

The Comparison of Malaysian and Indonesian Constitutions from a Historical Perspective in Human Resources Study

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ABSTRACT

A country's constitution has a major influence towards human resource (HR) management policies, both in the public and private sectors. This article discusses the comparison of the constitutions of Malaysia and Indonesia from a historical perspective and their impact on HR policies. The main focus of the analysis is how the differences in the history of the formation of the constitutions in the two countries in shaping the employment system, education, and labor protection. This study shows that the federal system of Malaysia with a strong influence from the English legal system produces HR policies that are different from Indonesia, which is adhered to form a system with influences from customary law and Continental Europe.

Keywords: Constitution, Malaysia, Indonesia, Human Resources, History

INTRODUCTION

The constitution is a basic law that serves as the main guideline in the administration of the state. The constitution not only regulates the structure of government, division of power, and the rights and obligations of citizens, but also provides policy direction in various sectors, including in the management of human resources (HR). Each country has a constitution that is designed based on history, culture, and the legal system that has been adopted. Therefore, the constitution plays a fundamental role in determining labor policies, education systems, and social protection for workers (Asshiddiqie, 2010: 21).

Malaysia and Indonesia are two countries in the Southeast Asian region that have different constitutional histories. This difference is rooted in the background of colonialism that influenced the legal and governmental systems in both countries. Malaysia inherited the common law legal system from England, while Indonesia adopted a civil law legal system rooted in Continental European law, especially the Netherlands. This difference in legal systems also influences the formulation of HR policies in each country, both in terms of employment, education, and social protection (Mahfud MD, 2009: 37).

In the context of employment, the constitutional differences in Malaysia and Indonesia result in different industrial relations systems. Malaysia applies a more flexible approach to employment relations, while Indonesia has more protective regulations for workers. This is reflected in the employment regulations which are implemented in each country, such as the Employment Act 1955 in Malaysia and the Employment Act No. 13 of 2003 in Indonesia. With these differences, it can be studied how the constitution plays a role in shaping employment policies in both countries (Ghai, 2003: 65).

In addition, the education systems in Malaysia and Indonesia are also influenced by the constitutions of each country. Malaysia has an affirmative action policy that prioritizes indigenous groups, especially in education and employment. This policy is based on Article 153 of the Malaysian Constitution which grants special rights to Bumiputera. Meanwhile, Indonesia applies a more inclusive education system and does not discriminate

against certain community groups in receiving education and employment opportunities. These differences in policy reflect how the constitution influences human resource development through the education sector (Harding & Lee, 2007: 89).

In addition, in employment and education, social protection for workers is also an important aspect of HR policies which is regulated in the constitution. Malaysia has a labor protection system that is more based on pension fund schemes such as the Employees Provident Fund (EPF) managed by the government and the private sector. In Indonesia, labor protection is regulated in a social security scheme managed by BPJS Ketenagakerjaan. The differences in social protection schemes show how the constitutions in the two countries provide different policy directions in ensuring the welfare of workers (World Bank, 2018: 102).

Referring to the differences above, this study aims to analyze the comparative history of the formation of the Malaysian and Indonesian constitutions and their influence on HR policies in the two countries. By understanding the history of the formation of the constitution, it can be seen that how the fundamental values embedded in the constitution contribute to HR management policies, both in the labor, education, and social protection sectors (Lijphart, 2012: 54).

Furthermore, this study also explored the impact of HR policies derived from the constitution on economic and social development in the two countries. The quality of human resources are the main asset in national development, so that the regulations and policies that govern them are greatly influenced by constitutional provisions. By comparing Malaysian and Indonesian human resource policies, this study also provides the insight of the effectiveness of human resource policies based on different constitutional bases (Schmidt, 2008: 77).

Academically, this study is expected to contribute to understanding the relationship between constitutional law and human resource policies. This comparative legal study can also be a reference in evaluating human resource policies in Indonesia, especially in facing the challenges of globalization and the industrial revolution 4.0 which demand flexibility and innovation in employment regulations and human resource development (Dunn, 2015: 98).

Based on the description above, this study focuses on three main objectives, namely: (1) comparing the history of the formation of the constitutions of Malaysia and Indonesia, (2) analyzing the influence of the constitution on HR policies in both countries, and (3) showing the implications of the constitution on aspects of employment, education, and social protection. By understanding this comparison of constitutions, it is hoped that new insights can be obtained regarding the role of the constitution in developing competitive and highly competitive HR (Friedman, 2017: 120).

THE OBJECTIVES OF THE STUDY

This study aims to:

1. Compare the history of the formation of the constitutions of Malaysia and Indonesia.
2. Analyze the influence of the constitution on HR policies in both countries.
3. Show the implications of the constitution on employment and HR development aspects.

METHODOLOGICAL APPROACH

This comparative analysis was conducted using a qualitative and historical-legal approach, focusing on the constitutional foundations of human resource (HR) policy in Malaysia and Indonesia. The study relied on document analysis of primary legal texts, including the Federal Constitution of Malaysia and the 1945 Constitution of Indonesia, as well as relevant employment, education, and social protection laws.

The comparison was structured around several core criteria:

- Historical context and formation of the constitution;
- Legal structure and system (federal vs. unitary, common law vs. civil law);
- Human resource policy implications in three key areas: employment, education, and social security;
- Institutional arrangements and policy outcomes related to labor flexibility, equity, and social protection.

The time frame considered in this study spans from the post-independence era (1957 for Malaysia and 1945 for Indonesia) to recent developments up to the year 2024. This allows for an evaluation of both the historical evolution and contemporary impact of constitutional frameworks on human resource policy in each country. The study also utilized a comparative legal method, examining similarities and divergences between the two systems to identify best practices and potential areas for policy reform.

This research was conducted using a library research method, which involved an analysis of the Malaysian and Indonesian constitutions, employment regulations, education policies, and social protection in both countries. In addition, this study also uses a comparative legal approach to understand how the constitution plays a role in shaping effective and sustainable human resource policies (Tushnet, 2008: 34).

THE HISTORY OF THE CONSTITUTIONS OF MALAYSIA AND INDONESIA

The Constitution of Malaysia

The Constitution of the Federation of Malaysia was ratified on August 31, 1957, coinciding with the country's independence from Britain. As the highest basic law, this constitution regulates the system of government, the rights and obligations of citizens, and various other fundamental aspects. The formation of the Malaysian constitution was heavily influenced by the British legal system, considering that this country is a former colony of Great Britain. However, despite adopting modern legal principles, the Malaysian constitution still maintains traditional elements, such as the position of the Malay Kings and the implementation of Islam as the official state religion (Harding, 2012: 45).

One of the main characteristics of the Malaysian Constitution is its federal system of government. Unlike Indonesia which implements a unitary system, Malaysia consists of several states that have authority in various aspects, including the management of labor, education, and local economic policies. This is regulated in Article 1 of the Malaysian Constitution, which states that Malaysia is a federation consisting of 13 states and three federal territories (Lee, 2017: 62).

The formation of the Malaysian constitution also involved significant influence from the Reid Commission, a commission formed by the British colonial government in 1956 to draft a new country's constitution. This commission submitted various recommendations, including the protection of individual rights, the establishment of a parliamentary system of government, and the recognition of the special position of Malays and the legitimate interests of other communities. These recommendations were finally accommodated in various articles of the constitution, especially Article 153 which regulates the privileges of Bumiputera (Fernando, 2006: 38).

In terms of law and government, the Malaysian constitution regulates a constitutional monarchy system with the role of Yang di-Pertuan Agong as head of state. This position is held in rotation by nine Sultans from states that have a monarchy system. Meanwhile, day-to-day government is run by the Prime Minister and cabinet elected through a parliamentary democracy system. The position of the Malay Kings provides a distinctive color in the Malaysian constitutional system, which distinguishes it from parliamentary systems in other countries (Shad Saleem Faruqi, 2019: 83).

In the context of law and social policy, Islam is recognized as the official state religion under Article 3 of the Malaysian Constitution. However, the constitution also guarantees freedom of religion for citizens who adhere

to other religions. The recognition of Islam as an official religion has implications for various policies, including in aspects of family law, sharia courts, and religious education in public schools. This system shows a blend of secular law and Islamic law in the Malaysian legal system (Hamzah, 2015: 56).

In addition, the Malaysian constitution also emphasizes an affirmative policy that provides privileges to Bumiputera, the majority of whom are ethnic Malays and indigenous people of Sabah and Sarawak. This policy is stated in Article 153, which provides privileges in the fields of education, employment, and business ownership. The purpose of this policy is to reduce the economic gap between Bumiputera and non-Bumiputera groups, especially ethnic Chinese and Indians who have historically been more advanced in the economic sector (Gomez & Jomo, 1997: 71).

In the field of employment, the Malaysian constitution gives the central government the authority to regulate labor policies, but the states still have a role in their implementation. The main labor regulation in Malaysia is the Employment Act 1955, which regulates industrial relations, worker protection, and provisions regarding working hours, leave, and compensation. Compared to Indonesia, the Malaysian labor system is more flexible, with regulations that are more open to foreign workers and contract-based employment agreements (Arudsothy & Littler, 1993: 98).

The education system in Malaysia is also influenced by the constitution, especially in terms of language policy and access to education for various ethnic groups. Article 152 of the Malaysian Constitution establishes Malay as the national language, but other languages such as Mandarin and Tamil are still taught in community schools. In addition, the quota policy in higher education provides privileges for Bumiputera students, which aims to increase their representation in the professional and academic sectors (Lee, 2019: 112).

In terms of social protection, the Malaysian constitution does not explicitly regulate a social security system for workers. However, social protection policies are implemented through various programs such as the Employees Provident Fund (EPF) and the Social Security Organization (SOCSO). This system provides protection for workers in the form of pension savings, employment insurance, and health and work accident benefits. With a social protection system that is more contribution-based than state subsidies, Malaysia has a different approach compared to Indonesia which relies on BPJS Ketenagakerjaan with a national social security scheme (Barraclough, 2009: 88).

Overall, the Malaysian Constitution reflects a combination of the British legal system, the Malay monarchical tradition, and socio-economic policies oriented towards national development. With a federal system, employment and education policies have greater flexibility at the state level, while protection of the interests of indigenous groups remains a central aspect of national policy. A comparison with Indonesia shows that although both countries have similar historical roots in colonialism, differences in constitutional structure have resulted in different approaches to HR policy (Crouch, 1996: 135).

The Constitutions of Indonesia

The Indonesian Constitution, namely the 1945 Constitution (UUD 1945), was first ratified on August 18, 1945 by the Preparatory Committee for Indonesian Independence (PPKI). The 1945 Constitution was designed as the basic law of the state which became the basis for the system of government, the rights of citizens, and various strategic policies, including in the field of human resources (HR). The formulation of the 1945 Constitution was influenced by various legal systems, including customary law that had long developed in the archipelago, Islamic law adopted by the majority of the population, and the Continental European legal system introduced by the Dutch colonialists (Asshiddiqie, 2010: 23).

As a country with a unitary system of government, Indonesia adheres to the principle of centralization of power which then changed along with political and governmental developments. Despite having regional governments, the main authority remains with the central government as stipulated in Article 1 paragraph (1)

of the 1945 Constitution. However, after the 1998 Reformation, a decentralization system began to be implemented with Regional Autonomy, that gave greater authority to regional governments in managing resources, including in the employment and education sectors (Jimly Asshiddiqie, 2006: 45).

Before being amended, the 1945 Constitution was considered quite short and gave very great authority to the President, in accordance with the presidential model of government adopted. After the Reformation, there were four amendments to the 1945 Constitution (1999-2002) which significantly changed the state structure. These amendments strengthened the democratic system, limited executive authority, and clarified the division of power between the center and regions. These changes had a direct impact on employment policies and human resource development, because regions became more flexible in managing the workforce and education according to local needs (Soehino, 2006: 67).

In the field of employment, the 1945 Constitution provides protection for workers through various articles, especially in Article 27 paragraph (2) which states that "Every citizen has the right to work and a decent living for humanity." This article is the basis for various employment regulations, including Law No. 13 of 2003 concerning Employment, which regulates employment relations, workers' rights, and social security for workers. In addition, the industrial relations system in Indonesia is more protective than Malaysia, with strict regulations on termination of employment (PHK) and the provision of severance pay for workers affected by company policies (Simanjuntak, 2018: 92). In the field of education, the 1945 Constitution also emphasizes the role of the state in improving the intelligence of the nation as stated in the Preamble to the 1945 Constitution. Article 31 of the 1945 Constitution regulates the right of every citizen to obtain an education and the state's obligation to provide a national education system. Education policy in Indonesia is more inclusive than Malaysia, without any ethnic or religious-based quota system in higher education admissions. The government also allocates a minimum education budget of 20% of the APBN as regulated in Article 31 paragraph (4) of the amendment (Tilaar, 2012: 105).

In addition, in employment and education, social protection for workers is also an important part of HR policy in Indonesia which is based on the constitution. Article 34 of the 1945 Constitution states that "The poor and neglected children are cared for by the state," which is the basis for the establishment of a social security system in Indonesia. Programs such as BPJS Employment and BPJS Health are implementations of the constitutional mandate in providing protection for workers, both in the formal and informal sectors. This social security scheme is more comprehensive than the Malaysian system which is based on individual contributions, such as the Employees Provident Fund (EPF) (Kusnadi, 2020: 78).

In terms of the influence of Islam on the constitution, even though Indonesia is not an Islamic country, Islamic values also influence various regulations in national law. For example, in the field of employment, the concept of living wages and social justice is often associated with sharia principles. In addition, the sharia financial system is also developing rapidly in Indonesia with the existence of sharia banking and halal economic regulations supported by national policies (Effendi, 2015: 66).

Compared to Malaysia, Indonesia's legal structure is more complex due to the existence of legal pluralism that includes national law, customary law, and Islamic law. In some cases, the management of labor and education must also adjust to local social and cultural norms. For example, in some areas such as Aceh, the application of sharia law coexists with national regulations, including in employment policies and Islamic-based education systems (Baso, 2011: 143). Looking at the development of the Indonesian constitution, it can be concluded that the 1945 Constitution underwent a major transformation after the Reformation, which had an impact on HR policies, both in terms of employment, education, and social protection. The decentralization system provides flexibility for regions in managing the workforce, while social protection policies provide broader guarantees for workers than Malaysia. This comparison shows that although the two countries have different historical legal backgrounds, both face the same challenges in developing highly competitive HR in the era of globalization (Fauzan, 2021: 119).

THE INFLUENCE OF THE CONSTITUTION ON HUMAN RESOURCE POLICY

The Employment System in Malaysia

The employment system in Malaysia is regulated by the Employment Act 1955, which regulates the employment relationship between employers and workers, including wages, working hours, annual leave, and other benefits. As a country with a British colonial legal background, the Malaysian employment system emphasizes flexibility in industrial relations, making it easier for companies to recruit and dismiss workers compared to the system in Indonesia (Arudsothy & Littler, 1993: 56).

One of the characteristics of the employment system in Malaysia is the flexibility of industrial relations. Companies in Malaysia have the freedom to determine employment contracts, both in the form of permanent employment and contract employment. This is different from Indonesia, which has more protective employment regulations, especially regarding termination of employment (PHK) which requires payment of severance pay in a certain amount (Barraclough, 2009: 75).

In terms of regulating working hours, the 1955 Employment Act stipulates that standard working hours are a maximum of 48 hours per week with a maximum provision of 8 hours per day. If workers exceed the stipulated working hours, they will be given overtime pay at a rate stipulated in the law. In addition, Malaysia also has an annual leave policy that depends on the length of service, where workers with more than five years of service are entitled to 16 days of annual leave (Gomez & Jomo, 1997: 92).

In terms of foreign labor policies, Malaysia applies stricter regulations than Indonesia. The Malaysian government requires companies wishing to recruit foreign workers to obtain approval from the Ministry of Human Resources. In addition, foreign workers in Malaysia are generally only allowed to work in certain sectors, such as construction, manufacturing, and plantations. The government also implements a foreign labor quota policy to prioritize local workers (Lee, 2019: 130). Although Malaysia's employment system is more flexible, the country also has social protection programs for workers, such as the Employees Provident Fund (EPF) and the Social Security Organization (SOCSO). The EPF functions as a retirement savings for workers, where contributions are shared between workers and employers. Meanwhile, SOCSO provides protection for workers in the form of work accident insurance, disability, and other health benefits (Harding, 2012: 101).

The Employment System in Indonesia

In Indonesia, the employment system is regulated by the Employment Law No. 13 of 2003, which regulates various aspects of employment relations, including employment contracts, wages, social security, and labor protection. This law is designed to provide stronger protection for workers compared to the system implemented in Malaysia (Simanjuntak, 2018: 84).

One important aspect of the employment system in Indonesia is the minimum wage system, which is set both at the national and regional levels. Each province in Indonesia has a Provincial Minimum Wage (UMP) policy which is set annually based on considerations of inflation and economic growth. In some regions, the minimum wage is also set more specifically in the form of the Regency/City Minimum Wage (UMK) (Kusnadi, 2020: 97).

In addition to the wage system, Indonesia also implements an outsourcing system, which allows companies to recruit workers through third parties. However, this system is often controversial because it is considered detrimental to workers, especially in terms of job security and welfare. The latest regulation in the Job Creation Law (Law No. 11 of 2020) attempts to provide legal certainty regarding the contract and outsourcing work systems, but has still received much criticism from various parties (Effendi, 2015: 110).

In terms of working hours, the Manpower Law in Indonesia sets a maximum working hour of 40 hours per week, which is lower than Malaysia. This regulation aims to maintain a balance between work life and workers'

personal lives. In addition, workers in Indonesia are also entitled to a minimum of 12 days of annual leave after working for a full year (Fauzan, 2021: 127).

In terms of labor protection, Indonesia has a broader social security system than Malaysia through BPJS Ketenagakerjaan. This BPJS provides protection in the form of work accident insurance, death insurance, pension insurance, and job loss insurance for workers who are laid off. This scheme reflects the government's commitment to providing social protection for both formal and informal workers (Tilaar, 2012: 119).

The employment system in Indonesia also provides greater protection for local workers, especially in regulations related to the use of foreign workers. Companies that want to recruit foreign workers must meet various strict requirements, including the provision of technology transfer programs for local workers. In addition, foreign workers can only be employed in certain positions that require special skills (Soehino, 2006: 82). Overall, the employment system in Indonesia is more protective than Malaysia, especially in terms of layoff regulations, minimum wages, and social security. However, on the other hand, lower flexibility in industrial relations can be a challenge for the business world in facing global competition.

The Comparison Table of Malaysian and Indonesian Employment Systems

Aspect	Malaysia	Indonesia
Main Employment Law	Employment Act 1955	Employment Law No. 13 of 2003
Working Hours	48 hours/week	40 hours/week
Minimum Wage	Sector-based	Regional (UMP/UMK)
Labor Flexibility	High flexibility, easier termination	Lower flexibility, more protective
Foreign Worker Policy	Quota-based, permits required	Strict entry, skill-based limitations
Social Protection	EPF, SOCSO, EIS (formal sector focus)	BPJS Employment & Health (covers formal and informal sectors)
Vocational Training	Strong TVET & dual training programs	Developing stage, limited linkage to industry
Language of Instruction	Malay + English (bilingual)	Indonesian only
Affirmative Policies	Bumiputera quotas in education and jobs	Inclusive system, no ethnic quotas
Migrant Worker Coverage	Limited, mostly excludes foreign workers	Weak abroad, but stronger internal protection

The Education System and Human Resource Development

Education System in Malaysia

The Malaysian education system is more structured and has an affirmative policy for the Malay population, known as the Bumiputera Policy. This policy provides a special quota for Malay students in higher education admissions as well as greater education subsidies compared to non-Malay groups. This aims to reduce the economic and social gap between Malay and non-Malay ethnic groups (Lee, 2019: 120).

In addition, Malaysia implements a bilingual system in education, where Malay is used as the main language, but English remains the language of instruction in some subjects, especially in higher education and science. This approach aims to increase the competitiveness of graduates in the global labor market. However, this policy also poses challenges for some ethnic groups who are more comfortable using their mother tongue in basic education (Gomez & Jomo, 1997: 87).

One of Malaysia's strengths in human resource development is its large investment in TVET (Technical and Vocational Education and Training). The Malaysian government has allocated a significant budget to

strengthen vocational education, by establishing various polytechnics and industrial training institutes to meet the increasingly specific needs of the labor market (Harding, 2012: 98).

The education system in Malaysia is also integrated with the industrial world, where many universities and polytechnics collaborate with private companies in providing internship and job training programs. This step helps graduates acquire skills that are in line with industry needs and increases employment opportunities after graduation (Lee, 2019: 134).

In terms of educational structure, Malaysia has six years of primary education, five years of secondary education, and two years of pre-university education before entering university. This system allows students to choose an academic or vocational path early, which provides flexibility in developing skills according to their interests and talents (Gomez & Jomo, 1997: 92).

Education System in Indonesia

Indonesia has a more inclusive national education system than Malaysia, without any ethnic-based affirmative action. Every citizen has the same right to access education, with the government providing various assistance schemes, such as the Smart Indonesia Card (KIP) to support students from underprivileged families (Tilaar, 2012: 108).

However, the Indonesian education system still faces challenges in the gap in quality between regions. In big cities, access to quality education is easier to obtain, while in remote areas, there are still limitations in infrastructure, teaching staff, and adequate learning resources (Soehino, 2006: 81).

Unlike Malaysia, Indonesia does not have a formal bilingual policy in national education. Indonesian is the only language of instruction in the education system, although there are several international and private schools that use English in some subjects. This policy aims to strengthen national identity and avoid language-based discrimination (Fauzan, 2021: 116).

In the field of vocational education, Indonesia is still in the development stage compared to Malaysia. Although there are Vocational High Schools (SMK) and Polytechnics, the number of graduates who choose the vocational path is still lower than the academic path. The government is trying to improve vocational education through various industrial training programs and cooperation with the private sector (Effendi, 2015: 104). One of the main challenges in developing human resources in Indonesia is the low level of digital literacy and technological skills among new graduates. Although the national curriculum has undergone various changes to adapt to industry needs, there is still a gap between the skills taught in schools and the skills needed in the world of work (Simanjuntak, 2018: 93).

In terms of educational structure, Indonesia implements nine years of basic education (six years of elementary school and three years of junior high school), three years of secondary education (SMA/SMK), and higher education that is more flexible than Malaysia. This system provides students with wider opportunities to explore various fields of study before entering the workforce (Kusnadi, 2020: 88).

In terms of human resource development, Indonesia also has various training and skills certification programs to improve the competitiveness of the workforce. The government through the Pre-Employment Card provides digital-based training that can be accessed by the general public, including job seekers and workers who want to improve their skills (Tilaar, 2012: 112).

Although still facing various challenges, the Indonesian education system continues to undergo reforms to improve the quality and competitiveness of human resources. With increasing investment in vocational education and digitalization of learning, it is hoped that Indonesian graduates will be better prepared to face global challenges in the future (Fauzan, 2021: 122).

The Comparison Table of Malaysian and Indonesian Education Systems

Aspect	Malaysia	Indonesia
Affirmative Action Policy	There is (special quota for Bumiputera)	No, the system is more inclusive
Language of instruction	Bilingual (Malay and English)	Indonesian as the main language
Vocational Education	Highly developed with huge investment	Still in development stage
Educational Structure	6 years of elementary school, 5 years of middle/high school, 2 years of pre-university	6 years of elementary school, 3 years of middle school, 3 years of high school/vocational school
Curriculum	More focused on industry needs	Based on national standards, more general
Relations with Industry	Very strong, lots of internship programs and industry collaborations	Still developing, but starting to strengthen
Financial Support	Large subsidies for the Malay population	KIP and scholarships for underprivileged families
Digital Literacy	High, part of the main curriculum	Still in the strengthening stage

Workforce Protection and Social Security in Malaysia

The labor protection system in Malaysia is more advanced than Indonesia, especially in terms of old age security and pensions. The Employees Provident Fund (EPF) is a mandatory scheme for workers in the formal sector that requires employers and workers to set aside part of their salaries for pension savings. The funds collected can be accessed when workers reach retirement age or under certain conditions, such as buying a house or urgent medical needs (Harding, 2012: 120).

In addition to the EPF, Malaysia also has the Social Security Organization (SOCSO), which provides protection for workers against work accidents, work-related disabilities, and death benefits for workers' families. SOCSO ensures that workers who experience accidents or injuries at work continue to receive income through a compensation scheme (Lee, 2019: 150).

One of the advantages of the labor protection system in Malaysia is the wider coverage of health insurance through the Workers' Social Safety Scheme. This program provides benefits in the form of health care, rehabilitation, and cash compensation for workers who cannot work due to work accidents (Gomez & Jomo, 1997: 99).

However, labor protection in Malaysia is still more focused on the formal sector, with informal workers not yet receiving optimal protection. The government has tried to expand the scope of SOCSO to freelancers and small entrepreneurs, but its implementation still faces various obstacles, such as budget constraints and low awareness of informal workers to join this scheme (Harding, 2012: 125).

In addition, Malaysia also has an Employment Insurance System (EIS) policy that provides protection for workers who lose their jobs. This program provides benefits in the form of temporary benefits, skills training, and job search assistance for workers who are laid off (Lee, 2019: 153).

Although the social protection system in Malaysia is quite advanced, there is criticism of the foreign worker protection policy, where most migrant workers do not have access to the same social security schemes as local workers. This poses a challenge in creating a more inclusive labor protection system (Gomez & Jomo, 1997: 104).

Workforce Protection and Social Security in Indonesia

In Indonesia, social security for workers is regulated by BPJS Ketenagakerjaan, which replaces the previous Jamsostek system. BPJS Ketenagakerjaan covers various protection programs, including work accident insurance, elderly insurance, pension insurance, and death insurance (Effendi, 2015: 130).

One of the advantages of the social security system in Indonesia is its wider coverage compared to Malaysia in terms of protection for informal workers. The government has encouraged freelancers, self-employed, and workers in the informal sector to join BPJS Ketenagakerjaan with more flexible contributions (Fauzan, 2021: 170).

Furthermore, Indonesia has national health insurance through BPJS Kesehatan, which covers almost the entire community, including formal and informal workers. This program provides access to more affordable health services, although it still faces various challenges, such as long queues and limited health facilities in some areas (Simanjuntak, 2018: 99).

However, the workforce protection system in Indonesia also has weaknesses, especially in the management of pension funds. Unlike Malaysia which has EPF as a mandatory savings system, pension funds in Indonesia still rely on BPJS Ketenagakerjaan which has a more limited benefit scheme (Tilaar, 2012: 145).

In terms of protection for workers who lose their jobs, Indonesia has just developed the Job Loss Guarantee (JKP) in 2022. This program provides benefits in the form of cash for six months, job training, and access to labor market information, similar to the EIS system in Malaysia (Kusnadi, 2020: 160).

However, there are still challenges in implementing social security for migrant workers. Many Indonesian migrant workers (TKI) abroad are not fully covered by social protection programs, making them vulnerable to exploitation and economic uncertainty after returning to Indonesia (Effendi, 2015: 140).

Overall, the labor protection and social security system in Indonesia is quite advanced, there are still challenges in the effectiveness of implementation and equal distribution of benefits for all workers (Fauzan, 2021: 175).

THE IMPLICATIONS OF CONSTITUTIONAL DIFFERENCES ON HUMAN RESOURCES MANAGEMENT

Employment System in Malaysia

The employment system in Malaysia is regulated by the Employment Act 1955, which is a legacy of the British legal system. This law regulates industrial relations between employers and workers, including employment contract standards, wages, working hours, and benefits for workers (Harding, 2012: 105). One of the main characteristics of the employment system in Malaysia is its higher flexibility compared to Indonesia, especially in terms of employment contracts and termination of employment (PHK) policies.

In addition to the 1955 Employment Act, Malaysia also implements the Industrial Relations Act 1967, which regulates industrial relations and the resolution of labor disputes through mediation and arbitration institutions. This system aims to prevent strikes that can disrupt economic stability (Lee, 2019: 88).

Malaysia has high flexibility in industrial relations, especially in employment contract policies and outsourcing systems. Many companies in Malaysia use a short-term contract system to reduce the burden of fixed labor costs, which allows companies to more easily adjust the number of workers to economic conditions (Gomez & Jomo, 1997: 112).

On the other hand, foreign labor policies in Malaysia are stricter than those in Indonesia. The Malaysian government implements a quota system for foreign workers, especially in sectors that require manual labor

such as plantations, manufacturing, and construction. In addition, foreign workers are required to have work permits that are renewed periodically and are taxed higher than local workers (Harding, 2012: 110).

Hence, the employment system in Malaysia also faces challenges, especially in terms of protecting informal workers and migrant workers. Many foreign workers in Malaysia experience exploitation due to an unclear contract system and weak legal protection for informal sector workers (Lee, 2019: 95).

Employment System in Indonesia

In Indonesia, the employment system is regulated by Law No. 13 of 2003 concerning Employment, which is the legal basis for industrial relations between workers and employers. This law regulates various aspects of employment, including protection of workers' rights, outsourcing systems, minimum wages, and provisions for termination of employment (Effendi, 2015: 125).

One of the main differences between Indonesia and Malaysia is the higher level of protection for local workers in Indonesia. The Indonesian government requires companies to prioritize domestic workers before recruiting foreign workers. In addition, foreign workers in Indonesia must meet certain requirements, such as having special skills that cannot be met by local workers (Fauzan, 2021: 150).

Indonesia also has a minimum wage system that is regulated nationally and regionally. Each province and district/city has the authority to set the Regional Minimum Wage (UMR) based on the living needs in their respective regions. This system aims to protect workers from exploitation, although it often poses challenges for business actors in adjusting labor costs (Simanjuntak, 2018: 77).

In addition, the outsourcing system in Indonesia is stricter than Malaysia. The government regulates that outsourcing workers are only allowed for certain jobs that are supporting and not the main part of the company's business. This regulation aims to reduce the practice of exploiting contract workers who often do not get the same rights as permanent workers (Kusnadi, 2020: 135).

However, the employment system in Indonesia also faces several challenges, especially in enforcing labor laws and the gap in the quality of labor between regions. There are still many companies that do not fully comply with labor regulations, especially in the informal sector and small businesses (Effendi, 2015: 130).

So, although Indonesia has stronger labor protection than Malaysia, labor flexibility in Indonesia is lower, which can impact the competitiveness of the workforce in facing globalization.

Labor Mobility in Malaysia

Malaysia is known as one of the countries with a more open foreign labor policy in Southeast Asia. This is due to the need for labor in various sectors, especially in the manufacturing, construction, plantation, and household services industries (Lee, 2019: 88). The Malaysian government implements a foreign labor quota system that allows companies to recruit workers from abroad based on the needs of a particular sector.

One of the main regulations in managing foreign labor in Malaysia is the Immigration Act 1959/63, which regulates the requirements for foreign workers who wish to work in Malaysia. In addition, there is the Employment (Restriction) Act 1968, which stipulates that foreign workers must have a work permit in accordance with the sector determined by the government (Harding, 2012: 105).

The Malaysian government also implements a levy system or foreign labor tax, which requires companies to pay additional fees if they want to employ foreign workers. This system aims to reduce dependence on foreign workers and encourage companies to recruit more local workers (Gomez & Jomo, 1997: 112).

However, despite being more open to foreign workers, Malaysia also faces challenges in protecting migrant workers, especially those working in the informal sector. Many migrant workers experience exploitation due to an unclear contract system and weak legal protection for foreign workers (Lee, 2019: 95).

Labor Mobility in Indonesia

Unlike Malaysia, Indonesia focuses more on protecting local workers and has stricter regulations in accepting foreign workers. The main regulation in managing the workforce in Indonesia is Law No. 13 of 2003 concerning Manpower, which stipulates that foreign workers may only be employed for certain positions that require special skills (Effendi, 2015: 125).

In addition, foreign workers who wish to work in Indonesia must meet various requirements, such as having certain skills, obtaining a work permit from the Ministry of Manpower, and being accompanied by local workers in the knowledge transfer process (Fauzan, 2021: 150). This policy aims to ensure that foreign workers entering Indonesia do not take over jobs that can be done by domestic workers.

Indonesia also implements a policy of using Indonesian Migrant Workers (TKI) abroad, which provides opportunities for local workers to work in various countries, including Malaysia. Many Indonesian workers work in the informal sector such as domestic helpers and plantation workers in Malaysia, although they often face challenges in terms of protecting labor rights (Simanjuntak, 2018: 77).

However, the main challenge faced by the employment system in Indonesia is the mobility of domestic labor, especially in the equal distribution of employment opportunities between urban and rural areas. There is still a significant gap in terms of access to decent employment, which causes high rates of urbanization and labor migration from villages to cities (Kusnadi, 2020: 135).

Comparison of Mobility and Employment in Malaysia and Indonesia

From the comparison between Malaysia and Indonesia, it is seen that Malaysia is more open to foreign workers due to industrial needs, while Indonesia emphasizes more on protecting local workers and strict supervision of the entry of foreign workers. This policy reflects the economic strategies of each country in facing the challenges of employment and globalization.

Education and Training System in Malaysia

Malaysia has a more structured education system, with a focus on vocational education and technical training. The Malaysian government actively promotes technical and vocational education through Technical and Vocational Education and Training (TVET), which aims to create a workforce that is more ready to enter the industry (Lee, 2019: 102). TVET is one of Malaysia's main strategies in reducing dependence on foreign workers and increasing the competitiveness of the local workforce.

In addition, Malaysia implements a bilingual system, where Malay remains the primary language of education, but English is also widely used, especially at the tertiary and vocational levels (Gomez & Jomo, 1997: 98). This policy aims to improve the capabilities of the Malaysian workforce in facing global competition.

Malaysia also has several industry-based education programs, such as the National Dual Training Scheme (SLDN), which allows students to gain direct work experience in companies while undergoing formal education (Harding, 2012: 121). This program provides benefits to the industrial world because it can obtain a more work-ready workforce.

Although the Malaysian education system is relatively more advanced, there are still challenges in improving the quality of education in remote areas, especially in providing competent teachers and adequate educational facilities (Lee, 2019: 110).

Education and Training System in Indonesia

Indonesia has a broader national education system that covers various levels of education, from elementary school to tertiary education. The main regulation governing the Indonesian education system is Law No. 20

of 2003 concerning the National Education System, which emphasizes the principle of equal education for all Indonesian people (Effendi, 2015: 135).

However, one of the main challenges in the Indonesian education system is the gap in the quality of education between regions. In urban areas, educational facilities tend to be better than in rural areas, which still face limitations in terms of teaching staff, facilities, and curriculum that is in accordance with industry needs (Fauzan, 2021: 156).

In terms of vocational education, Indonesia still lags behind Malaysia. Vocational High Schools (SMK) in Indonesia still face various challenges, including the lack of industry involvement in the curriculum and the low absorption of SMK graduates in the workforce (Simanjuntak, 2018: 85). The government has made efforts to improve vocational education through the SMK revitalization program and strengthening partnerships with the industrial world, but its implementation still needs to be improved.

Unlike Malaysia which has implemented a bilingual system more widely, Indonesia is still dominated by the use of Indonesian as the language of instruction in education. Although there are several schools and universities that use English, its use is still limited (Kusnadi, 2020: 143).

The Indonesian government has also developed various job training programs through the Job Training Center (BLK), but its effectiveness still needs to be improved, especially in terms of connectivity between training and industry needs (Effendi, 2015: 140).

Comparison of Education and Training in Malaysia and Indonesia

From this comparison, it can be seen that Malaysia is more advanced in vocational education and industry-based training, while Indonesia has a broader education system but still faces challenges in terms of quality and equity.

IMPLICATIONS AND RECOMMENDATIONS FOR HUMAN RESOURCE POLICY REFORMS

Based on the comparative analysis of the Malaysian and Indonesian constitutions, it is evident that historical and structural differences in legal foundations shape each country's human resource (HR) policy orientation. Malaysia's federal and more flexible system facilitates decentralized and pragmatic HR policymaking, while Indonesia's unitary and more protective constitutional framework underlines equity and inclusiveness.

One major implication for HR policy reform is the need for greater balance between flexibility and protection. Malaysia may benefit from integrating stronger worker protection mechanisms, especially in the informal and migrant labor sectors, without undermining industrial competitiveness. Meanwhile, Indonesia could explore regulatory flexibility in its employment framework to support economic dynamism and labor market efficiency, particularly in the context of globalization and digital transformation.

CONCLUSION

The history of the formation of the constitutions of Malaysia and Indonesia has a significant influence on HR policies in each country. Malaysia with a federal system and the influence of British law has a more flexible labor policy and greater investment in vocational education. Meanwhile, Indonesia with a unitary system and the influence of Continental European law is more protective of the workforce and has a more inclusive education system but still faces challenges of equality. This difference shows that in managing human resources, not only the economic aspect plays a role, but also the legal history and constitution of a country.

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