

Child Adoption in Indonesia and Pakistan: A Comparative Analysis of Legal Frameworks and Regulatory Gaps

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Abstract:

This study aims to analyze the legal regulation of child adoption in Indonesia and Pakistan, as well as the legal implications arising from the presence or absence of specific adoption laws in both countries. Child adoption in Muslim-majority countries presents a legal challenge due to the interaction between Islamic legal principles and state law. This research employs a qualitative normative legal approach through library research, using a comparative method to examine legislation, court decisions, and relevant legal doctrines. The analysis is grounded in the theory of legal pluralism and the principle of the best interests of the child. The findings reveal that Indonesia has established a codified and institutionalized framework for child adoption, providing stronger legal certainty and child protection. In contrast, Pakistan relies on guardianship mechanisms under Islamic law without specific statutory regulation, resulting in limited legal certainty and protection for children. This study emphasizes that the existence of clear and codified regulations plays a crucial role in ensuring legal certainty, institutional accountability, and the protection of children's rights.

Keywords: best interests of the child; child adoption; comparative law; Islamic family law.

Abstrak:

Studi ini bertujuan untuk menganalisis regulasi hukum adopsi anak di Indonesia dan Pakistan, serta implikasi hukum yang timbul dari ada atau tidaknya undang-undang adopsi khusus di kedua negara tersebut. Adopsi anak di negara mayoritas Muslim menghadirkan tantangan hukum karena interaksi antara prinsip-prinsip hukum Islam dan hukum negara. Penelitian ini menggunakan pendekatan hukum normatif kualitatif melalui riset pustaka, menggunakan metode komparatif untuk meneliti undang-undang, putusan pengadilan, dan doktrin hukum yang relevan. Analisis ini didasarkan pada teori pluralisme hukum dan prinsip kepentingan terbaik anak. Temuan menunjukkan bahwa Indonesia telah menetapkan kerangka kerja adopsi anak yang terkodifikasi dan terinstitusionalisasi, memberikan kepastian hukum dan perlindungan anak yang lebih kuat. Sebaliknya, Pakistan bergantung pada mekanisme perwalian berdasarkan hukum Islam tanpa regulasi hukum khusus, sehingga menghasilkan kepastian hukum dan perlindungan anak yang terbatas. Studi ini menekankan bahwa keberadaan regulasi yang jelas dan terkodifikasi memainkan peran penting dalam memastikan kepastian hukum, akuntabilitas kelembagaan, dan perlindungan hak-hak anak.

Kata Kunci: kepentingan terbaik anak; adopsi anak; hukum perbandingan; hukum keluarga Islam.

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Introduction

In recent decades, the practice of child adoption and alternative child care arrangements in Muslim-majority countries has increased significantly, driven by social changes, economic challenges, and the growing need for child protection systems. Previous

studies have examined child adoption primarily from normative Islamic perspectives or within specific national contexts; however, limited attention has been given to how differences in legal frameworks—particularly between codified systems and those lacking specific adoption laws—affect the protection of children's rights. This gap highlights the need for a more focused comparative legal analysis to understand the implications of diverse regulatory approaches in Muslim-majority countries.

Adoption in Muslim-majority countries constitutes a complex legal issue situated at the intersection of Islamic legal principles, state regulation, and child protection frameworks (Ginting 2023). This complexity arises from the normative tension between classical Islamic family law doctrines and the demands of modern state legal systems in addressing social needs related to child care and protection (Mahbub Ali, 2025). In classical Islamic law, adoption in the sense of severing biological lineage (*nasab*) is not recognized (Sabri, 2011); instead, child care is governed through the concept of *kafālah*, which emphasizes nurturing and protecting a child without altering the child's legal identity, civil status, or lineage (Ranger, 2013). This doctrinal framework reflects the centrality of lineage preservation as a foundational principle of Islamic family law.

In the context of modern nation-states, however, evolving social realities—such as the increasing number of abandoned or vulnerable children and the growing emphasis on child rights (Kurniawan, 2021)—have compelled Muslim-majority countries to develop diverse legal mechanisms to regulate adoption. These responses are far from uniform and are shaped by each country's legal system, the relationship between Islamic law and state law, and the extent of state involvement in child protection policies (Khusnul, 2025). As a result, adoption regulation in Muslim-majority countries ranges from comprehensive legal codification to partial or entirely uncoded arrangements (Ashraf, 2025).

Indonesia and Pakistan, as two Muslim-majority countries with large populations (GoodStats Data 2025), exemplify contrasting legal approaches to adoption. Indonesia has established a relatively comprehensive and codified legal framework governing adoption, encompassing administrative requirements (Wibawa et al. 2023), eligibility criteria for prospective adoptive parents, procedural safeguards, and the involvement of social institutions and judicial oversight (Wibawa et al. 2023). This codified structure demonstrates an active role of the state in ensuring legal certainty, institutional accountability, and enhanced child protection through formal legislative instruments (Lubis et al, 2024).

By contrast, Pakistan does not possess specific legislation explicitly regulating adoption (Laiba et al, 2025). Child care practices are predominantly addressed through guardianship mechanisms and judicial decisions, resulting in a largely uncoded regulatory framework (Hasan, 2017). The legal position of child adoption in Pakistan is governed by the Guardians and Wards Act 1890. However, since the Guardians and Wards Act 1890 does not provide detailed and comprehensive rules on child care and custody, Pakistani courts frequently exercise judicial discretion to fill legal gaps through statutory interpretation and the application of Islamic legal principles. Judges at times resort to *ijtihad* or general

principles of justice, equity, and good conscience when adjudicating child custody cases (Sabreen, 2018). This reliance on discretionary reasoning has resulted in inconsistencies across judicial decisions (Global Legal Studies Review, n.d). This regulatory vacuum contributes to legal fragmentation and inconsistencies in the protection of children's rights (Khadkha et al., n.d.).

Empirical evidence further highlights the importance of examining adoption law within the broader framework of alternative care for children. In Indonesia, data from the National Socio-Economic Survey (Susenas) indicate that the proportion of children aged 5–17 years classified as neglected declined from 2.02% in 2021 to 1.37% in 2024 (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak RI 2024), although this indicator encompasses multiple dimensions of deprivation and should not be equated directly with children without parental care. In Pakistan, by contrast, the National Commission on the Rights of Child and UNICEF report that more than four million children have lost one or both parents (NCRS & UNICEF 2024), while formal foster care remains underdeveloped and there are no comprehensive legal provisions governing foster care. Pakistan primarily relies on guardianship (kafalah) rather than formal adoption, allowing children to retain their original identity and inheritance links with their biological family ("Pakistan Intercountry Adoption Information" 2026). These differences should not be interpreted as evidence that the existence of adoption legislation directly reduces child abandonment; rather, they demonstrate how different legal architectures shape the availability, regulation, and institutional oversight of alternative care.

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The divergent approaches adopted by Indonesia and Pakistan reflect two broader regulatory models of adoption in Muslim-majority countries: the model of state legal codification and the model of non-codification. A comparative examination of these models is essential to assess how differing legal structures influence the protection of children's rights, the role of the state, and the implementation of the principle of the best interests of the child within national legal systems.

A number of previous studies on child adoption have predominantly focused on the procedural and legal aspects of adoption (Subhan Lubis et al. 2024), including statutory frameworks and legal protection mechanisms for children (Bariki, 2024). In addition, some studies highlight various challenges in practical implementation, such as procedural non-compliance, weak institutional oversight, and the potential for irregularities in adoption practices (Ridwan et al., 2024). Other research specifically emphasizes post-adoption supervision as an instrument to ensure the best interests of the child (Purnama et al., 2025). Meanwhile, from an interdisciplinary perspective, many studies—particularly in the fields of psychology and social sciences—concentrate on the developmental outcomes of adopted children, encompassing issues of well-being, identity formation, and social adaptation within adoptive families (Grotevant et al., 2013).

Although scholarship on Islamic family law and child protection has expanded, comparative studies that specifically analyze the implications of the presence or absence of codified adoption laws remain limited, particularly those comparing Indonesia and Pakistan. Accordingly, this study seeks to address this gap by examining adoption regulations in Indonesia and Pakistan, focusing on their legal foundations, regulatory mechanisms, and the implications of these frameworks for child protection within contemporary Muslim-majority legal systems.

However, previous studies have not sufficiently examined how differences in the legal frameworks governing child adoption shape legal certainty and child protection in a comparative context. This study therefore aims to comparatively examine the legal frameworks governing child adoption in Indonesia and Pakistan, focusing on their legal foundations, regulatory mechanisms, and implications for legal certainty and the protection of children's rights. By comparing Indonesia's relatively codified framework with Pakistan's regulatory framework, which lacks a specific and comprehensive statutory framework governing adoption, the study identifies similarities, differences, and regulatory gaps in both countries and assesses their implications for ensuring the best interests of the child.

Method

This study examines the legal regulation of child adoption and its implications for legal certainty, institutional accountability, and child protection (Burns et al. 2019). It employs normative legal research with a comparative approach, examining legislation, judicial decisions, legal doctrines, and other relevant legal materials concerning child adoption. Indonesia and Pakistan are selected as comparative jurisdictions because both are Muslim-majority countries characterized by plural legal traditions in which Islamic law interacts with customary and state law, yet they have developed substantially different legal frameworks for child adoption. Indonesia has established a relatively structured and codified regulatory framework governing child adoption, whereas Pakistan regulates child care and guardianship through several legal instruments without a specific and comprehensive statutory framework governing adoption. This combination makes Indonesia and Pakistan a

particularly relevant comparative pair for examining how differences in regulatory structure and legal codification affect legal certainty, institutional accountability, and the protection of children's rights.

Data are collected from primary legal materials (statutory regulations and court decisions), secondary legal materials (books, journal articles, and legal commentaries), and supporting non-legal documents (reports related to child welfare). The collection process is conducted through systematic identification, selection, and classification of relevant sources.

The analysis is carried out using a comparative legal approach based on legal pluralism theory and the principle of the best interests of the child. The study applies interpretative and comparative techniques to examine differences in legal structures, evaluate their implications, and assess how each system institutionalizes child protection.

Results and Discussion

The principle of the best interests of the child serves as the primary guiding principle in adoption practices in both Indonesia and Pakistan

In Indonesia, adoption was initially driven largely by the desire to continue family lineage, particularly among couples who were unable to have biological children. However, as public awareness of child protection and child welfare has increased, the orientation of adoption has undergone a significant shift (Widowati, 1982). This shift is normatively reflected in Article 2 of Government Regulation No. 54 of 2007, which stipulates that the purpose of adoption is to prioritize the best interests of the child in order to ensure the child's welfare and protection (Ismail and Pongoliu 2021). In other words, approval for adoption may only be granted on the basis of considerations that place the child's interests at the forefront, rather than the interests of prospective adoptive parents or other motives (Sompie 2017). This principle must also be upheld by the District Court in the process of legalizing adoption (Gerhastuti & Yunanto, 2017).

Furthermore, Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection, affirms that, in principle, a child should be cared for by both biological parents and should not be separated from them. Nevertheless, where there are convincing reasons indicating that the child can grow and have his or her rights better fulfilled if cared for or adopted by others, separation from the biological parents may be legally permitted. Article 14(1) affirms every child's right to be raised by his or her own parents, except where there are lawful grounds demonstrating that such separation is in the best interests of the child and constitutes a measure of last resort (Hamsiri, 2023).

In Pakistan, although there is no specific statutory regulation governing adoption, the practice of child care and child placement continues to prioritize the welfare of the child through the kafala system (Abbasi & Sabreen 2019). Government authorities assess the suitability of prospective caregivers by considering their capacity to provide a safe and adequate home environment for the child's growth and development. Government

authorities conduct a comprehensive assessment of the eligibility of prospective adoptive parents by taking into account various factors related to the best interests of the child. This assessment includes the ability of prospective caregivers to provide a safe, stable, and adequate home environment, encompassing physical, psychological, social, and economic aspects, in order to ensure the fulfillment of the child's basic needs and to support the child's optimal growth and development. In addition, the evaluation also considers the emotional readiness and long-term commitment of prospective adoptive parents in fulfilling their caregiving and protective responsibilities (Mehr Jan, 2025).

In Pakistan, adoption is not governed by specific statutory law as in Western legal systems; instead, children are often placed under guardianship or kafala, an alternative care mechanism that preserves the child's biological identity while prioritizing the child's well-being (Mehr Jan, 2025). Accordingly, the child's welfare is placed above all other interests, indicating that the principle of the best interests of the child is substantively applied even in the absence of a codified adoption law (Kutty, 2014).

The differences in legal frameworks reflect the codification of law in Indonesia and the legal vacuum in Pakistan.

Indonesia possesses a relatively comprehensive legal framework governing child adoption, reflected in statutory regulations and Islamic family law instruments. Article 171(h) of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) defines an adopted child as a child whose responsibility for daily care, education, and other needs is transferred from the biological parents to the adoptive parents based on a court decision. This arrangement is consistent with the principle that adoption does not sever the child's biological lineage. Under Indonesian law, an adopted child therefore retains his or her nasab, while inheritance and marital guardianship remain governed by the child's relationship with the biological family rather than being transferred to the adoptive parents. This legal construction reflects the accommodation between state law and Islamic legal principles: caregiving responsibilities may be transferred to the adoptive parents, while the child's biological identity and core personal-status relationships are preserved (Ginting, 2023). Accordingly, Indonesia provides a relatively structured regulatory framework that recognizes adoption as a mechanism for child care and protection without creating a legal parent-child relationship that replaces the child's biological lineage.

It is important to note that legal relationships such as lineage affiliation, the right of guardianship in marriage for adopted daughters, and reciprocal inheritance rights between the child and their biological parents are not terminated by a court decision of adoption (Nadeem et al. 2024). In other words, although adoption establishes a new caregiving relationship between the child and the adoptive parents, certain legal ties between the child and the biological family remain recognized and continue to exist. This arrangement illustrates the Islamic legal principle governing adoption, whereby specific rights and obligations concerning care and upbringing may be transferred to adoptive parents, while

the child's lineage and other fundamental legal rights with the biological parents are preserved. Such a model reflects a balanced approach between child welfare considerations and the preservation of identity-based rights, particularly those associated with lineage, inheritance, and religious obligations.

As a country with a Muslim-majority population, Indonesia has also developed family law regulations that are largely inspired by Islamic legal principles, although these regulations are not exclusively derived from Islamic law. Elements of customary law (*adat*) have also influenced the formation of the national legal system (Yulistyaputri, 2019). Some scholars argue that the Indonesian family law system represents a modification of customary law integrated with the application of Islamic legal principles (Wirahadinofa & Ismail, 2024). In this regard, the Indonesian government has enacted legal provisions governing family law, most notably Law No. 1 of 1974 on Marriage. The legal foundations of child adoption in Indonesia are derived from the Qur'an, the Sunnah, and various forms of *ijtihad* that have developed within the Indonesian context as part of Islamic legal thought. These normative foundations are expressed through multiple legal products, including classical *fiqh*, fatwas, judicial decisions, statutory regulations, and the Compilation of Islamic Law (Alhaq, 2025). This layered legal structure demonstrates how Indonesia operationalizes legal pluralism through formal integration, transforming religious and customary norms into enforceable state law.

Conversely, Pakistan does not formally recognize child adoption through a specific statute that comprehensively regulates the legal status of adopted children, as found in some other legal systems (Hasan, 2017). This, however, does not mean that the practice of adopting or caring for a child is entirely prohibited in Pakistan (Kutty, 2014). In practice, child care by families other than biological parents continues to occur and is socially accepted in Pakistan. Such arrangements often take place through informal agreements within families or local communities, frequently based on verbal consent between the biological family and the caregivers. Kinship-based care and *kafala* are widely recognized as culturally accepted forms of alternative care, many of which are established informally rather than through formal legal procedures. This reflects a socio-legal context in which community-based norms and familial solidarity play a dominant role in regulating child care practices, often operating independently of formal state legal structures.

According to the International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC), these informal arrangements reflect the strong role of extended family networks in providing alternative care for children in Pakistan. However, because many of these caregiving arrangements are not formalized through legal mechanisms, they do not necessarily provide a strong legal basis for altering the child's legal status. Consequently, such conditions may lead to legal uncertainty regarding the rights, protection, and long-term welfare of the child (ISS/IRC). The absence of formal recognition also limits access to legal remedies and institutional safeguards, which are essential components of a rights-based child protection system.

From a juridical perspective, the legal framework most commonly applied to regulate the care of children by individuals other than their biological parents in Pakistan is the Guardians and Wards Act 1890, a colonial-era regulation inherited from British rule that governs child guardianship (Kalanauri, 2015). Through this mechanism, a court may appoint an individual as a guardian for a child in need of care and protection. Nevertheless, such an appointment does not transform the legal status of the child into that of a biological child of the guardian. In other words, the legal relationship established is limited to guardianship rather than a full parent–child legal relationship as recognized in legal systems that formally acknowledge adoption. This distinction has significant implications for the scope of legal rights available to the child, particularly in relation to inheritance, identity, and long-term familial integration.

Within the framework of Islamic law, which serves as one of the normative foundations of family law in Pakistan, the concept that most closely resembles this practice is kafala, namely the care of a child by another family without severing the child’s lineage (nasab) with the biological parents (Ennis & Blarel, 2022). Under this model, the caregiving family assumes responsibility for the child’s upbringing, education, and welfare but does not acquire the legal status of parents (European Judicial Training Network 2020). As a result, legal consequences typically associated with the parent–child relationship—such as inheritance rights or changes in lineage—do not apply within this arrangement. While this model aligns with Islamic legal principles, its limited juridical transformation raises challenges in aligning moral responsibility with enforceable legal rights.

The absence of a specific regulation governing adoption in Pakistan ultimately creates a legal vacuum in the regulation of child adoption. This condition leads to limited legal certainty for children raised by families other than their biological parents, particularly with regard to legal status, inheritance rights, and long-term protection (Ashraf, 2025). Furthermore, in judicial practice, judges often possess considerable discretionary authority in determining the form of care deemed most appropriate for the child’s welfare. Such reliance on judicial discretion may produce varied court decisions due to the lack of a uniform legal framework governing adoption procedures and their legal consequences in Pakistan’s national legal system (Agha, 2025). This variability underscores the fragility of a system that relies heavily on discretion rather than standardized legal norms, potentially undermining consistency and predictability in child protection.

Compared with countries that have established a more structured regulatory framework for adoption, this situation indicates that Pakistan’s legal system places greater emphasis on guardianship rather than legal adoption. This distinction highlights how different regulatory models can significantly influence the degree of legal certainty, institutional accountability, and the protection of the best interests of the child. Ultimately, the comparison reveals that while both systems aim to protect children, the presence of a codified legal framework provides a more stable and accountable foundation for ensuring the realization of children’s rights in a sustainable and measurable manner.

Legal Requirements and Procedural Mechanisms of Child Adoption in Indonesia and Pakistan

The differences in the legal frameworks of Indonesia and Pakistan are also evident in the legal requirements and procedural mechanisms governing child adoption in each country. Indonesia has established a relatively comprehensive and structured regulatory system, while Pakistan primarily relies on guardianship mechanisms derived from Islamic law and general guardianship provisions. These differences reflect two distinct regulatory models in the governance of alternative child care in Muslim-majority countries: a codified legal framework and a more limited regulatory approach that does not specifically regulate adoption. This distinction is not merely technical but reflects deeper variations in how the state conceptualizes its role in regulating family relations and safeguarding children's rights within the broader legal system.

In Indonesia, the legal requirements and provisions governing child adoption are comprehensively regulated under Government Regulation No. 54 of 2007 on the Implementation of Child Adoption. The regulation establishes several criteria that must be met by prospective adoptive parents, including specific age limits, a minimum marriage duration of five years for married couples, religious compatibility between the child and the adoptive parents, adequate economic and social capacity, and psychological readiness to provide proper care for the child. Furthermore, the adoption process requires recommendations from accredited social institutions and the involvement of competent government authorities in assessing the suitability of prospective adoptive parents (Gautama, 1987). These requirements function as a screening mechanism aimed at minimizing potential risks to the child, ensuring that adoption is not driven solely by the interests of adults but is aligned with the child's long-term welfare.

The adoption procedure in Indonesia is carried out through a series of relatively strict administrative and judicial stages. The process generally begins with submitting an application to the authorized social institution, followed by an assessment of the prospective adoptive parents through a home study conducted by social workers to evaluate the family's economic, social, and psychological conditions. After undergoing a temporary foster care period to ensure the readiness of the adoptive family to care for the child, the adoption application is subsequently submitted to the court to obtain an *Surat Keputusan* (SK) of the child (Ridwan 2024). This multi-layered procedure also reflects a system of checks and balances designed to prevent irregularities such as child trafficking, unlawful adoption practices, or inadequate caregiving arrangements.

In contrast, in Pakistan the regulation of child adoption is not governed by a specific adoption law. The existing legal system places child care practices within the framework of guardianship, as regulated under the Guardians and Wards Act 1890. In practice, several requirements must be fulfilled by prospective caregivers. One provision frequently applied is that prospective adoptive parents must be Muslim and have been married for a certain period, generally at least three years (Service 2017). Courts may also grant permission to

foreign Muslim couples to care for a child in Pakistan, provided that one of the spouses is a citizen of Pakistan (Khadkha et al., n.d.). However, these requirements are not codified in a unified and comprehensive regulatory framework, resulting in variations in their application across different cases and jurisdictions.

In certain cases, social institutions also consider religious compatibility between the child and the caregiving family. For example, if a child is known to come from a Christian family, social institutions in Pakistan may consider prospective adoptive parents who are also Christian in order to maintain the continuity of the child's religious identity ("Pakistan Intercountry Adoption Information" 2026). This provision indicates that religion plays an important role in child caregiving practices in Pakistan, reflecting the strong influence of Islamic legal principles as well as social and cultural values within the country's family law system. Such considerations highlight that, even in the absence of formal legal codification, normative and ethical principles continue to guide decision-making processes in child care arrangements.

From the perspective of Islamic law, which serves as one of the normative foundations of Pakistan's legal system, a child raised by another family does not legally acquire the status of a biological child. Consequently, adopted children do not possess inheritance rights from their adoptive parents, as the lineage (*nasab*) relationship with their biological parents must be preserved in accordance with the principles of Islamic law. In practice, the responsibilities of the caregiving family are primarily focused on the child's maintenance, education, and welfare, without establishing a legal relationship fully equivalent to that of biological parents and their children. This limitation underscores a fundamental distinction between caregiving responsibility and legal parenthood, which has significant implications for the scope of rights afforded to the child.

From a procedural perspective, applications for child guardianship in Pakistan must be submitted to the competent court in accordance with the Guardians and Wards Act 1890. The court considers the welfare of the child and other relevant circumstances before determining guardianship. Where the biological parents are known, their consent may form part of the evidentiary basis considered by the court, although its legal effect depends on the applicable legal framework and judicial determination. Rather than interpreting the absence of a specific adoption statute simply as a procedural deficiency, this study finds that it reflects a broader feature of family law reform in Muslim-majority states: the continuing negotiation between Islamic legal principles, state legislation, and socially embedded normative practices. The comparison with Indonesia demonstrates that legal codification does not necessarily mean replacing Islamic norms; instead, codification can function as a mechanism for translating and institutionalizing Islamic principles within a modern state legal framework.

Conversely, Pakistan's reliance on guardianship illustrates how the absence of a dedicated adoption framework can preserve the distinction between biological lineage and caregiving while leaving certain legal consequences less explicitly regulated (Iqbal, 2023).

The broader implication is that contemporary reform of Islamic family law is not necessarily a choice between religious norms and state regulation, but concerns how multiple normative orders can be integrated into a coherent framework that provides legal certainty while preserving the child's identity and prioritizing the best interests of the child.

A comparison between the two systems indicates that Indonesia possesses a more structured and institutionalized mechanism for child adoption through clear regulations and systematic administrative procedures. In contrast, Pakistan relies more heavily on a limited guardianship framework that depends significantly on judicial interpretation in determining the form of care considered most appropriate for the child's best interests. This difference demonstrates that the degree of legal codification plays a significant role in shaping legal certainty, child protection, and institutional accountability in the practice of child care arrangements in Muslim-majority countries. Ultimately, the comparison reveals that codified systems tend to offer stronger institutional safeguards, while non-codified systems rely more heavily on moral, social, and judicial considerations, which may provide flexibility but also introduce potential inconsistencies in the protection of children's rights.

Legal Codification and Legal Vacuum in Determining the Effectiveness of Child Protection in Adoption Law

A comparison between Indonesia and Pakistan demonstrates that the existence of legal codification significantly influences the effectiveness of child protection in the practice of child adoption. In Indonesia, the regulation of adoption explicitly formulated in statutory laws enables the state to perform regulatory and supervisory functions in a more systematic manner. Legal codification not only provides legal certainty for prospective adoptive parents and adopted children but also establishes uniform procedural standards for law enforcement authorities and social institutions. As a result, the principle of the best interests of the child functions not merely as a normative principle but is also translated into concrete and measurable legal mechanisms. This transformation from abstract norm to enforceable legal standard allows the state to intervene proactively, monitor compliance, and ensure that adoption practices align with broader child protection objectives. In this sense, codification operates not only as a legal instrument but also as a governance framework that integrates legal norms with institutional practice.

In contrast, the condition of a legal vacuum in Pakistan indicates that child protection within the context of adoption largely depends on judicial interpretation and case-based administrative practices (Australian Government Migration Review Tribunal, 2010). Although substantively the kafala system continues to place the welfare of the child as a primary concern, the absence of a specific law governing adoption potentially creates legal uncertainty, particularly regarding the legal status of the child, the continuity of care, and the long-term protection of children's rights. The reliance on informal agreements or verbal consent also creates the possibility of inconsistent treatment between cases, which may ultimately weaken the principle of equality before the law (O'Halloran, 2008). Moreover,

the absence of standardized procedures limits the ability of state institutions to systematically monitor and evaluate adoption outcomes, thereby increasing the risk of fragmented governance and uneven protection across different jurisdictions.

From the perspective of legal pluralism theory, this situation reflects different patterns of interaction between Islamic law, state law, and social practices in the two countries. Indonesia has chosen a path of formalization by integrating principles of Islamic law into the national legal system through written regulations, such as the Compilation of Islamic Law and its implementing regulations. Meanwhile, Pakistan tends to maintain a non-codified approach by providing greater space for the practice of kafala and broader judicial discretion. This difference in approach demonstrates that the implementation of Islamic law within modern state systems is not uniform but is shaped by legal policy choices and the legal traditions of each country. It further illustrates that legal pluralism operates not merely as coexistence of multiple legal orders, but as a dynamic process in which the state selectively institutionalizes certain norms while leaving others within the domain of social or religious practice.

Furthermore, legal codification in Indonesia functions as a preventive and institutional mechanism for regulating child adoption and protecting children from potential exploitation, trafficking, and adoption practices driven primarily by adult interests. The requirement of judicial determination and the involvement of social institutions provide formal mechanisms through which the state can assess the suitability of prospective adoptive parents and the welfare of the child. Indonesia's relatively developed regulatory framework, however, should not be understood simply as the product of a more interventionist state. It reflects a longer process of legal institutionalization in which state law, Islamic legal norms, and customary law have been progressively accommodated within a national legal framework. The development of Indonesian Islamic family law demonstrates that codification can operate as a means of translating selected Islamic principles into state law while simultaneously negotiating the country's plural legal traditions.

Pakistan followed a different trajectory. Its contemporary legal framework retains significant elements of the colonial legal structure, including the Guardians and Wards Act 1890, while questions of family relations continue to be shaped by Islamic legal principles and social practices. Rather than developing a specific statutory regime of adoption, Pakistan has largely accommodated child-care arrangements through guardianship and custody. The persistence of this framework is therefore not adequately explained by an absence of legal concern for children, but by a different mode of negotiating the relationship between state legislation, Islamic concepts of lineage and guardianship, and inherited legal institutions. The Guardians and Wards Act 1890 continues to provide a statutory basis for judicial intervention in guardianship matters, including requirements concerning notice to parents and other relevant parties.

The divergence between Indonesia and Pakistan consequently reflects different trajectories of legal reform rather than a simple contrast between a “developed” and an

“underdeveloped” legal system. Indonesia demonstrates how a Muslim-majority state can institutionalize child adoption through codification while retaining the Islamic distinction between caregiving and biological lineage. Pakistan, by contrast, illustrates a model in which guardianship remains the principal legal vehicle for child care, leaving adoption without a distinct and comprehensive statutory identity. This difference can be understood through the lens of legal pluralism: both states negotiate multiple normative orders, but they have institutionalized those interactions differently. The Indonesian experience suggests a greater movement toward formal integration and codification of plural norms, whereas the Pakistani experience demonstrates the continued reliance on inherited statutory institutions alongside Islamic and customary norms. This comparison indicates that the direction of Islamic family law reform in Muslim-majority states is shaped not only by religious doctrine but also by historical legal inheritance, state-building, institutional capacity, and the political choices through which states determine which Islamic and customary norms should be incorporated into formal law (Balaati, 2013).

Nevertheless, the findings of this study also indicate that the existence of legal codification is not the sole determining factor in ensuring the protection of children's rights. Pakistan demonstrates that the principle of the best interests of the child can still be applied substantively through non-formal mechanisms rooted in religious and moral values within society. However, without the support of a clear and comprehensive legal framework, the implementation of this principle risks becoming inconsistent and difficult to evaluate objectively. This suggests that the relationship between normative values and legal structures is complementary rather than substitutive, where moral commitment alone is insufficient without institutional reinforcement. Therefore, the effectiveness of child protection in adoption practices is largely determined by the extent to which such normative principles are institutionalized within a legal system capable of ensuring certainty, accountability, and sustainable protection for children. In this regard, the study underscores the importance of bridging normative principles with formal legal mechanisms to achieve a more coherent and effective child protection regime.

Table 1. Comparison of Legal Regulation and Procedural Mechanisms of Child Adoption in Indonesia and Pakistan

No.	Analytical Aspects	Indonesia	Pakistan
1.	Basic Principles of Child Adoption	Normatively, Indonesia explicitly affirms the best interests of the child as the primary objective of child adoption, as stipulated in Government Regulation No. 54 of 2007 and the Child Protection Law.	In contrast, although Pakistan does not have a specific statute governing adoption, the practice of child care through the kafala system places the welfare of the child as the primary consideration in decisions regarding caregiving arrangements.

2. Legal Regulatory Status	Has a codified legal framework governing child adoption through national legislation as well as the Compilation of Islamic Law (Kompilasi Hukum Islam).	Does not have a specific law regulating adoption; legal regulation is limited to guardianship provisions under the Guardians and Wards Act 1890.
3. Model of Child Adoption	Child adoption is carried out through a court decision, with oversight from the state and relevant social institutions.	Child care arrangements are primarily based on the kafala system and legal guardianship, without full legal recognition of adoption.
4. Lineage Relationship and Inheritance Rights	The child's lineage (nasab) with the biological parents is not severed; therefore, adopted children do not inherit from their adoptive parents, except through a will (wasiyyah) or gift (hibah).	In Pakistan, the relationship with biological parents remains intact, and adopted children do not acquire inheritance rights from adoptive parents in accordance with principles of Islamic law.
5. Religious Requirement for Prospective Adoptive Parents	Prospective adoptive parents must share the same religion as the child to be adopted.	Prospective adoptive parents are generally required to be Muslim, although exceptions may be considered in cases involving children from non-Muslim families.
6. Age and Marital Status Requirements	Prospective adoptive parents must generally be between 30 and 55 years old and have been married for at least five years.	Prospective adoptive parents are usually required to have been married for at least three years.
7. State Involvement	State involvement is relatively high, involving the Social Affairs Office, the Child Adoption Advisory Team (Tim PIPA), and formal approval by the district court.	State involvement is relatively limited; the court primarily plays a role in granting guardianship without a structured social supervision mechanism.
8. Mechanism of Child Adoption	The adoption process follows a multi-stage procedure, including foster care permission, eligibility assessment, recommendations from social institutions, and a formal court decision.	The process generally involves submitting a guardianship application to the court; if the biological parents are known, a written agreement relinquishing parental rights is usually required.
9. Implications for Child Protection	This framework provides greater legal certainty, clear procedural standards, and institutional accountability in the adoption process.	Child protection may still be substantively considered, but it has the potential to be less consistent due to reliance on judicial discretion and informal caregiving arrangements.

Source: Author's compilation based on various legal sources, including Government Regulation No. 54 of 2007 on the Implementation of Child Adoption, the Compilation of Islamic Law, the Guardians and Wards Act 1890, and relevant academic literature.

The table 1 above presents a comparative overview of the regulation of child adoption in Indonesia and Pakistan by highlighting the differences and similarities in legal principles, regulatory frameworks, requirements and procedural mechanisms of adoption, as well as

their implications for child protection. The presentation of this table is intended to systematically illustrate how legal codification in Indonesia and the legal vacuum in Pakistan shape the practice of child adoption and the level of legal protection afforded to children.

Conclusion

This study finds that the principle of the best interests of the child does not depend solely on the existence of a specific law governing child adoption, but rather on how this principle is institutionalized within the national legal system. Indonesia demonstrates that legal codification can strengthen child protection through legal certainty, standardized procedures, and the active involvement of state institutions at every stage of the adoption process. In contrast, Pakistan illustrates that even without codified adoption regulations, child protection can still be implemented substantively through the kafala system and guardianship mechanisms, although with a more limited level of legal certainty and consistency.

The main finding of this study challenges the assumption that the absence of a specific and comprehensive adoption statute necessarily results in an absence of child protection. The comparison between Indonesia and Pakistan demonstrates that child protection can be institutionalized through different legal pathways. Indonesia relies on a relatively codified adoption framework in which judicial determination and administrative safeguards provide formal mechanisms for regulating adoption and protecting children's rights. Pakistan, despite the absence of a dedicated statutory framework governing adoption, does not leave children entirely without legal protection. Instead, child protection is accommodated through guardianship and custody mechanisms, judicial oversight, and Islamic legal principles, particularly those concerning the preservation of lineage and the welfare of the child. This finding suggests that the central distinction between the two systems is not simply whether child protection exists, but how protection is legally institutionalized and how effectively different normative orders are coordinated. The Indonesian model provides greater formal legal certainty through codification, whereas the Pakistani model demonstrates that a regulatory gap can coexist with functional forms of child protection through guardianship (kafalah) and judicial mechanisms. The study therefore contributes a more nuanced understanding of legal reform in Muslim-majority states: effective child protection does not necessarily depend on adopting an identical model of legal codification, but on the capacity of the legal system to coordinate state law, Islamic norms, and institutional practices in a manner that safeguards children's rights and prioritizes their best interests.

This study has several limitations that should be acknowledged. First, as a normative legal study, the analysis is based primarily on legislation, judicial decisions, legal doctrines, and other documentary sources; therefore, it does not provide empirical evidence regarding how adoption and guardianship regulations are implemented in practice by courts, social institutions, adoptive parents, or children. Second, the comparative analysis is limited to

Indonesia and Pakistan, and the findings should therefore not be generalized to all Muslim-majority countries, which may have different historical, legal, and institutional contexts. Third, access to comprehensive and up-to-date Pakistani legal materials, particularly judicial decisions and other official sources concerning adoption-related practices, remains limited, which may affect the breadth of the comparative analysis. Future research could address these limitations by incorporating empirical field research, examining a broader range of Muslim-majority jurisdictions, and conducting more systematic analyses of judicial decisions and institutional practices. Such research would provide a more comprehensive understanding of how different legal frameworks operate in practice and affect the protection and best interests of children.

Statement of the Use of Artificial Intelligence

The authors used artificial intelligence (AI) technology solely to assist with language editing, grammar refinement, and improvement of the manuscript structure. All research design, data collection, legal analysis, interpretation of findings, and conclusions were conducted, reviewed, and verified by the authors. The authors take full responsibility for the content of this article.

Author Contribution Statement

Khusnul Amalia contributed to the conceptualization of the research, literature review, comparative legal analysis, data interpretation, and preparation of the original manuscript draft. Hikmiyyah contributed to the research design, legal source collection, and manuscript review. Mohammad Wildan Raja Mahasina contributed to the development of the analytical framework, comparative analysis, and critical revision of the manuscript. Husnul Khatimah contributed to data organization, literature verification, and manuscript editing. Raisa Rahim contributed to the interpretation of findings, manuscript proofreading, and final review. All authors have read and approved the final version of the manuscript.

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Conflict of Interest

The authors declare that there are no conflicts of interest that could have influenced the research process, analysis, interpretation of data, or publication of this article.

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