

The Interplay of Customary Law and Labor Regulations: A Comparative Legal Pluralism Study in Indonesia and Algeria

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Abstract

Introduction: This study examines the interaction between customary law and national labor regulations in Indonesia and Algeria through the lens of legal pluralism. The research is motivated by the persistent coexistence of formal state law and traditional practices in shaping employment relations, which is particularly evident in societies with strong communal and religious traditions. Both Indonesia and Algeria represent cases where historical legacies of colonialism, post-independence political choices, and enduring social structures have produced distinctive forms of legal pluralism in labor relations.

Purposes of the Research: The purpose of this research is to compare how legal pluralism operates in the two countries to regulate employment relations, resolve labor disputes, and accommodate customary norms within national frameworks.

Methods of the Research: This study applies a normative legal research method with a comparative legal approach. Primary data sources include statutory regulations such as the Indonesian Labour Law Number 13 of 2003 (as amended by the Job Creation Law 2020 and Law Number 6 of 2023) and the Algerian Labour Code (Law Number 90-11/1990), while secondary data are drawn from academic literature, case studies, and reports from international institutions like the ILO. Data were analyzed using a descriptive-comparative technique to identify similarities, differences, and integration patterns between customary law and national labor regulations.

Results of the Research: The findings reveal that both Indonesia and Algeria institutionalize pluralism by formally recognizing certain customary practices, such as oral employment agreements in Algeria and community-based contractual practices in Indonesia. This novelty lies in demonstrating how pluralism is not merely a social phenomenon but also a legally recognized mechanism for regulating labor relations and dispute resolution. This study advances existing knowledge by showing that legal pluralism provides a flexible and context-sensitive framework for labor law, balancing global standards with local legitimacy.

Keywords: Legal Pluralism; Customary Law; Labor Regulation; Employment Relations.

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INTRODUCTION

The employment relationship is one of the fundamental aspects of social, political, and economic life, constantly evolving with the dynamics of society. Labor regulations are influenced not only by positive law that applies nationally but also by social norms, culture, and deeply rooted customary practices. The phenomenon of legal pluralism in the field of employment demonstrates that there is more than one legal system that exists and operates side by side, both in the form of state law and unwritten law. In this context, customary law plays an important role in shaping work relations, patterns of interaction between workers and employers, and mechanisms for resolving labor disputes. This reality of pluralism

further emphasizes that the study of labor law cannot be separated from the socio-cultural dimensions that underlie legal practices at the local level.

The influence of legal pluralism in employment relations poses challenges for countries with different historical, political, and social backgrounds. Most modern countries build their labor law systems with reference to international standards set by global organizations such as the International Labour Organization (ILO).¹ However, the application of these standards often undergoes adjustments when it encounters local legal traditions that have higher social legitimacy. This encounter between national law and customary law produces unique relationship patterns, sometimes harmonious but often creating tension. In such conditions, comparative studies become important to reveal how countries with different characteristics manage legal pluralism in the field of employment.

Indonesia is one of the countries with high legal pluralism,² including in the employment sector. Indonesia's ethnic, religious, and cultural diversity creates a value system that influences employment practices.³ Although labor regulations have been codified in laws and government regulations, customary practices and local values remain a reference in resolving labor disputes, recruiting workers, and forming labor unions. This phenomenon demonstrates an ongoing dialectic between state law and customary law. On the other hand, Indonesia's condition also shows a debate between efforts to modernize the law and the need to maintain social justice rooted in traditional norms.⁴

Algeria presents how legal pluralism works in the realm of employment, albeit in a different social, cultural, and historical context. As a country with a background of French colonialism and a majority Muslim population,⁵ The legal system in Algeria is a combination of positive law inherited from the colonial era, Islamic law, and local customary law practices.⁶ In the field of employment, this situation creates interesting dynamics because the state seeks to implement modern regulations, but in practice, there is still a strong influence from community norms and local legal traditions. As in Indonesia, legal pluralism in Algeria often presents complexities in the application of labor regulations,⁷ especially when formal law meets the social legitimacy inherent in unwritten law.

Indonesia and Algeria have significant similarities and differences in their social structures and legal systems. Both are developing countries with large populations and dominated by Muslim communities, so religious and customary values play an important role in community life, including in work relations. However, differences in colonial history,

¹ Evi Rosa Dwihastini, Didin Hikmah Perkasa, and Ahmad Badawi Saluy, "Kebijakan Ketenagakerjaan Internasional Dan Peran Atase Ketenagakerjaan Dalam Perlindungan Pekerja Migran," *Syntax Literate; Jurnal Ilmiah Indonesia* 10, no. 6 (2025), <https://doi.org/10.36418/syntax-literate.v10i6.59507>.

² Qatrunnada Assyifa Shabrina Zulfa, Rachmad Indrawan Sidiq, and Aryo Subroto, "Tradisi Carok Dalam Pluralisme Hukum Di Indonesia," *Jurnal Analisis Hukum* 7, no. 2 (2024): 224–33, <https://doi.org/10.38043/JAH.V7I2.5243>.

³ Ilyas Syarofian Akmal et al., "Agama Dan Relasi Budaya Dalam Islam: Menjelajahi Peran Penting Budaya Dalam Pembentukan Identitas Keagamaan," *AL AUFA: Jurnal Pendidikan Dan Kajian Keislaman* 5, no. 2 (2023): 113–33, <https://doi.org/10.32665/ALAUFA.V5I2.1667>.

⁴ Septi Indah Lestari and Novia Putri Rahmadani, "Implikasi Hukum Masyarakat Dalam Penegakan Keadilan Sosial Di Era Modern: Studi Kasus Putusan Nomor 93/Puu-Xx/2022," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 24 (2024): 647–58, <http://www.jurnal.peneliti.net/index.php/JIWP/article/view/9131>.

⁵ Hannah Louise Clark, "The Islamic Origins of the French Colonial Welfare State: Hospital Finance in Algeria," *European Review of History: Revue Européenne d'histoire* 28, no. 5–6 (2021): 689–717, <https://doi.org/10.1080/13507486.2021.1990867>.

⁶ Mohamed Charif Mansouri, "English and Algerian Legal Cultures Formation: A Comparative Anthropological Study," *Indonesian Journal of Social Science Research* 5, no. 2 (2024): 460–70, <https://doi.org/10.11594/ijssr.05.02.08>.

⁷ Bencherif Mohammed Hichem and Kadaoui Soumia, "Mediation and the Legal Translator's Obligation in the Face of Differing Legal Systems in Algeria: Theoretical Benchmarks," *Man and Field Magazine* 9, no. 2 (2023): 258–78, <https://asjp.cerist.dz/en/article/233551>.

political systems, and approaches to national law make the pattern of managing legal pluralism in the two countries different. By comparing Indonesia and Algeria, a broader understanding can be obtained of how legal pluralism influences work relations in the context of countries that have similar cultural foundations but different historical and institutional paths. This comparison also opens up space to understand how the practice of legal pluralism in one country can provide inspiration or lessons for other countries.

The flow of foreign investment, changes in production patterns, and demands of the international labor market encourage countries to adjust labor regulations to align with global standards. Without understanding and accommodating the legal pluralism that exists in society, labor policies risk being ineffective or even causing social resistance. In this context, a comparative analysis between Indonesia and Algeria is important as an effort to show that the success of labor regulations is not only determined by the strength of positive law but also by the extent to which the law is able to engage with social norms and customs that have taken root.

Research on legal pluralism in employment also contributes to the academic discourse on how countries strive to build harmony between national law and customary law. By understanding the experiences of Indonesia and Algeria, this research can enrich thinking about the theory of legal pluralism in the field of employment, while filling the gap in studies that have so far focused more on legal pluralism in the realm of family, agrarian, or customary justice. The urgency of this research lies not only in its academic significance but also in its potential practical contribution to formulating labor policies that are more inclusive and responsive to social realities.

The comparison between Indonesia and Algeria through the lens of legal pluralism is not just an academic discourse but also a means of critical reflection for both countries in organizing fair and contextual labor regulations. The challenges of employment in the era of globalization cannot be resolved only with formal regulations but also by recognizing and integrating local values that live in the midst of society. Thus, this research presents a dual relevance: first, in expanding the theoretical understanding of legal pluralism in employment relations; second, in providing practical contributions to the formulation of more adaptive labor policies in Indonesia, Algeria, and even other countries with similar characteristics.

Research conducted by Karina Nataya Walenta, et al., in the *Philosophia Law Review* focuses on efforts to fulfill the rights of indigenous peoples in the context of employment relations. The study emphasizes the importance of constitutional protection for indigenous groups who are vulnerable to marginalization in the employment sector. The results show that although the national legal framework provides formal guarantees, implementation in the field still faces obstacles due to limited access, discrimination, and the inability of state law to fully adapt to local socio-cultural realities. This research confirms the existence of a gap between written legal norms and employment practices experienced by indigenous peoples.⁸

Meanwhile, Irwan Syah, et al., in *Asas Wa Tandhim: Journal of Law, Education and Socio-Religious Studies* highlighting the relationship between national law, customary law, and Islamic law after the enactment of the Job Creation Law. This study focuses more on the

⁸ Karina Nataya Walenta, Nur Mohamad Kasim, and Lusiana Margaret Tijow, "Pemenuhan Hak Konstitusional Masyarakat Adat Suku Polahi Di Bidang Ketenagakerjaan," *Philosophia Law Review* 2, no. 1 (2022): 1-14, <https://doi.org/10.56591/PILAR.V2I1.14125>.

political legal aspect and how national regulations impact the position of non-state law within the Indonesian legal system. The research finds that although the Job Creation Law was intended to promote efficiency and investment, its existence actually poses challenges to the continuity of Islamic law and customary law that have long existed within society. Thus, this research emphasizes the political dimension in the harmonization between state law and non-state law.⁹

The novelty of this research lies in the comparative approach between Indonesia and Algeria within the framework of legal pluralism in the field of employment. In contrast to previous studies that tend to focus on the local context of Indonesia or on internal political legal analysis, this research attempts to look at the interaction of customary law and national labor regulations in a cross-country perspective. This approach offers a new perspective by placing legal pluralism as the main lens for comparing two countries that have similar religious cultures but differ in colonial history, legal systems, and employment politics.

The aim of this research is to analyze how legal pluralism influences the interaction between customary law and national labor regulations in Indonesia and Algeria, while also revealing the influence of historical, political, and social factors in shaping their relationship. In addition, this research also aims to explore a deeper understanding of the challenges and opportunities of managing legal pluralism in the field of employment in the era of globalization, so that it can make theoretical and practical contributions to the development of a fair, inclusive, and contextual employment legal system.

METHODS OF THE RESEARCH

This research uses a qualitative research type with a comparative legal approach to compare the interaction between customary law and national labor regulations in Indonesia and Algeria within the framework of legal pluralism. Data was obtained through library research by examining primary legal sources in the form of labor laws and regulations, international legal instruments, and official government documents, as well as secondary legal sources such as journal articles, books, previous research, and reports from international institutions, including the International Labour Organization (ILO). Data analysis techniques were carried out qualitatively using a descriptive-comparative method, namely classifying data based on main themes and then comparing them to find similarities, differences, and the implications of legal pluralism on employment relations in the two countries.

RESULTS AND DISCUSSION

A. Main Heading of the First Analysis or Discussion

Legal pluralism is a condition where there are two or more legal systems that are running and living side by side in the same social dimension.¹⁰ In a pluralistic legal structure, there are generally three legal components, namely state law, customary law and religious law.¹¹ This perspective is relevant to explain the interaction between customary law and positive law in Indonesia and Algeria. Employment relations in both countries are not only

⁹ Irwan Syah et al., "Politik Hukum Undang-Undang Cipta Kerja Terhadap Eksistensi Hukum Islam Dan Adat," *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan* 4, no. 2 (2025): 363-74, <https://doi.org/10.47200/AWTJHPSA.V4I2.2910>.

¹⁰ Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (2021): 1-36, <https://doi.org/10.35673/AJMPL.V6I1.1129>.

¹¹ I. Gede Agus Kurniawan et al., "Legal Reform in Business Dispute Resolution: A Study of Legal Pluralism in Indonesia, Vietnam, and Thailand," *Journal of Law and Legal Reform* 6, no. 2 (2025): 569-616, <https://doi.org/10.15294/JLLR.V6I2.21128>.

understood through national regulations but also through customary norms, social practices, and religious values that provide additional legitimacy. This creates a dialectic between formal law, which is written, and customary law, which is deeply rooted in community traditions. In the context of legal pluralism, the two do not negate each other but rather influence and integrate with each other.

In Indonesia, labor regulations are governed by Law Number 13 of 2003 concerning Manpower, which was later amended by Law Number 11 of 2020 concerning Job Creation and Law Number 6 of 2023 concerning the Job Creation Cluster.¹² Article 1 number 15 of Law Number 6 of 2023 concerning the Job Creation Cluster defines the employment relationship as a relationship between an entrepreneur and a worker based on a work agreement that has elements of work, wages, and commands.¹³ The basis for the validity of a work agreement still refers to Articles 1320 and 1338 of the Civil Code, which recognize custom as one of the sources of law in agreements.¹⁴ Based on this, customary recruitment practices such as paron (rice field sharecropping in Java) or maro (garden sharecropping) can be recognized as an employment relationship if they meet the element of agreement.¹⁵ This means that positive law integrates customary practices into formal arrangements.

Algeria has a Labour Code (Loi n° 90-11 du 21 avril 1990 modifiée et complétée relative aux relations de travail) which is the basis for labor regulations.¹⁶ Article 8 of this code states that employment relationships can take the form of written or unwritten contracts, as long as there is an agreement regarding work, wages and working conditions.¹⁷ This provision demonstrates the integration of customary law because it recognizes the practice of oral agreements that are widely used in rural communities. In Algerian community traditions, oral contracts are rooted in customary norms and Islamic principles of honesty and trust. Thus, Algerian positive law explicitly opens up space for customary law to coexist in employment relations.

The concept of employment relations in Indonesia is greatly influenced by its vast cultural diversity. In the formal sector, written contracts regulated by the Manpower Law are dominant, especially in industrial and multinational companies.¹⁸ However, in the informal and rural sectors, family-based customary agreements, such as sambatan (mutual cooperation),¹⁹ is still recognized as a legitimate form of work. This integration is evident when customary practices meet the elements of an employment relationship as required by law, even without a written contract. Thus, legal pluralism explains that positive law does

¹² Krista Yitawati, Meirza Aulia Cahirani, and Angga Pramodya Pradhana, "Problematika Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja Klaster Ketenagakerjaan Dalam Memberikan Perlindungan Dan Kesejahteraan Pekerja," *Jurnal Rechtsens* 13, no. 1 (2024): 97-118, <https://doi.org/10.56013/Rechtsens.v13i1.2671>.

¹³ Sutrisno Sutrisno, Dayat Limbong, and Yusuf Hanafi Pasaribu, "Pemutusan Hubungan Kerja (Phk) Akibat Pelanggaran Perjanjian Kerja Ditinjau Dari Undang-Undang Nomor 6 Tahun 2023 Pt Tekno Cipta Dwidaya," *Fiat Iustitia : Jurnal Hukum* 5, no. 1 (2024): 132-42, <https://ejournal.ust.ac.id/index.php/FIAT/article/view/4145>.

¹⁴ Apriyodi Ali, Achmad Fitriani, and Putra Hutomo, "Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *Sentri: Jurnal Riset Ilmiah* 1, no. 2 (2022): 270-78.

¹⁵ Ana Liana Wahyuningrum and Darwanto Darwanto, "Penerapan Bagi Hasil Maro Perspektif Akad Mukhabarah," *Tawazun : Journal of Sharia Economic Law* 3, no. 1 (2020): 45, <https://doi.org/10.21043/Tawazun.v3i1.7544>.

¹⁶ Asma Djemaïai, "Analyse De La Procédure D'assurance Des Salariés En Algérie. Cas De Chu" (Universite Mouloud Ministere De L'enseignement Superieur Et De La Recherchescientifiqueammeri, 2022).

¹⁷ ILO Natlex Algeria, "Relative Aux Relations De Travail, Modifiée Et Complétée Modifiée Et Complétée," Pub. L. No. Loi n° 90-11 du 21 (1990), <https://www.mtess.gov.dz/fr/>.

¹⁸ Feriandy et al., *Dinamika Hubungan Industrial Era Modern: Antara Idealisme, Realita, Kepentingan Buruh, Dan Pengusaha* (Yogyakarta: Pohon Cahaya, 2025).

¹⁹ Nurul Aulia et al., "Gotong Royong Di Desa Lagadar: Membangun Kebersamaan Dengan Nilai Pancasila," *Jurnal Pendidikan Non Formal* 2, no. 4 (2025): 10-10, <https://doi.org/10.47134/JPN.v2i4.1712>.

not negate customary law but rather provides space for such practices to continue existing within the legal framework.

In Algeria, the concept of employment relations also shows a similar integration. Formal regulations require a clear agreement, but do not limit its form solely to written contracts.²⁰ Many workers in the agrarian or small industry sector work on the basis of verbal agreements that are passed down from generation to generation.²¹ The agreement is valid in the eyes of the community because it is rooted in customary norms and Sharia values of justice and trustworthiness. Legal pluralism is clearly seen because positive law accepts non-formal forms of employment relations as valid. Thus, the concept of employment relations in Algeria is a mixture of state law, custom, and religion.

The interaction of customary law and positive law is also evident in dispute resolution mechanisms in Indonesia. Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes provides formal mechanisms such as mediation, conciliation, arbitration, and industrial relations courts.²² In practice, labor disputes that occur in indigenous communities are first resolved through deliberation under customary authority.²³ The Dayak community, in resolving work disputes, is brought to the Customary Council before entering the state mechanism.²⁴ This reflects legal pluralism, as both mechanisms can run in parallel and the results of customary settlements are often respected by the parties involved.

In the case of labor disputes in the Baduy indigenous community, conflicts related to workers' wages are resolved through local customary institutions.²⁵ Although it does not use formal instruments of state law, this customary settlement is accepted by local workers and employers because it is more in line with community values. This case shows that social legitimacy is often stronger than formal power. This integration is a real reflection of legal pluralism in the practice of employment relations in Indonesia.

In Algeria, dispute resolution is regulated in the Labour Code Articles 19–21, which emphasize conciliation and mediation before going to court.²⁶ However, customary or community-based dispute resolution remains strong, especially in rural areas. For example, the *jemaa* (village customary council) often acts as a mediator in labor disputes in the agricultural sector.²⁷ Customary norms and Sharia values are used as references to seek justice that is more appropriate to the social context. This shows that legal pluralism in Algeria operates through formal recognition and social practices simultaneously.

²⁰ Bahri Halima and Hadj Soudi Mohamed, "The Concept Of The Binding Authority Of Arbitration Decisions In Collective Labor Disputes : A Study In Light Of Algerian Law," *Russian Law Journal* 12, no. 2 (2024), <https://cyberleninka.ru/article/n/the-concept-of-the-binding-authority-of-arbitration-decisions-in-collective-labor-disputes-a-study-in-light-of-algerian-law>.

²¹ Marouane Chaami et al., "Why Is There a Shortage of Agricultural Labor in Algeria? Evidence from M'zirâa, Southern Algeria's Leading Vegetable Market," *New Medit* 1, no. 2025 (2025), <https://doi.org/10.30682/nm2501h>.

²² Rai Mantili, "Konsep Penyelesaian Perselisihan Hubungan Industrial Antara Serikat Pekerja Dengan Perusahaan Melalui Combined Process (Med-Arbitrase)," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 47–65, <https://doi.org/10.23920/jbmh.v6i1.252>.

²³ Hery Mahardika, M Galang Asmara, and Muh Risnain, "Pelaksanaan Penyelesaian Sengketa Adat Melalui Lembaga Adat Di Kabupaten Lombok Utara," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 4 (2022): 2107–21, <https://doi.org/10.31604/justitia.v9i4>.

²⁴ Abdian Berkat Ndraha et al., "Penerapan Hukum Pidana Adat Dalam Penyelesaian Sengketa Pertanahan Pada Masyarakat Adat Dayak Di Kabupaten Seruyan, Kalimantan Tengah," *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 5, no. 01 (August 13, 2025): 41–53, <https://doi.org/10.69957/CR.v5i01.1728>.

²⁵ Sidik Puryanto and Sardjiyo, "Persepsi Masyarakat Baduy Terhadap Konflik," *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 6, no. 4 (2023): 936–43, <https://doi.org/10.37329/Ganaya.v6i4.2709>.

²⁶ Benachi Amel, "The Legal System of Judicial Conciliation in Civil Litigation under The Algerian," *Journal of Law and Political Science*, 12, no. 1 (2025): 384–99, <https://asjp.cerist.dz/en/article/262624>.

²⁷ Anna Zasuñ, "The Compromise of Islamism and Democracy in the Light of the Tunisian Revolution and Views of Rachid Al-Gannouchi," *British Journal of Middle Eastern Studies* 52, no. 2 (2025): 401–23, <https://doi.org/10.1080/13530194.2023.2281424>.

Indonesia and Algeria show patterns of integration between customary law and positive law in the settlement of labor disputes. In Indonesia, integration is evident in the recognition of customary-based dispute resolution before resorting to formal mechanisms. In Algeria, integration is seen in the recognition of oral contracts and the involvement of custom and religion in dispute resolution. Although the paths are different, both show that legal pluralism makes the dispute resolution system more adaptive to local values. In this way, legal legitimacy is obtained not only from the state but also from community acceptance.

Analysis of key articles shows that legal pluralism in both countries is not merely a social phenomenon but is also institutionalized in positive law. In Indonesia, Article 1338 of the Civil Code and the recognition of customary law communities in Article 18B of the 1945 Constitution reinforce the applicability of custom in employment relations.²⁸ In Algeria, Labour Code Article 8 gives explicit recognition to oral employment contracts rooted in custom and religious norms. This integration shows that state law deliberately provides space for customary norms to be recognized and institutionalized. This is formal evidence of legal pluralism in national regulations.

Legal pluralism has proven to significantly influence employment relations in Indonesia and Algeria. National regulations do not stand alone but must engage in dialogue with customary law and religious norms that exist in society. This interaction allows for dual legitimacy: from the state and from the community. However, legal pluralism also presents challenges, especially if customary norms conflict with international labor standards such as gender equality or child protection. Nevertheless, legal pluralism remains key to building a fair, inclusive, and contextual employment system in both countries.

B. Factors Influencing the Relationship Between Customary Law and National Employment Regulations in Indonesia and Algeria

Colonial history played an important role in shaping the relationship between customary law and national labor regulations in Indonesia and Algeria. In Indonesia, the Dutch colonial legal system introduced the *Burgerlijk Wetboek* (BW), which emphasized written contracts,²⁹ but did not completely eliminate customary law. Communities still use customary-based work practices, such as *maro* or *paro*,³⁰ Although formally, colonial law emphasized contractualism, this gave rise to continued legal dualism. Thus, the colonial legacy actually strengthened legal pluralism because the state was unable to completely eradicate customary practices.³¹ Algeria's history shows a similar pattern but with the characteristics of French colonialism. Since the 19th century, France implemented the *Code du Travail* which applied to formal workers, especially in the urban and industrial sectors.³² Rural communities, on the other hand, maintained customary and sharia-based work practices, which were often ignored by colonial authorities.³³ After independence in 1962,

²⁸ Safrin Salam et al., "Pengakuan Hak Atas Tanah Ulayat Masyarakat Hukum Adat Di Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Perspektif Teori Hukum Kritis," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 721-32, <https://doi.org/10.22225/JUINHUM.5.1.7166.721-732>.

²⁹ Afif Muhni et al., *Pengantar Hukum Indonesia: Sejarah, Sistem, Sumber Hukum Dan HAM Di Indonesia*, ed. Indah Khairun Nisya, Cetakan Pe (Yogyakarta: Star Digital Publishing, 2025).

³⁰ Wahyuningrum and Darwanto, "Penerapan Bagi Hasil Maro Perspektif Akad Mukhabarah."

³¹ Yuldiana Zesa Azis and Ahmad Ali Muddin, "Revitalisasi Hukum Waris Adat Dalam Masyarakat Marind: Penguatan Nilai Lokal Di Papua Selatan," *Jurnal Hukum Cassowary* 2, no. 1 (2025): 22-33, <https://jurnal.asthagrafika.com/index.php/cas/article/view/151>.

³² Martin Bruegel, "Law, Labour and Lunch in France at the Turn of the Twentieth Century," *International Review of Social History* 68, no. 2 (2023): 257-75, <https://doi.org/10.1017/S0020859023000214>.

³³ Jihan Zakarriya, "Female Activism, Tribalism, and Shame in the Arabian Gulf," in *Shame and Gender in Transcultural Contexts* (Cham: Springer Nature Switzerland, 2024), 139-57, https://doi.org/10.1007/978-3-031-54593-1_8.

Algeria adopted a national legal system that attempted to unify various sources of law, but still recognized customary and religious norms.³⁴ Thus, colonial history shaped a pattern of dualism between modern state law and local law.

Politically, Indonesia affirms the existence of customary law in Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive.³⁵ This legal policy has implications for employment because customary practices are still given space to apply in local communities. Employment regulations, such as Law No. 13 of 2003, are based on modern law, but their implementation cannot ignore local traditions. This creates a pattern of compromise between written rules and customs in the practice of employment relations. Indonesia's legal politics are thus inclusive of legal pluralism.

Algeria also politically integrates Sharia and custom into the national legal system after independence.³⁶ The 1996 Algerian Constitution affirms Islam as the state religion, which automatically legitimizes sharia norms in labor law.³⁷ Article 8 of the Labour Code (Loi n° 90-11/1990), which recognizes oral contracts, is a manifestation of legal politics that opens space for custom and religion. This policy reflects a post-colonial political compromise that attempts to unite the modernity of French law with local values. In this way, Algeria's legal politics shape a distinctive relationship between customary law, Sharia, and national regulations.

Social factors also play a major role in shaping this relationship. In Indonesia, people still rely on community-based work, especially in the agricultural and informal sectors.³⁸ Employment relationships are often based on kinship ties or local customs, not written contracts. This phenomenon makes it necessary for national regulations to adapt to long-standing social practices. As a result, legal pluralism in employment emerges as a response to social needs.

In Algeria, social factors are also rooted in strong community structures and the dominance of religious values. Traditional employment relationships in rural areas are often conducted through the jamaa or customary council, which oversees recruitment practices.³⁹ Oral contracts are considered valid because they are based on social values of trust and good faith. Formal regulations that recognize oral contracts reflect the acceptance of this social practice. Thus, social factors become an important determinant for the integration of customary law and national law.

The influence of history, politics, and social factors is also evident in dispute resolution mechanisms. In Indonesia, even though Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes already exists, customary communities often prefer

³⁴ Francesco Tamburini, "Who Controls the Past Controls the Future: How Algeria Manipulated History and Legitimated Power Using Its Constitutional Charters and Legislation," *Journal of Asian and African Studies* 57, no. 2 (2022): 226-46, <https://doi.org/10.1177/00219096211013416>.

³⁵ Achmad Asfi Burhanudin, "Eksistensi Hukum Adat Di Era Modernisasi," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 2, no. 4 (2021): 96-113, <https://doi.org/10.2906/SALIMIYA.v2i4.466>.

³⁶ Andri Gustamar et al., "Transformation Of Family Law In Algeria Analysis Of The Pre- And Post Independence Period," *Mawaddah: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025): 65-79, <https://doi.org/10.52496/MJHKKI.V3I1.68>.

³⁷ Francesco Tamburini, "The History of the Algerian Islamic High Council: Promoting and Preserving the 'True Islam' for National Unity and Stability," *Journal of Asian and African Studies*, 2024, <https://doi.org/10.1177/00219096241270686>.

³⁸ Ahmad Sholikin, "Social Security Bagi Tenaga Kerja Informal Pada Sektor Industri Ekstraktif Di Bojonegoro," *Madani Jurnal Politik Dan Sosial Kemasyarakatan* 16, no. 02 (2024): 225-48, <https://doi.org/10.52166/MADANI.V16I02.7401>.

³⁹ Annabelle Houdret and Hichem Amichi, "The Rural Social Contract in Morocco and Algeria: Reshaping through Economic Liberalisation and New Rules and Practices," *The Journal of North African Studies* 27, no. 4 (2022): 641-62, <https://doi.org/10.1080/13629387.2020.1848560>.

customary-based deliberative resolution.⁴⁰ This occurs because social legitimacy is more trusted than formal processes that are considered bureaucratic. The legal policy that recognizes the existence of customary communities allows these mechanisms to run in parallel. As a result, legal pluralism is clearly evident in the settlement of labor disputes.

Algeria also regulates mediation and conciliation mechanisms in the Labour Code, which are complemented by customary practices.⁴¹ In some cases, customary councils or religious leaders are involved to provide legitimacy to the results of formal mediation.⁴² The post-colonial political factor that prioritizes the integration of local values reinforces this pattern. Thus, dispute resolution in Algeria reflects a fusion of state law, custom, and religion.

A comparison of Indonesia and Algeria shows that colonial history created legal dualism, post-colonial legal politics legitimized pluralism, and social factors strengthened the legitimacy of custom. In both countries, legal pluralism in employment is not merely a theory but an ongoing socio-historical reality. Formal regulations cannot be separated from the customary and religious values inherent in society. In other words, legal pluralism functions as a mechanism for adapting state law to local realities. This provides flexibility in regulating diverse employment relationships.

The interaction between historical, political, and social factors shows that legal pluralism is an important foundation in employment relations in Indonesia and Algeria. Colonial history created dualism, post-colonial legal politics legitimized pluralism, and social factors ensured the continuation of customary practices in employment. This relationship makes labor law in both countries more complex but also more contextual. Despite facing the challenge of harmonization with international standards, legal pluralism remains relevant for bridging the gap between tradition and modernity. Thus, legal pluralism is a product of the historical, political, and social dynamics that shape the unique character of employment in both countries.

CONCLUSION

Legal pluralism is key to understanding the dynamics of employment relations in Indonesia and Algeria, particularly through the recognition and integration of customary norms into positive law. This integration is evident in the recognition of custom-based agreements in the Civil Code and Labor Law in Indonesia, as well as the recognition of oral contracts in the Algerian Labour Code. This shows that national law cannot be separated from the social practices and religious values that exist in society. Colonial historical factors, post-colonial politics, and social structures play an important role in shaping the distinctive legal relations in both countries, making legal pluralism a means of adaptation between legal modernity and local wisdom. Legal pluralism functions not only as a compromise but also as a legitimizing mechanism that strengthens the acceptability of employment regulations at the community level. Therefore, employment regulations in both countries should be directed towards being more responsive to local socio-cultural realities while also being in line with international standards, so as to create a fairer, more inclusive, and sustainable employment relations system in the face of global challenges.

⁴⁰ Houdret and Amichi.

⁴¹ Amel, "The Legal System of Judicial Conciliation in Civil Litigation under The Algerian."

⁴² Boulassel and Soufiane, "Challenges of Civil Society Organizations in Tourism in Algeria: A Civil Participation Approach," *Http://journals.Openedition.Org/Espacoconomia*, no. 22 (2021), <https://doi.org/10.4000/ESPACOECONOMIA.21202>.

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