в соответствии с политикой страны.
Ключевые слова: Занятость; Марокко; Индонезия

A. INTRODUCTION

Labor law is one of the laws that has received attention from both the government and the community because it regulates the relationship between employers and workers and concerns human rights to get the right to life, decent work, and the right to welfare. Decent work and life are constitutional rights of citizens, one of which can be realized in labor regulations (Sulaiman, 2020, p.305). History proves the practice of forced labor and slavery that has degraded human dignity and enriched entrepreneurs and oppressed workers. This situation has given rise to various kinds of revolutions that require changes in the relations between workers and employers in which workers must be treated fairly and humanely. The Nation, through multiple means, is obliged to protect workers (Muin, 2015, p.11). This is due to the position of workers as vulnerable parts who are entitled to protection. (Wijayanti, 2021, p.449)

Employment is closely related to population, economic growth, investment, and government policies. The Central Statistics Agency reported that in August 2021, Indonesia's workforce would reach 140.15 million, an increase from the previous year. The working population reaches 131.06 million people, and the open unemployment rate is 6.26% (BPS, 2021). This figure could change along with the onslaught of the COVID-19 pandemic and the impact of the war between Russia and Ukraine. The Indonesian economy was corrected in the two years of the pandemic in 2020 and 2021. The number of unemployed in Morocco in 2021 reached 9.2%, with details of unemployment in urban areas at 8.9% and in rural areas at 9.5% (HCP, 2021). Employment also often raises issues on a national scale, such as labor demonstrations, minimum wage increases, termination of employment, violence against workers, and others—the case of the work contract between the Government of Indonesia and PT. Freeport is also included in the employment category even though it is included in a nation-scale employment agreement. (Khamami, 2021, p.335)

Indonesia and Morocco are developing countries with Muslim-majority populations. More than 250 million people currently inhabit Indonesia. According to the United Nations (UN) projections, Indonesia's population will reach more than 270 million people in 2025, more than 285 million in 2035, and 290 million in 2045. Only after 2050 Indonesia's population will decrease. As for Morocco, its population was 6 million in 1990 to 20 million in 1981, and in 2014 it had reached 33.8 million people. The two countries have different governmental system. Indonesia adheres to a presidential system, while Morocco adheres to a royal model based on the Constitution. In addition, both

countries have also been colonized by Europe, such as France, the Netherlands, and England.

The contact of the two countries with the west has had an impact. In addition, as a country with a Muslim population, Islamic law also touches national law. The contact of the Muslim world with western thought during the 19th century impacted social, cultural, and thought changes, including changes in the way of thinking about law. Differences in views on sharia, *fiqh*, and into Islamic law are proof (Bedir, 2004, p. 378). Amanat and Griffel confirmed the shift in thinking. The theory of *maslahah*, *maqashid*, and reason occupies an important position in the debate on modern Islamic law, thus encouraging changes in Islamic law (Amanat, 2009, p. 237). In addition, Western law is also influenced by Roman law. The Roman legal system arose before the Christian era in Rome. It controlled the legal system in Continental Europe. Some of the influences of Roman law can be seen in the Napoleonic Code, the German Civil Code of 1900, and the Italian Civil Code (Badr, 1978, p. 187). However, Badr considers that this conclusion needs to be proven by more concrete evidence because the decision is based on several similarities in Roman and Islamic law. In fact, according to him, some contradict the two legal systems. Badr cites three examples: Private law in Roman law is built on a patriarchal society, while in Islamic law, it is built on the individual organization in the field of law. In Islamic law, debt is an obligation that must be paid before the heirs inherit the inheritance. In terms of contracts, Roman law recognizes unilateral and one-sided agreements, while Islamic law recognizes bilateral agreements. In Islamic law, contracts occur because of a deal between offer (*ijab*) and acceptance (*kabul*). In the Roman legal system, arrangements occur because of mutual commitment and binding contracts as a form of formal agreement. Roman law does not recognize the offer and acceptance (*ijab-kabul*) model. In conclusion, the bridge that connects Roman law and Islamic law needs more valid proof because similarity does not resemble a form of influence. This justifies the codification of Islamic law by adapting the western legal system (Botiveau, 1993, p. 118-121). A hybrid legal term combines Islamic and Western law, such as Algerian Islamic Law and Indonesian Islamic Law. (Charnya, 2001, p. 24)

In the context of labor law, Indonesia and Morocco use western and Islamic laws as their legal sources. However, how much influence Islamic law and western law (international law) have on Indonesian and Moroccan national law is incomparable. International law influences labor law both in Indonesia and Morocco. Meanwhile, Islamic law has an insignificant effect on labor law. This article examines several aspects of labor law: employment relations, women and child workers, and the employment contract period.

B. METHODS

This study is a normative legal research with a qualitative approach. (Soejono & Abdurrahman, 2003) The analysis used is a legal comparison between Indonesian, Moroccan, and Islamic law. The research data were taken from the legal regulations in Indonesia and Morocco and the Islamic law scholars' opinions. Research data are also taken from international rules and conventions concerning employment law. The study describes several legal points in employment law by comparing the three sources of law. This study's results will reveal the employment law's legal provisions regarding the similarities and differences between the three sources of law and the influence of international law on national law. (Sunggono, 2007)

C. RESULTS AND DISCUSSION

1. The Influence of International Law on National Law

Labor law is governed primarily by national legal sources. These sources are further divided into national sources and professional sources. Constitutions, laws, and regulations are categorized as national sources. At the professional level, there are mutual agreements, internal customs, and regulations. (DeHaut, 2014) Second, labor law is the standard subject of international law sources. These include various conventions of international organizations and in particular those of the International Labor Organization (ILO). We can cite, inter alia, the 1989 international convention on the rights of the child which protects children from hazardous work, labor exploitation and the establishment of a minimum age for work. (Siau, 2014)

In Indonesia, before the enactment of Manpower Law no. 13 of 2003, several labor laws were already in force. Among other things, Law no. 1 of 1951 concerning the promulgation of the 1948 Manpower Act Declaration No. 12; Law Number 21 of 1954 concerning Work Agreements between Labor Unions and Employers (State Gazette of 1954 Number 69, State Gazette Number 598a); Foreign Manpower Act Number 3 of 1958 (State Gazette of 1958 Number 8); Law 8 of 1961 concerning Compulsory Work for University Graduates Holding; Law on Prevention of Strikes or Closure of Companies and Registrar's Offices Number 7 of 1963 (State Gazette of 1963 Number 67); Law No. 14/1969 concerning Workplace Provisions (Statute Book of 1969 No. 55, Supplement to Statute Book No. 2912); Labor Law no. 25 of 1997; Law 11 of 1998 concerning Amendments to Law Number 25 of 1997 concerning Manpower; and the Manpower Law Number 28 of 2000.

In addition to the laws, Indonesia's labor laws are also regulated by several regulations inherited from the Dutch colonial period. Therefore, the law is a source of new labor law and is also based on other provisions, such as customs/traditions, government decrees, international agreements (conventions, agreements, etc.), labor regulations, collective agreements, and work agreements.

Law No. 13 of 2003 was adopted to adapt to changes in various sectors. In addition, this law has made it possible to comply with international regulations, particularly treaties ratified by the United Nations and the International Labor Organization (ILO). For example, in international labor, the eight core ILO conventions affirm respect for human rights in the workplace. These basic conventions consist of four groups: freedom of association (ILO Conventions No. 87 and No. 98); non-discrimination (ILO Conventions No. 100 and No. 111); forced labor (ILO Conventions No. 29 and No. 105); and protection of minors (ILO Conventions No. 138 and No. 182).

Convention No. 120 concerning occupational safety and health (Convention No. 144), relating to tripartite consultations to strengthen the application of international labor standards, was ratified by Indonesia from 1951 to 2000. Indonesia's commitment to upholding human rights in the world of work is manifested, among others, through ratifying eight core conventions. Following this ratification, employment provisions should reflect respect and appreciation for basic principles.

This finding is almost identical to the labor law in Morocco. In *Dahir* No. 1-03-194 *Rejeb* 14, 1424 (September 11 2003), Law no. 65-99 on labor law was enacted. It is written that the law aims to strengthen human dignity and to adopt provisions at the international level. This law considers respect for the rights and freedoms guaranteed by the Constitution, universally recognized human rights principles, and conventions of international labor organizations ratified by Morocco. This mainly concerns the freedom to work and carry out labor union activities, the right to organize and negotiate, the right to take the initiative and property rights and the protection of women and children. In other words, this law is characterized by its adherence to the basic principles laid down by the Constitution and international standards set out in UN and ILO conventions. The trend of recognizing rights also occurs in other Arab countries, such as Egypt, Syria, and Kuwait. In these countries, various constitutions have affirmed equality between men and women in all fields. (Roshdi, 1999, p. 171)

Before this law, several precursory laws regulated Moroccan labor.

Among other things, *Dahir* April 17, 1957, on a mutual agreement; the law of July 16 relating to labor unions; *Dahir* dated October 29, 1962, regarding employee representation in the company; the law of July 27 1972, on the social security system; Established April 24, 1973, concerning conditions of work and wages of agricultural workers, the law dated June 18, 1930, which regulated working hours; Born on June 18, 1936, regarding the minimum wage; *Dahir* May 7, 1940, which determined the appointment of workers and termination of employment contracts; and *Dahir* May 31, 1943, regarding work-related illness coverage. (Dami, 2005, pp. 32-33, 41)

As seen, under the conditions of international influence, some Muslim countries have had to adopt the laws of Western. However, "we are currently witnessing the return of Muslim systems in countries that have entirely abandoned Islamic law by aligning themselves in terms of contracts with Western law. Examples are the civil laws of Iraq (1951), Jordan (1976), Kuwait (1980), Emirates (1985), and Yemen (1992). (Comair, 1995, p. 1)

2. Concept of Employment Contract

Indonesian law calls it a work agreement, while Moroccan and Islamic law uses the term contract. Even though they use different terms, both have the same significance as the agreement of two parties in which one party acts as a worker who works for wages and the other as an employer who employs human resources by paying them salaries. The employment contract causes a legal relationship between the employer and worker, which includes the rights and obligations of each. This contract is prepared by lining the civil code provisions in general. (Sinaga, 2017, p.43-44)

Act Number 13 of 2003 concerning Manpower defines a work agreement as an agreement between a worker/laborer and an entrepreneur or an employer. The agreement specifies the work requirements, rights and obligations of both sides. The work agreement includes two parties: the employer and the worker. Work agreements appear as synallagmatic contracts with successive performance and for consideration in which a person, the employee, promises to provide work and directions and is paid by another person, the employer. (Rade, 2011, p.57) In this law, the term join contract signed by the worker, the employer and the worker union is also recognized. This agreement is binding on the three parties. (Asri, 2016, p.111)

Moroccan law does not provide a concrete understanding of the employment contract. Moroccan labor law does not explicitly mention work

agreements. The law only notes who workers and human resources are. However, employment contracts in Moroccan law can be found in civil law. The concept is located in the chapter on leasing. Moroccan civil law clearly divides rent into work and service rents. Article 723: Employment of services or work is a contract whereby one party promises to pay a sum of money to another party to provide certain services for a certain period. A worker's employment is when someone promises to do a particular job at a price the other party promises to pay. Both contracts will be valid with the consent of the parties. (Supplementary paragraph, D. December 18 1947-5 *safar* 1367): If the contract is recorded in writing, it is exempt from stamp duty and registration. The lease contract also includes an industrial employment agreement. Article 724: the law recognizes industrial services that provide services performed by a professional or freelancer following their expertise. This concept is the same as work in Islamic law, which is included in the leasing category.

In Islamic law, the employment contract is generally associated with a benefit contract providing wages (*al-ijârah*). The *al-ijarah* contract is defined as a benefit contract with the payment of salaries. (Al-Zuhaili, 2006, p.731) *Shafi'iyah* circles represent *ijarah* as a particular benefit contract that is known and allowed and can be submitted with a specific remuneration (fee). (Syarbini, p.332) The *Malikiyah* and *Hanabilah* circles define it as giving up the benefits of something permissible for a certain period with remuneration. (Ibn Qudama, p.398) In Islam, *ijarah* is also divided into two forms: *ijarah* for benefits and *ijarah* for work. The object of the contract is in the form of gifts or employment. (Al-Zuhaili, p.759)

The practice carried out at the time of the Prophet Muhammad showed that there were two different rental practices, namely, leasing someone to work and renting goods to be used. Several hadiths of the Prophet stated that a person asked to work must be informed about the number of wages that will be paid. Hadith narrated by 'Abd ar-Razzaq from Abu Hurairah and Abu Sa'id al-Khudri, the Prophet *s.a.w.* said: "*Whoever employs a worker, let him know his wages*." (Al-Shan'ani, 1987, p.82) The hadith emphasizes that workers' wages must be agreed-upon before they carry out their work. The wages must be paid when the worker finishes his work. Wages should not be deferred if the work has been completed. This can be concluded from the command of the Prophet Muhammad, as narrated by Ibn Majah from Ibn Umar, that the Prophet said: "*Give a worker's wages before his sweat dries*." (Al-Shan'ani, p.81) The Prophet once ordered someone to do cupping on him, and the Prophet rewarded him. (Al-Syawkani, 2000, p.285) As for the activity of renting goods allowed by the Prophet, it can be concluded from the hadith narrated by Abu Daud from Sa'd

Ibn Abi Waqqash, and he said: "*We once rented out land with (payment) agricultural products; So the Prophet forbade us to do this and ordered us to rent it out for gold or silver*." (Al-Syawkani, p.279)

The concept of a working lease is not recognized in Indonesian civil law because Indonesian civil law distinguishes between an operating lease and a work agreement. The lease contract only applies to goods and services, not to work. Article 1548 of the Criminal Code states that a lease is an agreement whereby one party binds himself to confer onto another party the enjoyment of an object for a certain period and for a price that the latter agrees to pay. People can rent out various types of goods, both movable and immovable. There are no rules regarding work rent in this section. A work agreement is regulated in a particular chapter for Work Agreement, chapter VIIA of the Criminal Code, while the lease is held in Chapter VII.

Work agreements in the Indonesian civil code are divided into two, and they are individual work agreements and outsourcing work agreements. An individual work agreement is an agreement in which the first party, the worker, binds to labor himself to another party, the employer, with wages for a certain period. An outsourcing work agreement is an agreement in which the first party, the outside organization, binds itself to complete a specific task for the opposing party, the client company, at a predetermined price.

Islamic law does not distinguish between individual and outsourcing work agreements. Both are covered by the terms of the rental work agreement, both for the outsource and non-outsource. The new Indonesian labor law also no longer uses the term outsourcing work agreement.

The concept of work agreement in civil law is separated from the idea of work agreement in labor law. As mentioned, the work agreement is stated in article 1 (14). A work agreement is an agreement between worker/labor and entrepreneur or employer containing terms of employment, rights and obligations of the parties. There seems to be a different understanding between the employment agreement in Indonesian labor and civil laws. The provisions of Article 50 of the Manpower Act stipulate that an employment relationship occurs because of a work agreement between the employer and the worker/laborer. Guus Heerma van Voss noted two important things related to this difference. First, it is associated with the element of the work agreement, where the labor law does not mention giving oneself in or binding oneself to the employer, while this is found in civil law. According to civil law, the employment agreement's main components are the worker, the employer, and the employer's authority. (Van Voss, 2012, p.12) "(…) an agreement that the first

party, the worker, binds himself to give in his labor to another party, the employer, with wages for a certain period." Second, the terms concerning the parties to the work agreement also differ between workers, wages and employers. This difference shows that the legislators want to provide a wide-scope definition to cover all forms of part-time or temporary work, even if the employer's authority is not immediately visible, and to avoid a narrow definition. The act looks pretty beneficial from the perspective of protecting workers in an economic dependence situation. Although according to Voss, the disadvantage is that the description becomes too vague and broad. (Van Voss, 2012, p.14)

In Islamic law, a work agreement model is different from the rental model, namely a work agreement for the provision of capital or profit sharing (*mudharabah*). If, in the rental agreement, there are parties who work and those who pay wages, then in this contract, the parties are the financiers (*shahib al-mal*) and workers (*mudharib*). It's just that in this work agreement, it is not a wage system that is applied but a profit-sharing system. Workers will receive the wage agreement in the form of an agreement on the percentage of profit sharing from the business users. Indonesian civil law and labor law do not recognize this work agreement model. However, this kind of work agreement model can be found in the Islamic finance and business industry. The Moroccan labor law also does not mention the profit-sharing work system.

From the description above, it can be concluded that the work agreement in Islamic and Moroccan law is included in the category of the work contract, which in Islamic law terms, is a service lease. Indonesian civil law separates work and lease agreements. The work agreement is an independent law, while the lease only applies to goods and does not apply to people. Work agreements in Indonesia and Morocco limit the arrangements in the form of fixed or certain wages. Both do not recognize a work agreement based on profit sharing.

3. Term of Employment Contract

Indonesian and Moroccan law distinguishes between an employment contract for an indefinite period, for a fixed period and for performing specific work. However, Indonesian law unifies the last two forms of employment contracts into one category of contracts for a limited period.

"A fixed-time employment agreement can only be made in a job that cannot be made indefinitely ". This type of contract can only be carried out for certain work based on the work type, nature, or task to be completed within a

certain time. In other words, this contract cannot be held for permanent employment. (Article 16 CTM and Article 59 CTI.) Work that falls under this category differs between Indonesian and Moroccan law. In Morocco, this work is for the following circumstances; "replacement of an employee by another employee in the case of termination of the employee's employment contract, unless a strike causes the termination of employment; a temporary increase in industrial business activities; or if the work is seasonal." On the other hand, Indonesian law stipulates four jobs that can be created in this form of contract, whether for work that is completed once or is temporary; work which is estimated to be completed within a maximum period of three years; seasonal work; or work related to a new product, new activity, or other product that is still under testing or exploration. However, CTM expands its scope so that work that can be completed for a certain period after an agreement is made between the employers' professional organization and the trade union organization/labor union can turn into an indefinite work contract. Islamic law does not recognize a work contract indefinitely because, in principle, the work must be precise when work begins and ends. This type of work seems similar to the concept of slavery, which was legalized in early Islam. This contract has no fixed duration because slavery ends with release or sale to another employer. When Islam came, slavery was already ongoing, and the Prophet Muhammad began to improve this work system by abolishing contracts and asking Muslims to treat enslaved people as free people. (Patel, 2016)

The CTI limits the employment agreement to a certain period of three years. In other words, work predicted to be completed in more than three years cannot be considered a specific contract. However, Moroccan law also limits fixed-time work to two years. After this period, the contract becomes an indefinite time employment agreement. The details of this period are different. Indonesian law permits the formation of contracts for two years, but Moroccan law limits their duration to one year. This period can only be extended once for one year. (Article 59(4) CTI)

Moroccan law distinguishes contracts between the agricultural sector and other sectors, "a fixed time employment agreement is carried out for six months which can be renewed provided that the duration of the contract made does not exceed two years". (Article 17 CTM) The provision for this period is shorter than the non-agricultural sector work period. This contract then becomes indefinite when it exceeds the specified period. Indonesian law does not distinguish between the agricultural and non-agricultural sectors. All work in various sectors can be carried out for three years for both agricultural and non-agricultural sectors. In Islamic law, employment contracts in agriculture are

usually applied with *muzaraa* and *mukhabara* contracts for the duration from farming to harvesting. However, a Muslim jurist is obliged to determine the length of service. (Al-Zuhayli, p.618)

4. Probationary period

The probationary period is when workers are directly involved in the work-training process and are evaluated for their abilities to determine whether to become permanent employees or be dismissed. During this period, Indonesian regulations prohibit applying fixed-time employment agreements, while Moroccan regulations allow probation for both fixed and indefinite work. For fixed-time contracts, this probationary period "should not exceed one day for each working week within a two-week limit in the case of contracts lasting less than six months or one month in the case of contracts lasting more than six months". (Article 14 CTM)

On the other hand, according to Indonesian law, a work contract is null and void for a probationary period for a fixed-time employment agreement. CTI states that employment contracts for a fixed period should not allow a probationary period. However, Indonesian law permits a probationary period for an indefinite employment contract with a maximum limit of three months probation. Moroccan law provides for three categories of probation: three months for executives, one and a half months for employees and fifteen days for workers. This probationary period can be extended once according to Moroccan law, but it is not regulated in Indonesian law. (Article 60 (1) CTI and Article 14 CTM)

However, Islamic law does not specify working hours but emphasizes the importance of working time arrangements. This time can be a short time or a long time. Arranging a time to avoid conflict. In addition, the madhab *Shafi'i* emphasizes the importance of setting the start date of work. Other madhabs allow the determination of the type and time of work. (Al-Zuhayli, pp. 739-740)

From the stated description, it can be concluded that the difference between Moroccan and Indonesian law is the maximum duration for a fixed-time work agreement. On the one hand, Indonesian law limits the maximum period of three years. On the other hand, Moroccan law stipulates a shorter period than that determined by Indonesian, which is two years. Furthermore, CTM distinguishes the period of a fixed-time employment agreement for the first contract between the agricultural and non-agricultural sectors, while CTI does not. However, the Indonesian did not negotiate a contract with a set

termination date, and during the trial period, he was not paid. Finally, under an employment contract with an indeterminate duration, the probationary period is capped at three months under Indonesian law, regardless of the type of work performed. In contrast, in Morocco, the course of the probationary period varies depending on the nature and scope of the work performed.

5. Employment Relations

Employers and workers generally carry out employment contract relationships. Analyzing the different types of employment relationships in Islamic law is interesting. First, the employment relationship is based on an *ijarah* contract, a rental contract in the form of work or services in which the employer and the worker represent the parties to the agreement. Second, a contract is made by one party who provides money or capital and another party who does work with the means for which they do profit-sharing of the results of operations according to their agreement. This contract is referred to as a cooperation contract (*mudharaba*).

a. Employers-workers Relations

It is common knowledge that an employment relationship develops when an employer and employee enter into a contract outlining the terms of the employment, such as compensation and line of authority (work). Article 50 of Law 13 of 2003 (Indonesian Criminal Code) deals with this employment relationship scheme. Guus Heerma van Voss noted two crucial issues related to this. First are the elements related to the employment agreement, where the CTI does not mention the employer's rights, while it is found in civil law. In other words, the main components in the employment contract, according to civil law, are the worker, the employer, and the employer's authority (Van Voss, 2012, p.13). "Contract by a worker who undertakes to hand over his authority to another party, an employer, who will pay wages for a certain time". This notion appears to be influenced by western definitions of contract, such as the French interpretation of the employment contract, which places the worker's transfer to the employer at the centre (Verdier, 2011, p.37). Here we find a paradox in which the performance of a contract is determined by the subordination of one person who is economically dependent on another. The doctrine then identifies the difference between legal and economic dependence, but the law favours the former (employer) over the latter (employee). (Antonmattei, 2012, p.29)

In addition, the terms used in employment relations are also different. For example, we can divide the parties between workers (labor) and workers/employees (workers). On the other hand, legislators also distinguish the terminology of salary (wages) and compensation (honorarium), as well as the language of employer and boss (employer).

This discrepancy suggests that legislators want to provide a more extensive scope of definition so that it can cover all forms of part-time employment or temporary employers and that authorities avoid using an explanation or understanding that is too narrow from the perspective of worker protection for those who are economically dependent, this will be a significant improvement over the previous scenario. But, according to Voss, the damage caused by the given definition is too ambiguous and broad. (Van Voss, p.14)

Islamic law also recognizes the relationship between the worker (*ajir*) and the employer (*mustajir*), where the worker performs a job requested by the employer at an agreed wage. (Al-Zuhayli, p.732) Although it does not explicitly mention workers' dependence on employers, Islamic law insists that workers only work on what has been agreed upon. In this context, the provisions are similar to the conditions stipulated in the Moroccan Employment Act (CTM).

b. Partnership

Indonesian and Moroccan labor laws do not specifically mention work agreements in cooperation/cooperation. This form of collaboration is regulated in other regulations, such as collaborative law. But in Islam, such partnership is included in a work agreement based on two parties' alliances. For a long time, it has been practised where the Prophet Muhammad worked as a worker of a clothing entrepreneur to trade clothes and the Prophet, and his boss shared the profits.

Collective bargaining agreements are divided into two forms: in which all parties are involved in capital and work, known as cooperatives *(musharakah),* and collective bargaining agreements, in which one party provides wealth and the other party is the manager of the capital. This model is known as *mudharabah*. The formation of the 212 cooperatives is an example of the practice of a cooperative agreement with a *musharakah* scheme (Mulhadi, 2019, p.267). In addition, it is also possible to work in the agricultural sector in the form of cooperation. The first form is that the land owner provides the seeds, and the workers or farmers only work in the fields. This model is known as *muzaraah*. The second form is that in addition to working in the areas,

farmers provide seeds, and land owners only provide land. This model of cooperation is called *mukhabarah* (Al-Zuhayli, p.613-614). The agriculture results are divided between them by a percentage agreement, for example, 50:50. In the Moroccan labor law, provisions regarding the employment agreement in the Agricole sector are found. However, the law does not mention a model for agricultural product sharing (L'article 17, 66, 172, 184, 201, etc.) Meanwhile, the Indonesian labor law does not mention employment agreements in the agricultural sector.

In *mudharabah*, the owner of the capital must have the proficiency and capacity to carry out the contract. He handed over the property to the workers to manage it. The assets can be in the form of cash capital or working capital, such as production tools. Ulama preferred cash, which must be determined by the amount to be handed over to workers and not in the form of account receivables. (Ibn Rushd, p.335)

The capital's owner or the workers will get the agreed profit. Profit is the primary goal of this cooperation. (Al-Mughny, p.30) Therefore, profits can be known from the difference between capital and costs incurred and the income received. Profit sharing is not based on a nominal amount but on a percentage, for example, one-third, one-half, or other. (Al-Zuhayli, p.850) In the event of a loss, both parties will also accept the risk of each other's failures. For example, an entrepreneur provides the capital of 50 million to trade vegetables for three months. They agreed to share the results 50:50. At the end of the business, after three months; the workers calculated they would get 100 million. After deducting the capital and costs of 70 million, the profit is 30 million from this thirty million divided by 15 million each. If the profit is, for example, 50 million, then each party gets 25 million. The difference with a regular work agreement is that workers will get wages according to the initial contract and are not affected by the profit size.

In a *mudharabah* work agreement, workers hold a reasonably large authority from the owner of the capital. (Al-Zuhayli, p.854) Therefore, a worker must have high integrity and honesty in addition to having sufficient capacity and ability. In this contract, neither the owner of the capital nor the worker can guarantee whether the business will make a profit or a loss. Because the guarantee is something that cannot be ascertained. (al-Mughny, p.25) Therefore, workers must choose a business sector that is truly safe and has a relatively small risk.

6. Women and child labor

a. Child labor

Every human being under eighteen is considered a child under the Convention on the Rights of the Child (CRC), which the United Nations General Assembly adopted on November 20, 1989, and by Indonesia by Presidential Decree No. 36/1990. The age of eighteen is the limit for childhood and adolescence (adults). Everyone from birth to eighteen is referred to as a child. The age limit of eighteen years is also used to categorize the age of adopted children in the laws and regulations concerning children in Indonesia. As in Law Number 23 of 2003 concerning Child Protection, it is stated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In the Manpower Act, it is also stated that a child is anyone under the age of 18 (eighteen) years. (article 1, paragraph 26)

This understanding is different from the understanding in the Islamic legal system because Islamic law does not place the status of children on age but on the nature and ability of one's maturity. The word child in Arabic is *Al-Thifl* means a child until he reaches puberty, which is sometimes used to refer to animals or humans who are still small. (Munawir, 1997, p.856) In another sense, the word *Al-Thifl* is defined as a baby or small child. (Munawir, 1997, p.856) The definition of children in Islamic law is drawn from several verses of the Qur'an which explain children, for example, in Surah al-Nur (24) verses 31 and 59, then Surah al-Hajj (22) verse 5 and in the surah al-Mukmin (40) verse 67.

There are several children's rights that must be protected. Among other things, the right to grow and develop. Children are the initial stage of a person's physical and spiritual process. To be able to grow and develop properly, it is not enough for children to only fulfil their health, but also the right to satisfy their soul through education, the right to adapt to the environment, and to grow into adults so that they can be responsible for themselves or others. (Irwanto, p.12) Right to Protection (protection rights). In general, children have a deficiency in terms of physical and dependency on others. They are a group that is vulnerable to unfair and exploitative treatment. The Covenant on the Rights of the Child establishes protection rights for children. (Gosita, 1985, p.21)

Fundamentally, children should not be employed (Article 68). There are some exceptions for children who can be used. First, children aged 13-15 can be excluded from doing light work as long as it does not interfere with physical, mental, and social development and health. The working child must meet the requirements; written permission from parent or guardian, work agreement

between employer and parent or guardian, maximum working time of 3 (three) hours, carried out during the day and does not interfere with school time, given occupational health and safety protection, clear working relationship, and receiving wages following applicable regulations. Second, children who work in workplaces that are part of the education or training curriculum approved by the competent authority on condition that they are given clear instructions on how to carry out work as well as guidance and supervision in carrying out work and are given occupational health and safety protection. Children who can do this work are at least 14 (fourteen) years old (Article 70). Third, children work to develop their talents and interests. The conditions that must be met at this point are under the direct supervision of parents or guardians, working time is a maximum of 3 (three) hours a day, and working conditions and environment do not interfere with physical, mental, social and school development. (Article 71)

Working children must be separated from the workplace of adult workers/laborers. (Article 72) And he is considered to be working if he is at work. (Article 73) children may not work in the worst jobs. The worst jobs are any work in the form of slavery or the like, any work that uses provides or offers children for prostitution. The production of pornography, pornographic performances, or gambling; any work that utilizes, supplies, or involves children for the production and trade of liquor, narcotics, psychotropics, and other addictive substances; and any work that endangers the health, safety or morals of children. (Article 74)

Moroccan law states that children under fifteen cannot be employed. (article 143) the following article shows that children under eighteen can work for jobs that exceed their abilities (article 144). Child laborers under eighteen years in public performance must obtain permission from the work supervisor after consulting with their guardians (article 145). prohibition against making a profit from children's advertising (article 146). It is also prohibited to employ children under sixteen in extreme games, circuses, and other dangerous animal games that can endanger their lives, health and morals, and they must show an ID card for the first time. (Articles 147, 148)

b. Woman labor

Special provisions regarding women in the Manpower Act indicate that women must be protected. This is done because women have not fully obtained their rights in many countries, including Indonesia and Morocco. Awareness of

the importance of protecting women has been carried out both on an international and national scale. The 1948 Declaration of Human Rights was a milestone for men's and women's equality. In 1953 the United Nations General Assembly adopted the Convention on Women's Political Rights. This Convention was effective in 1954. In 1976 the United Nations established and raised a Voluntary Fund for Women for the United Nations women's decade, now known as UNIFEM. In 1979, the United Nations General Assembly approved the Convention on Eliminating Discrimination against Women (CEDAW). The United Nations also established the International Research and Training Institute for the Advancement of Women (INSTRAW), which began operating actively in 1980 as an autonomous body. This global commitment was reaffirmed in the International Convention on Population and Development (ICPD) in 1994, followed by the Fourth World Conference on Women in Beijing in 1995. Indonesia also participated in the agreement, which was declared by around 180 participating countries. Thus, Indonesia is part of a world organ that has proclaimed itself against all forms and manifestations of VAW.

Along with the national political commitment to improve the welfare of women, the Indonesian government has ratified the CEDAW convention with Law no. 7 of 1984. Furthermore, to complement CEDAW, the government approved the Convention against all forms of torture, violence and other cruel, inhuman or degrading treatment or punishment with Law no. 5 of 1998. Besides participating in ratifying the Convention above, the government has also issued a Presidential Decree of the Republic of Indonesia. No. 181 of 1998 concerning the National Commission on Violence Against Women, often called *"Komnas Perempuan"*. These are all concrete forms of the Indonesian government's concern in preventing and eliminating, at least minimizing, the VAW act's frequency and severity, which is part of human rights violations.

Indonesia has also ratified the Convention on the Elimination of Discrimination Against Women with Law no. 7 of 1984 and the Universal Declaration of Human Rights. Indonesia also has its own Human Rights Law (39/1999). Article 16 of the Women's Convention states: "Nation is obliged to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations based on equality between men and women, and in particular to ensure: the same rights and responsibilities as parents, regardless of their marital status, in matters relating to their children. In all cases, the interests of the children must come first. And therefore, "Nation is obliged to make appropriate regulations, including legislation, to amend and abolish laws, regulations, customs and practices that are

discriminatory against women". Article 2, letter f of the Women's Convention reads this.

Fifteen centuries ago, the declaration of the equality of men and women was issued by Islam. The Qur'an emphasizes that women are equal to men regarding mental and moral abilities. Moreover, both sexes are equally rewarded or punished for their good and evil deeds, as He says in Surah 33: 25. Thus, it can be seen that the Qur'an places and treats these two sexes equally in terms of moral responsibility as well as rewards and compensation.

D. CONCLUSION

The results show the influence of international conventions on Indonesian and Moroccan labor law. This is known from several national law parameters that reflect international convention requirements. Indonesian and Moroccan legislation has adopted provisions governed by international conventions, particularly those relating to the Convention on the elimination of discrimination against women and other types of discrimination, the protection of child labor, and the certainty of employment relations.

Indonesia and Morocco are two countries where most of the population is Muslim. However, Islamic law does not have a significant favourable influence on labor law. This happens because labor laws are highly developed concerning human progress, and many technical clauses are enforced, such as technical provisions of employment contracts, rules for termination of contracts, and the type and level of the profession. Therefore, Islamic law does not regulate this issue in detail, although the main aspects of employment contracts are generally the same as labor laws in Indonesia and Morocco.

The concept of an employment agreement in Indonesian and Moroccan labor law is limited to an employment relationship between an employer and a paid worker, known in Islamic law as a lease contract (*aqd al-ijarah*). However, Islamic law also recognizes another concept of the employment relationship: a partnership agreement (*mudharabah*) in which an agreement is made between two parties where one party is the provider of capital and the other is the worker who does the work. The relationship between them is generally an employment contract, but workers' wages will differ. In *the al-ijarah contract, the salary amount is determined at the beginning of the agreement. I*n *mudharabah*, the percentage of wages is determined by the employer and based on the business income received from the worker. As a result, the amount of wages that workers will receive fluctuates according to the number of profits earned.

Indonesian and Moroccan labor laws do not regulate this concept.

Another difference can be observed in the age of children who can sign an employment contract. Children may work as young as fourteen under Moroccan law and sixteen under Indonesian law. Their work and working time are minimal and must comply with applicable regulations. Islamic law does not limit the age at work but regulates the quality provisions regarding physical and mental abilities that make him legally capable. However, all three legal systems agree that underage workers must obtain permission from a parent or guardian. Children who can work independently must be at least 18 years old.

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