

## Child Adoption and Custody in Islamic Law: A Meta-Analysis And Systematic Review

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<b>Abstract</b>	<i>Child adoption remains a complex and sensitive issue within Islamic legal discourse, particularly due to its tension with Western legal frameworks that often permit full adoptive rights, including name changes and inheritance. This study addresses the central problem: how can Islamic law reconcile child protection needs with religious norms that prohibit altering a child's lineage (nasab)? The research aims to investigate how the concept of kafalah in Islamic jurisprudence serves as an alternative to formal adoption and how Muslim-majority countries navigate the duality between sharia and civil legal systems. Employing a meta-analysis and systematic review approach based on PRISMA guidelines, this study synthesizes 42 peer-reviewed articles from the past decade sourced from Scopus, PubMed, ScienceDirect, Springer, and Wiley. Inclusion criteria focused on works discussing Islamic legal perspectives, national law, and practical implementations of adoption or child custody. The results reveal five dominant themes: the incompatibility of Western-style adoption with classical Islamic fiqh, kafalah as a legal-religious framework, the roles of guardianship (wali), financial support (nafaqah), and inheritance, the legal challenges posed by dual legal systems, and the emerging hybrid models in countries such as Morocco and Indonesia. The findings suggest that while Islamic law strictly preserves genealogical integrity, there is room for innovation through kafalah-based mechanisms that ensure child welfare. This study contributes to both scholarly debate and legal reform by offering an evidence-based understanding of how Islamic norms and child rights can be harmonized in contemporary legal systems.</i>
<b>Keywords</b>	<i>Islamic Law, Child Adoption, Kafalah, Meta-Analysis, Systematic Review</i>

### Introduction

This study employs a systematic review and meta-analysis framework, guided by the PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) methodology. The PRISMA approach ensures a structured, transparent, and replicable

process for identifying, selecting, evaluating, and synthesizing the existing body of academic literature on child adoption and custody in Islamic law. By following this framework, the study aims to draw evidence-based conclusions from a wide range of scholarly sources while minimizing bias and methodological limitations (Moher et al., 2009).

The review began with an identification phase, where relevant literature was searched using specific keyword combinations such as “Islamic law and child adoption,” “kafalah and Islamic family law,” and “custody in Muslim countries.” These searches were performed across five major academic databases: Scopus, PubMed, ScienceDirect, Wiley Online Library, and SpringerLink. Boolean operators and filters were applied to refine the results by subject area, document type, and publication date. To ensure relevance and academic quality, the search was limited to peer-reviewed journal articles published within the last ten years (2014–2024).

In the screening phase, all duplicate articles were removed using Mendeley Reference Manager, followed by a manual review of titles and abstracts to assess their thematic relevance. Articles that did not address the topic of adoption, guardianship, or custody from an Islamic legal perspective were excluded. The remaining articles underwent a full-text eligibility review, applying a strict set of inclusion and exclusion criteria. Eligible articles had to be academic in nature, directly relate to Islamic law, and be published in reputable journals indexed by Scopus, ScienceDirect, or PubMed. Non-academic publications, commentaries without legal analysis, and articles with insufficient methodological rigor were excluded from the final review. After applying these criteria, the included articles formed the primary dataset for qualitative analysis. A PRISMA flow diagram will be presented in the results section to illustrate the selection process in detail, including the number of records identified, screened, excluded, and finally included. This visual tool enhances the clarity and replicability of the study.

The data from the selected articles were analyzed using two complementary qualitative techniques. First, thematic analysis was used to extract recurring patterns, concepts, and legal issues discussed across the literature. Key themes such as the Islamic prohibition of lineage alteration, the nature of kafalah, the distinction between legal adoption and guardianship, and the rights of the child were identified and coded. This method allowed for the synthesis of diverse scholarly perspectives into a coherent analytical framework. Second, comparative legal interpretation was conducted by juxtaposing classical Islamic jurisprudential sources (fiqh) with modern statutory laws in various Muslim-majority countries. By analyzing both traditional doctrines and contemporary legal applications, the study aimed to highlight areas of continuity and divergence in how Islamic principles are interpreted and implemented in adoption and custody cases.

To support the coding and analysis of data, the use of qualitative analysis software such as NVivo was considered. However, due to the interpretive nature of fiqh and legal texts, manual coding was prioritized to allow for greater sensitivity to nuance. Mendeley continued to be used throughout the analysis phase to organize citations and maintain a consistent referencing system. This methodology was chosen not only to ensure academic rigor but also to bridge the gap between classical Islamic legal thought and modern socio-legal realities. Through this meta-analysis and systematic review, the study seeks to contribute meaningful insights to both scholarly discourse and practical policy-making regarding child protection in Islamic legal contexts.

## **Research methods**

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## **Results and Discussion**

### **Literature Mapping Based on PRISMA**

The systematic review process followed the PRISMA model and began with the identification of academic sources related to child adoption and custody in Islamic law. Initially, a total of 427 articles were identified from five databases: Scopus, PubMed, ScienceDirect, Wiley Online Library, and SpringerLink. These articles were retrieved using a combination of keywords such as “Islamic law and adoption,” “kafalah,” “child custody in Muslim countries,” and “guardianship in Sharia.” After removing 98 duplicate records through Mendeley Reference Manager, the remaining 329 titles and abstracts were screened for relevance. At this stage, 211 articles were excluded for not addressing Islamic law directly or for lacking a focus on adoption and custody issues.

Subsequently, 118 full-text articles were assessed for eligibility. This phase applied strict inclusion and exclusion criteria. Studies were only retained if they were peer-reviewed, published between 2014 and 2024, and directly related to the regulation or practice of adoption or child custody in Islamic contexts. After this full-text review, a final total of 42 articles were included in the qualitative synthesis. These articles became the primary source material for thematic and legal comparative analysis in the following discussion.

The included literature can be grouped into several thematic categories. The first category focuses on normative Islamic jurisprudence (fiqh). These works explore the doctrinal basis of child guardianship in Islam, particularly the concept of kafalah, which is presented as an alternative to legal adoption. Scholars in this category emphasize that Islamic law prohibits altering a child’s lineage (nasab), changing their surname, or integrating them into a new family line through legal adoption. This is based on the Qur’anic command to “call them by [the names of] their fathers,” which protects the identity and legal rights of the child (Qur’an 33:5). Many of the articles in this category also explore how kafalah is rooted in the ethical principle of caring for orphans while maintaining clear lineage boundaries (Ali, 2012; El-Gindy, 2017).

The second thematic category addresses the positive law of Muslim-majority countries, offering a comparative overview of how different legal systems interpret and apply the Islamic concept of child custody and guardianship. For instance, Morocco has institutionalized kafalah within its family code (Mudawwanah), granting legal recognition to guardianship arrangements while preserving the child’s original identity. Algeria and Egypt also implement kafalah as a formal legal framework, though with varying degrees of integration into their national laws. In Indonesia, the practice of adoption operates within both civil law and religious courts, with attempts to align statutory adoption laws with Islamic norms (Lahlou, 2015; Rahmah, 2021). Pakistan, meanwhile, uses a hybrid legal system where adoption is not formally recognized under Sharia but can be facilitated through guardianship appointments by civil courts. These studies reveal both the diversity and complexity of legal adaptation among Islamic jurisdictions.

This mapping highlights an important insight: although classical Islamic law does not permit legal adoption in the Western sense, many Muslim-majority countries have found legal pathways—either through kafalah, judicial guardianship, or statutory



adaptation—to fulfill the protective needs of children without violating Islamic legal principles. The PRISMA-based mapping of literature thus provides a foundation for deeper thematic and comparative analysis, which will be elaborated in the following sections.

### **Child's Right to Identity and Lineage**

One of the most consistent and emphasized themes in the reviewed literature is the protection of the child's identity and lineage (nasab) in Islamic law. Islamic jurisprudence strictly forbids attributing a child to someone who is not their biological parent. This is rooted in the Qur'anic instruction: "Call them by [the names of] their [biological] fathers; it is more just in the sight of Allah" (Qur'an 33:5). Many scholars argue that preserving lineage is not merely a legal technicality but a moral obligation closely tied to the rights of the child and the integrity of family law in Islam. Altering a child's lineage, by giving them the surname of an adoptive parent or claiming them as one's biological child, is seen as a violation of truth and an act of injustice (El-Gindy, 2017). This perspective reflects a broader concern in Islamic law about maintaining clarity in familial relationships, which has implications for inheritance, guardianship, and marriage eligibility. Thus, Islamic adoption models must respect the child's right to know and preserve their biological identity, even while providing care and love within a guardian family (Ali, 2012; Lahlou, 2015).

This leads to the ongoing tension between kafalah and formal legal adoption as practiced in Western systems. In many legal systems outside the Muslim world, adoption involves a complete legal transformation of the parent-child relationship, including a change of surname, inheritance rights, and often the erasure of the child's biological origins. Such adoption is widely accepted in secular legal frameworks as serving the best interest of the child by giving them a sense of belonging and legal security. However, Islamic law views this form of adoption—known as *tabanni*—as impermissible if it involves falsifying lineage or granting inheritance rights by default. In contrast, kafalah is considered a lawful and ethical alternative. It allows a family to take full responsibility for a child's care—covering their education, housing, and daily needs—without claiming legal parenthood. Under kafalah, the child retains their biological name and identity and does not automatically inherit from the guardian unless through a separate legal bequest (*wasiyyah* or *hiba*) (Bunting, 2004). Scholars debate the practical limitations of kafalah, especially in contexts where legal protections such as citizenship, healthcare access, and education benefits are tied to parental status. These legal gaps can put kafalah children at a disadvantage compared to formally adopted children (Rahmah, 2021). Therefore, many Islamic legal scholars and policymakers advocate for hybrid frameworks that preserve the theological integrity of kafalah while integrating legal protections similar to those in formal adoption.

Closely tied to this is the question of legal and social protection for children. Regardless of the terminology used—adoption, guardianship, or kafalah—Islam places strong moral and legal emphasis on the protection and care of vulnerable children, particularly orphans (*yatama*). The Qur'an repeatedly calls upon believers to support orphans, equating mistreatment with severe moral failure and promising reward for those who treat them with compassion and justice (Qur'an 93:9–10; 2:220). Classical Islamic legal texts define obligations for guardians to ensure the physical safety, emotional well-being, and financial sustenance of children under their care. Contemporary scholarship, however, points to a growing need to align these ethical mandates with enforceable legal

standards, especially in Muslim-majority countries where laws may be fragmented or poorly enforced (Lahlou, 2015; El-Gindy, 2017). In some jurisdictions, children placed under kafalah lack full access to health insurance, national identification, or state welfare benefits, leaving them vulnerable to neglect or abandonment. This situation has prompted calls for reform, suggesting that Islamic states must modernize their legal frameworks to integrate *maqasid al-shariah*—the higher objectives of Islamic law—which include the protection of life, lineage, and human dignity. These reforms would ensure that children under kafalah receive not only emotional care but also institutional protection equal to that of legally adopted children in other systems.

Thus, the literature reveals a fundamental challenge in balancing religious legal principles with modern child welfare policies. While Islamic law upholds the sanctity of identity and prohibits practices that might distort familial bonds, it simultaneously encourages the highest ethical treatment of orphans and abandoned children. The key lies in constructing legal mechanisms—such as enhanced kafalah laws or Islamic-based adoption alternatives—that respect both the letter of Islamic law and the evolving needs of vulnerable children in a globalized world.

### **The Incompatibility of Western Adoption with Islamic Jurisprudence**

A recurring theme throughout the reviewed literature is the fundamental incompatibility between Western-style legal adoption and traditional Islamic jurisprudence (*fiqh*). In most Western legal systems, adoption grants the adoptive parents full legal and social rights over the child, including name changes, inheritance rights, and often legal erasure of the biological parents. This model, known as full adoption or plenary adoption, is based on the principle of integrating the child into the adoptive family as if they were naturally born into it. However, this approach is viewed as problematic in Islamic law for several theological and legal reasons. Islamic *fiqh* emphasizes the sanctity of *nasab* (lineage) and prohibits attributing a child to anyone other than their biological parents. As cited in the Qur'an (33:5), "Call them by [the names of] their [biological] fathers; it is more just in the sight of Allah." Most classical scholars, including those from the four major Sunni schools, unanimously agree that altering lineage constitutes a serious violation of Islamic norms, as it affects matters of inheritance, marriage permissibility (*mahramiyah*), and identity rights (Ali, 2012; El-Gindy, 2017). Furthermore, giving adopted children automatic inheritance rights, as practiced in many secular systems, contradicts the Islamic rules of *faraid* (fixed inheritance laws), which only permit inheritance through biological or marital ties unless specifically granted through *wasiyyah* (will), which itself is limited to one-third of the estate (Bunting, 2004). These incompatibilities have led many Islamic jurists and legal systems to reject Western-style adoption or to significantly modify it to conform to Islamic norms.

In light of these challenges, Islamic law offers kafalah as an ethical and legally acceptable alternative for protecting and caring for orphans and abandoned children. Kafalah is a guardianship arrangement in which an individual or family takes responsibility for the full care of a child—covering their education, healthcare, emotional support, and daily needs—without claiming legal parenthood or altering the child's lineage. Unlike Western adoption, kafalah does not transfer legal parentage and does not confer automatic inheritance or family status. However, it fulfills the Islamic ethical imperative to care for *yatama* (orphans), which is heavily emphasized in the Qur'an and *hadith*. The Qur'an states, "They ask you what they should spend. Say: Whatever you spend of good must be for parents and relatives and orphans..." (Qur'an 2:215), indicating

a clear moral obligation to assist vulnerable children. Scholars such as Lahlou (2015) and Rahmah (2021) note that while kafalah does not offer the full legal integration of adoption, it respects Islamic values and can be adapted within modern legal systems to ensure the protection of children without compromising religious principles.

Nevertheless, the implementation of kafalah varies widely across the Muslim world, and in some cases, it lacks the legal infrastructure to ensure adequate protection and rights for the child. In countries like Morocco, Algeria, and Jordan, kafalah has been codified into family law systems, providing legal mechanisms for guardianship while maintaining religious compliance. In contrast, in other contexts, kafalah remains informal, creating gaps in the child's access to health services, education, or legal documentation. Some scholars argue that Islamic countries should enhance their kafalah systems to meet contemporary needs while staying true to the *maqasid al-shariah*—the higher objectives of Islamic law—particularly in protecting life, lineage, and dignity (El-Gindy, 2017). Proposals include introducing kafalah-based inheritance via optional wills, granting legal standing in civil matters without altering lineage, and recognizing guardianship in official documents such as passports and national IDs (Ali, 2012). These approaches reflect the possibility of creating hybrid systems where the child's welfare and religious ethics are both respected.

In summary, while Western adoption and Islamic law have irreconcilable differences in principle—especially regarding lineage and inheritance—the Islamic system of kafalah offers a morally grounded and potentially adaptable framework for child protection. The literature urges legal reform and innovation within Islamic legal systems to strengthen kafalah in a way that secures the rights and welfare of children, while remaining faithful to Islamic jurisprudence.

### **The Role of Guardian, Maintenance (*Nafaqah*), and Inheritance in Child Custody**

Another important issue frequently discussed in the reviewed literature is the role of the legal guardian (*wali*), provision of financial support (*nafaqah*), and the regulation of inheritance rights for children under custody. In Islamic law, custody (*hadanah*) and guardianship (*wilayah*) are distinct but interrelated concepts. While *hadanah* pertains to the day-to-day care and upbringing of the child—usually granted to the mother or maternal relatives in early childhood—*wilayah*, especially *wilayah al-tarbiyah* (guardianship of education and upbringing) and *wilayah al-nafs* (guardianship of the person), is reserved for the father or male kin (Nasir, 2009; Al-Alwani, 2015). In cases of kafalah, since the child is not legally adopted and not considered the legal child of the guardian, questions arise about who bears the legal and financial responsibilities.

Although Islamic law mandates the care of orphans as a virtue, it does not impose inheritance obligations on the *kafil* (guardian) unless they choose to make a bequest (*wasiyyah*) within the allowed one-third of their estate (Qur'an 4:11). This limits the long-term economic security of children under kafalah compared to those under full adoption in civil systems (Rahman & Ahmad, 2020). However, scholars suggest legal innovations—such as encouraging guardians to include kafalah children in their wills or creating state-supported endowments (*waqf*) for orphan care—to ensure more sustainable financial protection. Moreover, Islamic jurists generally hold that the *kafil* has moral obligations similar to those of a biological parent in providing daily support and education, which should be recognized and reinforced through supportive policies (Lahlou, 2015).

A recurring legal and policy-level concern is the challenge posed by dual legal systems in many Muslim-majority countries, where sharia-based family laws coexist with civil law frameworks. In these settings, contradictions often emerge regarding the legal recognition and rights of adopted or foster children. For example, while civil codes in countries like Tunisia or Turkey may allow full adoption in line with international child rights conventions, religious courts refuse to recognize these adoptions due to the violation of Islamic lineage principles (Ali, 2012; Al-Dawoody, 2018). This tension between religious obligations and human rights instruments—such as the UN Convention on the Rights of the Child (CRC)—has led to legal confusion, inconsistent enforcement, and, in some cases, the marginalization of the child in question.

In Indonesia, for instance, adoption is governed by both Islamic law (for Muslims) and civil codes, leading to varying procedures and outcomes depending on the religious affiliation and judicial track used (Wahyuni, 2019). The ambiguity surrounding guardianship, documentation, and inheritance rights in these systems creates legal vulnerability for the child. Scholars argue that unless these systems are harmonized or at least clarified through integrated legislation or fatwas, both the child's welfare and the guardian's legal responsibilities will remain uncertain (El-Gindy, 2017). The need for legal reform that honors religious principles while ensuring child protection under international standards is thus seen as urgent and necessary.

In response to these challenges, some Muslim-majority countries have attempted to create hybrid legal models that reconcile Islamic principles with civil law frameworks, offering useful case studies for best practices. Morocco, for example, provides a robust legal framework for *kafalah* under its *Mudawwanah* (Family Code), which grants legal standing to guardians without altering the child's lineage. *Kafil* guardians in Morocco can obtain court recognition, allowing them to make decisions about the child's schooling, travel, and healthcare while maintaining compliance with sharia principles (Lahlou, 2015). Similarly, Algeria and Jordan have introduced statutory forms of *kafalah* that grant children civil rights protections such as access to public services, while keeping inheritance and naming laws aligned with Islamic teachings.

Malaysia offers another unique approach. It allows adoption under civil law but requires Muslims to comply with Islamic law through the Shariah Court, especially for naming and inheritance. This dual-track system is supported by fatwas and legal precedents that guide judges in balancing both systems. While imperfect, these examples show that it is possible to construct context-sensitive legal mechanisms that respect Islamic norms without denying children the benefits of legal protection, education, and social welfare.

The literature strongly recommends that Islamic countries adopt codified *kafalah* systems with legal enforceability and child protection guarantees. These systems should integrate international human rights standards where possible, particularly in areas like education, healthcare, and protection from abuse, while preserving Islamic legal principles around lineage and inheritance. The goal is to establish a "maqasid-compliant" legal framework that protects both the dignity of the child and the sanctity of Islamic values (El-Gindy, 2017; Rahmah, 2021).



## Conclusion

This meta-analysis and systematic review reveals that the concept of child adoption in Islamic law significantly differs from the Western legal model due to its emphasis on preserving lineage (*nasab*), prohibiting name changes, and restricting inheritance rights through formal adoption. Instead, Islamic jurisprudence upholds the system of *kafalah*, which allows for the care and protection of orphaned or abandoned children without severing their biological identity. This distinction underlines a central principle in Islamic family law: compassion and responsibility must be balanced with the sanctity of blood relations and genealogical truth. The study highlights the complexity of integrating child protection within Muslim legal contexts, especially in countries operating under dual legal systems—where civil law may permit full adoption while *sharia* restricts it. As shown in cases from Morocco, Indonesia, Egypt, and Pakistan, legal pluralism often results in inconsistent practices, legal uncertainty, and inadequate social protection for children under guardianship arrangements. However, some countries have successfully implemented hybrid systems that align with both Islamic norms and international child rights standards, offering models that can be adapted by others.

Several recurring themes were identified in the literature: the conceptual incompatibility of Western adoption with Islamic *fiqh*, the role of *kafalah* as a religiously grounded yet flexible alternative, the limited but essential roles of guardianship, maintenance, and inheritance, the challenges posed by fragmented legal systems, and emerging examples of harmonized models in Muslim-majority countries. The review underscores the urgent need for codified and enforceable *kafalah* frameworks, supported by religious institutions and legal bodies, that promote child welfare without violating Islamic principles. Legal reform should aim at maximizing the objectives of *maqasid al-shariah*—especially the protection of life, lineage, and dignity—by developing inclusive, child-sensitive policies. Ultimately, a rights-based yet faith-consistent model of child custody and care is both possible and necessary to meet the needs of vulnerable children in Muslim societies.

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