



Exploring Flexible Work Arrangements' Legal Provisions in The Context of Employment Contracts and Maqasid Al-Shari'ah Principles

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Abstract

Flexible Working Arrangements are a salient part of contemporary employment relations, but their legal regulation varies throughout Muslim-majority states. Existing scholarship has explored FWAs from regulatory, contractual and employee-welfare perspectives, and their normative evaluation through Maqasid al-Shari'ah has, for the most part, evolved separately. This study compares FWA regulation in Malaysia, Indonesia, and the UAE and assesses how these frameworks accommodate mutual trust and confidence, managerial prerogative, employee autonomy, and Maqasid al-Shari'ah objectives. The study employs a comparative doctrinal method, using empirical findings from Malaysia, to evaluate legislation, regulatory tools, policy documents and employment practices. The findings reveal three regulatory patterns: Malaysia provides a procedural right to request FWAs with transparency and justification requirements; Indonesia relies largely on contractual arrangements, workplace policies, and managerial discretion; while the UAE formally recognises flexible work but retains substantial employer control. Despite these differences, the three frameworks demonstrate varying degrees of compatibility with mutual trust and confidence and Maqasid objectives concerning welfare, intellect, wealth, and human dignity. The study develops an integrated normative framework linking employment contract theory and Maqasid al-Shari'ah, demonstrating that effective FWA regulation requires not only legal recognition but also procedural fairness, reciprocal trust, and appropriate constraints on managerial discretion

I. Introduction

FWAs have been widely adopted across jurisdictions in recent years, driven by technological advancements (Abendroth & Reimann, 2024), the rise of the gig workforce (Yu & Tan, 2023), and the transformative effects of the global health pandemic (Kaushik & Neha, 2020; Vohra & Dutta, 2024; Bicks et al., 2023). Although initially implemented as a temporary remedy during the pandemic, FWAs have become a permanent fixture in many organizations, fostering work-life balance (WLB) (Chung, & Van der Lippe, 2018) and mental well-being (Barrero et al., 2023; Willett et al., 2024). FWAs are recognised as a permissible modification of the standardised working time framework (Ramsussen, 2023; Shoislomova, 2022), allowing employees to adapt their working hours, days, and venues while maintaining productivity and engagement.

FWAs can take a variety of forms, including work from home (WFH), remote working (RW), and hybrid models (Austin-Egole et al., 2020). While WFH and RW imply the worker's location, the word FWAs more generally incorporates flexibility in time, place, and mode of work (Eng et al, 2024). Many countries' employment legislation often utilizes the generic term "flexible working arrangements" under a service contract (Williamson et al., 2022).

Despite the expanding global popularity of FWAs, their legal regulation is varied, notably in Muslim-majority nations like Malaysia, Indonesia, and the United Arab Emirates (UAE). In Malaysia, FWAs are explicitly recognized under Part XIIC of the Employment (Amendment) Act 2022, marking a significant step toward statutory regulation (Mahyut et al., 2023). However, in the lack of implementing rules, enforcement mechanisms, and case law, employers have broad freedom in setting the terms and procedures of FWAs (Wahab et al., 2023). As a result, the implementation of FWAs is primarily guided by the Ministry of Human Resources' Guideline on Flexible Working Arrangements, which has little binding power (Wahab et al., 2023).

In Indonesia, companies rely on general rules in the Manpower Law No. 13 of 2003 and its revisions through the Job Creation Law 2020, which provide for minimal flexibility in working hours. However, Indonesian employment contracts remain anchored in the distinction between *Perjanjian Kerja Waktu Tertentu* (PKWT - fixed-term contracts) and *Perjanjian Kerja Waktu Tidak Tertentu* (PKWTT - permanent contracts), neither of which explicitly supports flexibility in work location or time (Anggraeny & Hidayah, 2021). In Indonesia, FWAs are implemented primarily through executive discretion or company-level agreements, rather than statutory coercion.

In comparison, the UAE offers a more formal but employer-driven arrangement. The Federal Decree-Law Number 33 of 2021 on the Regulation of Labor Relations permits flexible or shared work schedules, allowing employees to choose their start and end times within certain limits. Employees may also seek changes in working hours, although such requests are subject to employer approval (Kooli, 2023; Hashimi et al., 2023). This demonstrates a more permissive regulatory stance that facilitates flexible work while maintaining employer control over implementation.

In addition to these regulatory distinctions, research on FWAs has progressed in distinct but generally unconnected directions. For example, Azmi et al. (2026) conducted a comparative analysis of the legal structures of FWAs in the UK, Malaysia, and Australia in terms of work-life balance promotion, whereas Wahab et al. (2023) focused on the Malaysian legal system and the legal factors and regulatory limitations that are influencing FWAs' implementation. Such studies contribute to our understanding of the legal framework for FWAs, despite the fact that their focus is mostly on regulatory issues. Cooper and Baird (2014) expand on this subject by demonstrating how informal workplace relationships and direct managerial behaviors impact the right to request

flexibility, highlighting the limitations of analyzing FWAs only in formal legal terms. Alternatively, FWAs are examined via the lens of Ma-S. Amirul & Shaari (2023) conceptualize FWAs by comparing Ma-S to Maslow's Hierarchy of Needs, while newer research has applied Ma-S to employee welfare, equity, work-life balance, and organizational accountability in hybrid work contexts (Pamungkas et al., 2024). However, this ethical and purposeful discourse is far apart from the usual contractualism that underpins job contracts. Thus, the academic gap is not only in regulation comparability, but also in the absence of synergy between employment contract theory and Ma-S as normative and purposive perspectives for understanding FWAs. This paper fills that gap by doing a comparative examination of Malaysia, Indonesia, and the UAE, widening the topic from the legal governance of FWAs to what the core principles and values should be in the implementation of FWAs.

The comparison of Malaysia, Indonesia, and the UAE is purposeful. These three jurisdictions exhibit different legal traditions: Malaysia's hybrid common law system, Indonesia's mixed civil law framework, and the UAE's codified labor legislation influenced by Islamic jurisprudence. This diversity provides for a more comprehensive knowledge of how FWAs are integrated into various legal systems and how they balance modern work flexibility with ethical and religious grounding. The comparison also allows for a normative examination of how legal formalization (as in Malaysia) differs from discretionary implementation (as in Indonesia and the UAE).

This diversity of jurisdiction also enables the essay to use a functional comparison method to examine how the three legal systems manage the common issue of accommodating FWAs within current employment ties. The comparison does not focus solely on statutory differences, but also on how the respective frameworks regulate flexibility, employer discretion, contractual obligations, and employee protection, in accordance with Azmi et al.'s (2026) functional principle of comparative law. The doctrinal comparison is supplemented by Malaysian empirical findings in an effort to shed light on the practical operation of its regulatory framework; however, they are not used for direct empirical comparison between the three jurisdictions because equivalent empirical data were not gathered in Indonesia and the UAE. This technique allows the study to uncover functional convergence and divergence without presuming that different legal systems must use the same regulatory mechanisms to achieve equivalent employment objectives.

The study theoretically situates FWAs within the employment contract framework, building on Freedland's (2009) control theory and Deakin's (2009) contractual subordination analysis. However, FWAs question this notion by transferring temporal and spatial control to employees, possibly altering the working relationship. At the same time, FWAs rely on trust, transparency, and communication elements that are closely related to the common law notion of mutual trust and confidence (MTC) (Williamson et al., 2022).

From an Islamic perspective, Ma-S principles provide a useful foundation for assessing FWAs. The maqasid emphasizes the preservation of life (*hifz al-nafs*), intellect (*hifz al-'aql*), family (*hifz al-nasl*), and wealth (*hifz al-mal*), all of which can be promoted through flexible working arrangements that enhance employee well-being, productivity, and family harmony. (Al-Raysuni, 2006; Ashur, 2006; Dusuki & Abdullah, 2007; Safi, 2020; Zaini & Hassan, 2021).

By combining common law employment theory and maqasid reasoning, this essay provides a new analytical framework for understanding FWAs as both a contractual innovation and a normative mechanism that promotes justice and well-being. It contends that FWAs can be aligned with both legal and moral imperatives if implemented inside a

structured, rights-based system that protects employee dignity and trust.

This study addresses two principal legal questions: to what extent the existing regulatory frameworks governing Flexible Working Arrangements (FWAs) in Malaysia, Indonesia, and the United Arab Emirates (UAE) uphold the principle of mutual trust and confidence in employment contracts, and how these frameworks align with the objectives of Maqasid al-Shari'ah (Ma-S), particularly in promoting public welfare (*maslahah*) and preventing harm (*mafsadah*).

II. Contract of Employment and FWAs

A contract of employment often contains terms and conditions, including work arrangements such as the location, schedule, and method in which work is accomplished (Freedland, 2009; Hassan & Rahman, 2015). Traditionally, these features are set by the employer, with employees obliged to conform. However, FWAs have challenged some of these traditional norms. Employees may now work at odd hours and in unusual locales under the new rules.

Employer's control is the predominant element in a work organisation. The control test theory has evolved over time (Colins, 2003). During the early Industrial Revolution, control over employees was quite granular, with strict supervision and detailed oversight (Deakin, 2001). Modern employment practices, on the other hand, take a different approach to control, emphasizing autonomy, flexibility, and performance measures above direct supervision (Ayres & Stewart, 1999; Elias, 2018).

In FWAs, the traditional concept of employer control is being challenged. Employees who work from home or other remote places experience less direct control methods. Monitoring and supervision in WFH setups differ significantly from standard on-site approaches.

However, Aloisi and De Stefano (2020) argue that many workplace flexibility theories overlook the extent to which technology is now used to monitor and regulate workers. These theories often assume a simple trade-off: once workers receive formal employee status, their flexibility diminishes, usually in favour of employer interests.

This assumption is no longer valid. Legal job status and true flexibility are not mutually exclusive. Employees may pick their working hours, manage their workload, and work with minimal supervision, yet still come under the legal definition of "employees" (Aloisi & De Stefano, 2020; Deakin, 2009). It is argued that FWAs align well employment contract principles, particularly regarding the time and place of work, as courts' broader interpretive approach allows FWAs to be treated as part of the work setting, whether traditional or modern (Hiebl, 2022).

Legal Debate: FWAs, Pacta Sunt Servanda, and Fair Wages

FWAs question standard assumptions of employment contracts, particularly the notion of pacta sunt servanda, which requires parties to conform to agreed-upon obligations (Ardhie & Suwadi, 2024). Employment contracts normally define fixed working hours, location, and duties, however FWAs allow for variations from conventional agreements. This creates a legal question: does allowing WFH or RW constitute a permissible alteration of contractual terms, or may it be interpreted as compromising the enforceability of the original agreement? Courts may treat FWAs as consensual adjustments, emphasizing mutual agreement, or, in the absence of explicit assent, examine whether the changes reflect the spirit of the contract and do not unfairly disadvantage either party.

Similarly, FWAs intersect with the principle of fair wages. Flexible hours, part-time arrangements, or remote work may affect the calculation of pay, overtime, and

benefits (Bajaj, 2021). While FWAs can enhance WLB and productivity, they should not compromise employees' entitlement to fair compensation under law or contract. Ensuring that wages and benefits remain equitable, regardless of working arrangements, is essential to maintaining both the legal and ethical integrity of the employment relationship (Bloom et al., 2024).

These contractual conflicts demonstrate that the legal analysis of FWAs cannot be restricted to the consensual character of modifications or the protection of existing employment rights, particularly when implementation is substantially dependent on employer discretion. Brega et al. (2023) use the capacity approach to determine if national FWA policies serve as real resources for achieving WLB, focusing on their availability and accessibility to diverse employee groups. Although valuable for assessing the conversion of formal entitlements into meaningful opportunities, the methodology is primarily concerned with employees' ability to access and utilize FWAs within specific institutional and socio-occupational frameworks. Ma-S, on the other hand, provides a more broad legal-analytical framework for scrutinizing the use of contractual and management discretion in the implementation of FWAs, employing welfare, justice, dignity, and harm prevention as evaluation standards for substantive fairness.

III. Implied Obligations of Mutual Trust and Confidence (MTC)

An employment contract is built on the implicit responsibilities of both the employer and the employee, with MTC serving as one of the most important tasks. Trust and confidence are crucial components of the job relationship, especially when it comes to tasks and responsibilities in FWAs. Courts have generally upheld that employers must not act in a way that could seriously undermine the MTC between them and their employees, and vice versa (Case: Malik v BCCI [1998] AC 20).

Implied obligations require that employers respect the rights of employees as prescribed by law (Ramachandran & Mathialagan, 2018). Employees in Malaysia, for example, have the legal right to apply for FWAs under the Employment Act 1955 (EA). Employers must accommodate such requests or provide valid reasons for refusing. This duty promotes trust, assures procedural fairness, and enhances the workplace connection. Similarly, compliance with statutory working hours, rest days, and occupational safety regulations promotes MTC by proving that companies behave in good faith to protect employee welfare.

FWAs increase the demand for MTC by relaxing traditional supervision and control methods. Employees that work remotely or on a flexible schedule have more liberty, which emphasizes mutual trust. Employers must trust employees to carry out their obligations with integrity, while employees expect employers to respect contractual rights, give fair appraisals, and assure equitable treatment. Failure to respect these duties may undermine the employment relationship and destroy organizational cohesion (Soga et al 2022).

Therefore, it is submitted that the employer's implied obligation includes respecting employees' rights as prescribed by law (Ramachandran & Mathialagan, 2018). Accordingly, if FWAs are provided for under a country's labour legislation, the employer is bound to honour and comply with them.

Employees, on the other hand, have implied obligations to perform their work with full commitment and integrity (Aloisi & De Stefano, 2020). They must demonstrate loyalty and good faith in carrying out their responsibilities, even while working from home. WFH places a high value on trust and confidence because the employee has a substantial degree of control over the timing and manner of service provided. Therefore, these characteristics are critical in properly implementing FWAs in the workplace.

Integrating Maqasid al-Shari'ah (Ma-S) Principles

Islamic law aims to promote welfare and prevent harm (Ashur, 2006; Laldin, 2006), consistent with the Quranic principle: "We sent thee not, but as a Mercy for all creatures" (Al-Anbiya: 107). Modern developments not addressed directly in foundational texts can be reconciled through Ma-S principles (Al-Raysuni, 2006; Dusuki & Abdullah, 2007).

Earlier academics, such as Al-Juwayni and Al-Ghazali, conceptualized Ma-S as defending essential human interests, including life, intellect, family, justice, and damage prevention (Kamali, 2010). Applying these objectives to FWAs shows several points of alignment.

The MTC framework is closely aligned with Maqasid al-Shari'ah's objectives. Trust (*amanah*) is a fundamental pillar of Islamic law, representing the ethical basis of job relationships. FWAs, when applied equitably, support various Ma-S objectives:

1. Protection of life and well-being (*hifz al-nafs*): FWAs reduce workplace stress, minimise commuting risks, and support mental and physical health, aligning with the Ma-S principle of safeguarding life.
2. Protection of intellect (*hifz al-'aql*): FWAs provide employees with opportunities for continued learning and skill development, which supports intellectual growth and productivity.
3. Protection of family (*hifz al-nasl*): FWAs enable work-life integration, allowing employees to balance professional duties with family responsibilities, contributing to social stability and family welfare.
4. Justice and equity (*al-'adl wa al-ihsan*): Ensuring equal access to FWAs, fair evaluation, and unbiased opportunities for promotion upholds the higher objectives of justice and fairness.
5. Prevention of harm (*dar' al-mafasid*): By promoting health, safety, and fairness, FWAs prevent harm to employees and the organisation, in line with the Ma-S principle of minimising social and personal harm.

MTC and Ma-S principles complement each other in the context of FWAs, according to legal analysis. The implied requirements in common law establish a standard of good faith, procedural fairness, and equitable treatment. Similarly, Ma-S offers an ethical and purposeful perspective that prioritizes human well-being, dignity, and fairness. Combining these perspectives allows for a normative argument: the failure to respect MTC when implementing FWAs not only undermines the contractual and legal framework but also conflicts with Maqasid objectives such as *hifz al-nafs* and *al-'adl wa al-ihsan*, demonstrating that equitable and trust-based FWAs are both legally and ethically necessary.

In essence, effective implementation of FWAs necessitates striking a balance between flexibility, accountability, and fairness, while also meeting both legal and Shari'ah-informed ethical requirements. This method increases FWAs' credibility as a tool for modern work while upholding fundamental norms in employment law and Islamic jurisprudence. Although employment laws in Muslim-majority nations rarely explicitly include Ma-S concepts, many labor safeguards reflect underlying Shari'ah ideals. Ma-S focuses on producing desirable consequences, as explained by Imam al-Shatibi and subsequent thinkers (Al-Raysuni, 2006).

WFH across industries may be impossible. Contextual adaptation of Ma-S principles is necessary, not in the sense of changing their core meanings, but by dynamically interpreting them to suit the diverse realities of work in contemporary

society, such as service-based or manual labor industries like healthcare, retail, manufacturing, transportation, and hospitality, where physical presence is indispensable.

The prevalent narrative relating FWAs to Ma-S frequently presupposes a knowledge-based or white-collar setting in which digital tools make flexibility more available. However, in service-driven economies, a considerable section of the workforce, including nurses, manufacturing workers, cleaners, and delivery staff, does not have meaningful access to remote or flexible work. Claiming that FWAs universally support the Ma-S while neglecting the nature of these roles exposes conceptual superficiality. However, as universal precepts, the Ma-S principles can be applied to numerous sorts of employment.

The proposed framework's unique contribution is not simply the juxtaposition of two existing perspectives, namely employment contract theory and Ma-S, but also the demonstration of their normative convergence in addressing a fundamental shift in the employment relationship caused by FWAs. This transformation is from a relationship built on control and supervision to one that is more based on trust and responsible autonomy. MTC offers the contractual basis for regulating this transformed relationship, while Ma-S serves as a complementing normative standard for determining whether the exercise of contractual rights and obligations results in substantively fair and beneficial consequences. This integrated framework, which is implemented in three Muslim-majority jurisdictions, then redefines FWAs as trust-based employment arrangements that are legitimated by the effective balance of managerial interests, employee autonomy, reciprocal responsibilities, fairness, and human welfare, rather than merely as legally permissible forms of work flexibility.

IV. FWAs Provisions and Practices in Malaysia, Indonesia and the UAE

A. Malaysia

Prior to the COVID-19 outbreak, Malaysian labor law lacked specific regulations for FWAs. Nonetheless, WLB had already been debated in Malaysia and was viewed as a virtue that should be promoted in everyone's life (Noor & Mahudin, 2005; Zakaria & Khair, 2019). Some limited flexibility was allowed under the *Employment Act 1955* (EA), such as allowing employees, with the employer's approval, to choose a rest day within the week. In the private sector, this rest day could be selected from any day of the week.

The EA also provided for rest intervals during working hours. The total working hours per week were also reduced from 48 to 45 hours. However, these provisions were minimal and did not fully address the concept of FWAs. In 2022, the EA was amended to include clear provisions regarding FWAs.

The provisions of FWAs in Malaysia are contained in Sections 60P and 60Q of the EA as amended in 2022 (Mahyut et al., 2023). This is an important provision to the employee, as although it does not seem to confer a right to the employee, it does give a liberty for the employee to apply, and the employer must respond to such an application (Wahab et al., 2023; Mohd Nadzri et al., 2023).

This contrasts with the actual data, which show that 91% of respondents said their employers made it easier to request FWAs by following the necessary processes. Only one of the respondents stated that their workplace did not grant this right.

Cavalho & Ibrahim, 2024; Bird & Brown, 2018; Waddington & Bell, 2021 argue that many employees remain unaware of the statutory provision granting them the right to request FWAs, a finding supported by the empirical study in which 54% of respondents indicated they had no knowledge of this entitlement. This lack of awareness

raises concerns about the effectiveness of mechanisms for informing employees of their rights.

Furthermore, trade unions appear to play only a limited role in advocating FWAs on behalf of their members (Shaari & Amirul, 2023). Although one respondent stated that a trade union had communicated information about the ability to request FWAs, the empirical investigation did not capture the amount of unions' involvement in promoting this right.

Trade union officials from the hospitality and service industries were consulted on July 19, 2025, and August 21, 2025, respectively, and expressed widespread support for FWAs as long as they benefited workers. However, they emphasized that in sectors where physical presence is vital, such as hospitality and services, FWAs in the form of WFH are generally unfeasible.

In essence, the gist of the statutory provisions is that an employee is allowed to request an FWAs that may involve changes to their working hours, workdays, or work location. Here, it may be argued that the Malaysian provision confers the right to apply for FWAs to the employees (Pearson, 2024). In this context, the employee is the applicant, but in practice, it is the employer who typically initiates this arrangement.

An employee must apply for FWAs in writing, often using a prescribed form, after which the employer determines approval based on the implications for the organization's overall work schedule. The empirical data collected for this study demonstrate significant variance in how application procedures are implemented. Respondents specifically reported that applications were submitted through a variety of channels, ranging from formal submission of forms to the human resource department and online applications via human resource information systems to more informal methods such as verbal requests through WhatsApp or team chats and direct communication with superiors. This variation indicates a lack of standardization in practice, leaving substantial choice in the hands of businesses.

In terms of acceptance, 66% of respondents said their applications were granted, or mostly accepted, but sometimes with constraints attached. The nature of the task, industry standards, operational demands, and managerial discretion were all important considerations when granting approval. The most often accepted arrangements were location-based flexibility (WFH) and flexible or hybrid working hours. In contrast, 29% of respondents reported that their applications had been rejected, with reasons including staff shortages, the indispensability of certain roles, a perceived need for employee visibility in the office, a lack of trust from the employer, or the belief that FWAs were unsuitable for higher positions such as Heads of Department.

Empirical data from this study revealed that four of the 24 respondents raised concerns regarding employer mistrust, where managers doubted the integrity and honesty of employees when allowed to work flexibly. While such integrity concerns can be addressed through appropriate monitoring systems, such as digital reporting tools that require regular updates and are subject to review, these mechanisms must be accompanied by a shift in managerial mindset. The principle of FWAs is to create space for employees to balance work and personal life; yet, employers who blur these boundaries by imposing after-hours meetings or additional workloads undermine this purpose. As reflected in empirical feedback, employees reported that "time is no longer a limitation as remote meeting calls can happen outside working hours, sometimes late at night or early in the morning," and that "employers do not respect the boundaries of time when contacting employees about work."

In essence, the findings suggest that the conditions attached to approvals, as well as the reasons for rejections, are not deviations from the statutory framework but rather

illustrate how the law itself reinforces the principle that FWAs are contingent upon employer consent, thereby embedding managerial discretion at the heart of FWA implementation.

Also, the FWAs must take cognisance of the existence of a collective agreement at the workplace. The provision states that if the employer-employee is governed by a collective agreement, the FWAs given must conform to the stipulations of the collective agreement. This means that the employer cannot unilaterally introduce FWAs that contradict or override the provisions of a binding collective agreement. It can be argued that this provision serves to protect the collective bargaining rights of employees. In doing so, the law reinforces the principle that flexibility should not come at the expense of employees' existing entitlements under collective agreements.

The Director General's Office of the Department of Labour Peninsular Malaysia has also issued *Guidelines for the Implementation of Flexible Work Arrangements* (The Guidelines) (JTKSM, 2024), which is not legally binding on the employer and employee but serves as a useful instrument for the organisation management to execute the FWAs. The Guidelines, while non-binding, provides detailed procedures for the implementation of Sections 60P and 60Q of the EA by outlining the recognised forms of FWAs, flexible hours, flexible days, flexible workplaces, and hybrid models alongside categories of suitable work, application processes, and employer-employee responsibilities. It requires written applications, employer responses within 60 days with justifications for refusals, and establishes mechanisms for monitoring, appeals, complaints, and revocation. Although advisory in nature, the Guidelines encourage greater transparency and consistency in the practices and implementation of FWAs within organisations.

Considering the Malaysian legal framework and the empirical data provided, the right to request model for FWAs under sections 60P and 60Q of the EA is firmly rooted in the contractual employment theory. Although employees may request flexibility in their hours, days or place of work, its approval rests with the employer and its implementation remains subject to existing statutory rights, contractual terms and applicable collective agreements. The use of this discretion must thus be evaluated in conjunction with MTC's associated responsibilities, including its normative expectation of good faith, procedural fairness, and fair treatment. These expectations encompass the evaluation of a FWAs request through to its eventual execution, and they are mutually applicable to both employers and employees.

Ma-S provides an additional legal-analytical aspect to this relationship. While not explicitly included in Malaysia's statutory FWAs regulations, Ma-S offers a purposeful perspective for assessing the exercise of employer discretion. Its objectives, particularly the protection of life, intellect and family (*hifz al-nafs, hifz al-'aql and hifz al-nasl*) and the broader pursuit of justice, enable scrutiny of whether FWAs conditions, monitoring mechanisms, communication requirements and work-life boundaries are reasonable and consistent with employee welfare and dignity. Ma-S does not impose new legal responsibilities or override current employment legislation; instead, it establishes a normative standard for evaluating whether legally acceptable managerial discretion results in substantively equitable and balanced FWAs.

B. Indonesia

FWAs have gained popularity in many Indonesian workplaces, particularly since the COVID-19 outbreak. FWAs in this country involve work regulations that enable flexibility in areas such as location, work hours, or method.

In Indonesia, FWAs are often included in employment contracts or supported by provisions in current legislation that tacitly permit them. FWAs are widely used at many

workplaces, particularly in urban regions and large corporations. However, Indonesian labor legislation lacks precise or explicit regulations governing FWAs.

Literature in Indonesia highlighted the practices of FWAs at the workplaces mainly operating within regulatory grey areas, where employers implement these practices by interpreting existing labour laws in ways that accommodate flexibility while still maintaining compliance with core employment standards (Putra et al., 2023).

Since employment contracts are generally based on the freedom of the parties or, in some cases, the employer's discretion, FWAs can be included in these contracts. However, in the absence of explicit language about FWAs, employees cannot claim them as a right (Nuriskia & Nugroho, 2022).

Certain relevant labour regulations are often used as a basis for permitting these arrangements in Indonesia. Indonesian labour legislation, such as Law Number 13 of 2003 on Manpower (*Undang-Undang No. 13 Tahun 2003 tentang Ketenagakerjaan*) and Law Number 6 of 2023 on Job Creation (*Undang-Undang No. 6 Tahun 2023 tentang Cipta Kerja*), establishes a standard workweek of 40 hours, with 8 hours of work per day. This sets the maximum number of hours an employee is allowed to work. Employees, including ones in FWAs are entitled to overtime pay if they exceed these standard working hours.

In addition to the labour legislation, Indonesia has established various regulatory frameworks addressing these new forms of employment arrangements. Presidential Regulation Number 21 of 2023 concerning Working Days and Working Hours for Civil Servants (*Peraturan Presiden Nomor 21 Tahun 2023*) is particularly significant, as it formally recognises and governs flexible work arrangements for civil servants. This regulation introduces provisions for flexibility in both location and working hours.

Under this framework, the heads of a government agency are authorised to determine which types of work and categories of civil servants within their institutions are eligible for these FWAs. This Presidential Regulation also explicitly stated that Civil Servants on FWAs are obligated to fulfill the standard workweek of 40 hours working and entitled on receiving their rights as employees in accordance with the provisions of other laws and regulations (Article 9 *Peraturan Presiden Nomor 21 Tahun 2023*). This regulation delegates further implementation details, including specific criteria for qualifying work types, to be established through subsequent Ministerial Regulations, thereby creating a tiered regulatory approach to FWAs in the public sector (Article 8 Paragraph 4 *Peraturan Presiden Nomor 21 Tahun 2023*).

In white colour job, the implementation of FWAs in Indonesia found mostly in flexibility on choosing 'working place' using the term of Flexible Working Space (FWS), explicitly stating that workers are not bound on doing their works in their respective office location. Civil Servant of Direktorat Jendral Bea Cukai in Indonesia are still bound on specific time period to accomplishing their work, but they have gained the flexibility on choosing their workplace (Ramadian, et.al, 2024).

The Work Health and Safety Regulation (*Peraturan Kesehatan dan Keselamatan Kerja, or K3*) remains applicable even when workers are outside their usual office environment, such as when working from home and every other places. This suggests that the implementation of FWAs can be supported under this regulation. However, it is found that the social security program in Indonesia has not been able provide comprehensive coverage in the event of a workplace accident in companies that implement the FWAs (Firmansyah & Nugroho, 2023).

FWAs in Indonesia can also be implemented as part of a company's Corporate Social Responsibility (CSR) initiatives. While CSR has traditionally focused on external stakeholders, it is increasingly important for companies to apply CSR principles

internally as well. In this context, offering FWAs to employees represents a forward-thinking and impactful approach.

According to Indonesian legislation specifically, Law Number 25 of 2007 on Capital Investment (the Investment Law) and Law Number 40 of 2007 on Limited Liability Companies (the Limited Liability Company Law) CSR may include initiatives that directly benefit employees (Santoso et al., 2023). Implementing FWAs is one such initiative that aligns with the spirit of these laws and demonstrates a company's commitment to employee well-being.

The lack of an express statutory right to request FWAs in Indonesia mirrors the more general framework of Indonesian labor legislation, which largely defines minimum norms for working hours, pay, occupational safety, social insurance, and job status. Within these constraints, work is generally organized by employment contracts, company regulations, collective labor agreements, and managerial discretion. As a result, FWAs have emerged mostly through contractual and organizational norms rather than an individual legislative entitlement analogous to Malaysia.

This technique can also be seen from a policy standpoint. Indonesia's labor market is highly varied, encompassing knowledge-based businesses, services, manufacturing, and labor-intensive sectors where physical presence is required. A standardized legislative model of FWAs may thus be difficult to adopt across various types of employment. Enterprise-level arrangements allow for the flexibility to adapt working practices to operational requirements. However, this method means that employees' access to FWAs rests significantly on business policies rather than an enforceable procedural entitlement.

The divide between the public and private sectors exemplifies this regulatory development. Presidential Regulation Number 21 of 2023 legally recognizes civil officials' flexibility in working hours and places, although analogous procedural guarantees have yet to be established for private-sector personnel. This shows that Indonesia has taken a phased, sector-specific approach to FWA regulation.

According to employment contract theory and MTC, considerable managerial discretion might be problematic when choices over FWAs lack transparent criteria or reason. Similarly, in Ma-S, flexibility may enhance *maslahah* by meeting various workplace needs, but excessive discretion may jeopardize fairness, welfare, and employee dignity. The primary regulatory problem for Indonesia is to reconcile management liberty with effective procedural safeguards against arbitrary decision-making.

C. United Arab Emirates (UAE)

FWAs are gaining popularity in the UAE, thanks to a growing emphasis on work-life balance, labor productivity, and the country's reputation as a worldwide economic hub. Several studies have investigated the consequences of FWAs and WLB on employment arrangements and the workforce in the UAE Parakandi & Mohamed (2016) examined the standard of WLB in the UAE, especially on its impact on sustaining human resources. Kooli (2023) highlighted the problems of WFH during COVID-19 for female workers in the UAE. Meanwhile, Hashimi, et al. (2023) highlighted the effect of FWAs on workers' views of efficiency, dedication to the organisation, and job performance in the UAE.

The UAE government has introduced measures to support the labour force by promoting FWAs, which help foster a dynamic labour market. However, the adoption of FWAs is largely left to individual employers, who can tailor these arrangements to their specific needs and workplace environments, as the legislation provides only general guidelines.

The elements of FWAs are reflected in various labour regulations in the UAE, such as the Federal Decree by Law No. (33) of 2021 Concerning Regulating Labour Relations, which deals with employment matters. This decree, passed in February 2022, covers all labour categories, including permanent, casual workers, and flexible work hours.

The UAE labour law also enforces strict compliance with its complete leave arrangements, requiring organisations to adhere to these regulations. The types of leave included under the UAE labour law are paid vacation, regular weekly holidays, study leave, delivery leave for mothers, leave to support a family member's medical needs, empathetic leave, and leave for the Hajj.

According to Parakandi & Mohamed (2016), Kooli (2002) and Hashimi et al. (2023), the Ministry of Human Resources and Emiratization issued regulatory guidelines requiring companies and firms to implement FWAs such as remote working to address the challenges posed by the pandemic. This form of FWAs was introduced by the UAE government during the COVID-19 pandemic and has continued to evolve through labour legislation in the post-pandemic period. The most recent reform, introduced through the Federal Decree No. 9 of 2024, marks a significant development in the recognition of FWAs within the UAE's employment landscape. The statutory provisions formally permit employees to work remotely, either from home or alternative locations outside the traditional office, aligning the UAE with the global shift towards hybrid work models. In addition, the law extends recognition to flexible working hours, part-time arrangements, and job-sharing, thereby broadening the scope of legally sanctioned FWAs (Gurav, 2024).

Article 7 (1) (d) of Federal Decree by Law No. (33) of 2021 Concerning Regulating Labor Relations defines flexible labor as work in which the hours or working day vary depending on the volume of work and the Employer's economic and operational variables. The article states that the worker may work for the employer at times that vary depending on work conditions and requirements. As a result, the clause defines flexible work as a structure integrated into the contract in which the employer may alter working hours and days in response to business demands, and the employee accepts this variability as part of their job responsibilities. Critically, this definition places flexibility nearly exclusively at the hands of the employer, emphasizing management discretion and operational efficiency while providing limited assurance of predictability or autonomy for employees.

In the UAE, Blignaut (2025) examines the post-pandemic trajectory of remote work, focusing on structural alterations, implementation obstacles, and psychological repercussions for employees across industries. The analysis shows a slight decrease in remote job listings from 4.3% in 2023 to 3.7% in 2024, although hybrid work continues to exceed pre-pandemic levels. Notably, the emphasis is placed on institutional practices instead of formal legislative regulation, reflecting the UAE's reliance on organizational rather than statutory governance of FWAs.

Article 7(1)(d) of Federal Decree by Law No. (33) of 2021 Concerning Regulating Labor Relations embodies the contractual basis of FWAs in the UAE, since changes to working hours or days are incorporated into the employment contract between the employer and employee. While the clause gives businesses extensive flexibility to change work arrangements depending on operational needs, this freedom is not unlimited. The strict protection of statutory rights, such as leave entitlements, prevents flexibility from weakening existing employee protections. This demonstrates the fundamental idea of mutual trust and confidence, which requires contractual adaptability to function without jeopardizing either party's legitimate interests. Similarly to the Malaysian position, Ma-S gives an additional purposeful lens for examining this balance, ensuring that managerial

freedom stays consistent with fairness, justice, employee welfare, and dignity while meeting genuine organizational goals.

D. Comparative Analysis

When analyzing labor regulations on FWAs in Malaysia, Indonesia, and the UAE, it is clear that each country takes a distinct legislative approach. Employees in Malaysia have the right to apply for FWAs under Sections 60P and 60Q of the EA (Che Shaari and Amirul, 2020). By contrast, in the UAE, Article 7(1)(d) of the Federal Decree-Law No. 33 of 2021 formally recognises FWAs as a model of employment. However, the UAE framework rests on two central elements: first, FWAs must be expressly incorporated into the employment contract, effectively tying their implementation to the employer's operational and business needs; and second, recognised scope of FWAs is limited to flexibility in working hours and working days. Given its recent enactment, empirical evidence of the law's implementation in organisational practice remains limited.

Malaysia's statutory design is clearer and, arguably, more advanced. While Sections 60P and 60Q of the EA do not create a substantive right to FWAs, they do provide employees with a procedural right to request them. FWAs have a greater reach than in the UAE, comprising three categories: flexible hours, flexible days, and flexibility in work location. Importantly, the Malaysian regulations are supplemented by administrative guidelines imposing explicit requirements on employers.

Employers must approve or reject an application within 60 days of submission, with reasons provided. This reason need goes beyond a mere managerial prerogative and, in reality, resembles a procedural entitlement for employees. Critically, while both regimes left final discretion with the employer, Malaysia's statutory structure affords greater clarity, procedural safeguards, and a broader scope of FWAs than the UAE, placing it as the more comprehensive model.

In contrast, Indonesian labor legislation contains measures that are similar to such agreements. Employers in Indonesia rely on basic rules that provide for some degree of flexibility in working hours under the Manpower Law No. 13 of 2003 and its modifications through the Job Creation Law 2020. Nonetheless, the distinction between *Perjanjian Kerja Waktu Tertentu* (PKWT, or fixed-term contracts) and *Perjanjian Kerja Waktu Tidak Tertentu* (PKWTT, or permanent contracts), neither of which specifically permits flexibility in work location or time, continues to be the foundation of Indonesian employment contracts (Anggraeny & Hidayah, 2021).

However, Indonesian labor regulations do not prohibit companies from offering FWAs at their workplaces if they so want. As a result, in terms of implementation, FWAs in Indonesia are governed by current labor regulations, with a primary focus on work-hour flexibility, as long as they adhere to the basic principle of 40 working hours per week and a maximum of 8 hours per day. These arrangements apply equally to the public and private sectors (Arquisola et al., 2021).

In comparison, Indonesia, Malaysia, and the UAE all grant formal recognition of FWAs, but the legislation is applied differently. However, Malaysia potentially offers a balance through procedural safeguards (need to justify refusals), whereas the UAE, despite its progressive acknowledgment of flexible models, has substantial employer discretion that may limit employees' practical access to flexible work arrangements.

Nonetheless, fair implementation across sectors remains a challenge, given the nature of employment varies greatly between businesses. This is clear across jurisdictions (Blignaut, 2025; Arquisola, 2021; Amirul & Shaari, 2021). Jobs that demand physical presence, such as frontline customer service, food and beverage, manufacturing, or even

managerial roles like heads of department, face inherent limitations in adopting FWAs (Talent Corp & UNDP, 2021).

Furthermore, the larger approval and operational processes within organizations can disadvantage management-level employees, whose roles necessitate ongoing visibility, monitoring, and direct participation in decision-making. The empirical study's responses reflected these barriers, with employees noting: "No flexible work arrangements for heads of department," "Approval only granted to non-executive staff," "Difficulty obtaining feedback and signatures from superiors," as well as "challenges in obtaining timely responses from management."

It is recognised that the law faces inherent challenges in providing uniform provisions on FWAs across sectors and industries. For instance, in Malaysia's manufacturing sector, which depends heavily on mass production and repetitive tasks, workers must be present during fixed working hours. In such cases, FWAs are perceived as potential disruptions to production (Haziq et al., 2023). A more practical approach would be for companies to conduct pilot studies and issue clear internal policies based on the Ministry's guidelines to operationalise FWAs effectively.

Beyond sectoral limits, cultural and organizational practices provide substantial hurdles. In the UAE, the historic reliance on office-centric work models anchored in hierarchical control, visibility, and centralized decision-making has made the acceptance of FWAs more difficult, as conventional arrangements are frequently perceived as more successful for ensuring productivity (Willett et al., 2024; Blignaut, 2025).

From a theoretical aspect, the comparison analysis presented above is strongly based on contract theory and Ma-S concepts. According to contract theory, FWAs are evaluated against the balance of rights and obligations inherent in employment contracts, namely the tension between administrative prerogative and employee autonomy. Malaysia's demand for employers to disclose written reasons for refusing FWAs represents a shift toward increased contractual fairness and openness, coinciding with modern understandings of relational contracts where reciprocal trust and justifiable decision-making are important.

Similarly, examining the UAE and Indonesia through this lens reveals how differing degrees of employer discretion affect the substantive fairness of the employment bargain.

When evaluated based on Ma-S, especially concerning the safeguarding of intellect (*ḥifẓ al-ʿaql*), wealth (*ḥifẓ al-māl*), and human dignity (*ḥifẓ al-ʿird*), the three legal systems exhibit distinct approaches to harmonising flexibility with employee welfare. Malaysia's broader and procedurally safeguarded right to request framework provides stronger protection against excessive employer discretion, while Indonesia's less explicit statutory framework places greater reliance on contractual and workplace arrangements to achieve such balance. The UAE maintains significant managerial flexibility over work arrangements, although moderates this through contractual provisions and the existing safeguarding of statutory worker rights. From a Ma-S viewpoint, these distinctions illustrate that the validity of FWAs relies not solely on their legal recognition, but on the extent to which each framework harmonises organisational flexibility with fairness, employee welfare, and dignity. A comparative summary of the above analysis is presented in Table 1.

Table 1. Comparative Summary of FWAs: Malaysia, Indonesia and the UAE

Aspect	Malaysia	Indonesia	United Arab Emirates (UAE)
Statutory Basis	Sections 60P and 60Q of EA.	Manpower Law 2003 & Job Creation Law 2020.	Art. 7(1)(d), Federal Decree-Law Number 33/2021.
Nature of Recognition	Procedural right to request FWAs.	Indirect FWAs allowed but not explicit.	Contractual FWAs must appear in the employment contract.
Scope of FWAs	Flexible hours, days, and location.	Limited to flexible working hours.	Flexibility in hours and days only.
Procedural Safeguards	Employer must reply within 60 days with reasons.	No statutory procedure; employer policy-driven.	No procedural rights; employer needs-based.
Employer Discretion	Must justify refusal; more transparency.	Very high discretion.	Very strong discretion; tied to business needs.
Application Across Sectors	Varies; frontline and manufacturing limited.	Public and private sectors; limited scope.	Office-centric culture limits FWAs.
Workplace Barriers	Slow approval; HODs excluded; visibility demands.	Strict hour rules; limited flexibility.	Hierarchy and centralisation restrict FWAs.
Comparative Strength	Most comprehensive and safeguarded model.	Moderate; narrow and employer-driven.	Progressive recognition but high discretion.
Contract Theory Perspective	Fairness, transparency, relational contracting.	High employer discretion affects fairness.	Managerial prerogative dominates.
Maqāṣid Perspective	Supports dignity, welfare, intellect and wealth.	Promotes welfare within limits.	Narrow scope; less aligned with welfare principles.

Source: Authors.

V. Conclusions

The comparative analysis demonstrates that Flexible Working Arrangements (FWAs) in Malaysia, Indonesia, and the UAE are consistent with fundamental principles of employment contract law, particularly the implied duty of mutual trust and confidence, which balances managerial prerogative and employee autonomy. Although FWAs are recognised through different regulatory approaches, ranging from statutory provisions to indirect regulations and ministerial directives, they reflect a shift from traditional employer control towards trust-based employment relationships. The findings affirm that FWAs can uphold reciprocal contractual obligations while promoting organisational efficiency, employee autonomy, and workplace flexibility.

Furthermore, FWAs align with the objectives of *Maqasid al-Shari'ah* (Ma-S), particularly *ḥifẓ al-ʿaql* (preservation of intellect), *ḥifẓ al-māl* (preservation of wealth), and *ḥifẓ al-ʿird* (preservation of dignity), by promoting employee welfare, work-life balance, and productivity while advancing *maslahah* (public welfare) and preventing *mafsadah*

(harm). Although these principles are not explicitly incorporated into the relevant legislation, they provide an ethical foundation for FWAs. The study's principal theoretical contribution lies in integrating the implied duty of mutual trust and confidence with Ma-S as complementary frameworks for evaluating FWAs. This approach demonstrates that regulatory effectiveness should be assessed not merely through the legal recognition of workplace flexibility but also through its equitable implementation and contribution to employee welfare.

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