

Juridical Examination of Foster Care in Malaysia: Navigating Legal Dimensions

Muhammad Daniel Misni¹, Nadhilah A.Kadir^{2*} 

¹Fakulti Undang-Undang, Universiti Kebangsaan Malaysia, 43600 Bangi, Selangor, Malaysia.
Email: a179762@siswa.ukm.edu.my

²Fakulti Undang-Undang, Universiti Kebangsaan Malaysia, 43600 Bangi, Selangor, Malaysia.
Email: nadhilah@ukm.edu.my

CORRESPONDING AUTHOR (*):

Nadhilah A.Kadir
(nadhilah@ukm.edu.my)

KEYWORDS:

Foster care
Alternative care
Family-based care
Child protection
Child Act 2001

CITATION:

Muhammad Daniel Misni & Nadhilah A.Kadir. (2023). Juridical Examination of Foster Care in Malaysia: Navigating Legal Dimensions. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 8(12), e002640.
<https://doi.org/10.47405/mjssh.v8i12.2640>

ABSTRACT

Foster care plays a crucial role for children in Malaysia who lack a family environment, making it challenging for them to stay with their biological families. This study examines foster care as an alternative care option for children in Malaysia, delving into its concept, legal aspect as well as international and Islamic perspectives. The aim is to identify ways to enhance foster care within Malaysia's child protection system, focusing on abandoned and parentless children. The Child Act 2001 and the practice of the Department of Social Welfare oversees foster care, aiming to provide family-based care and reunite children with their families whenever possible. Using a qualitative approach, the study uncovers shortcomings in the current legal framework. Despite limited provisions for foster care in Malaysia, the emphasis is on bolstering legislation by improving resources and support for foster parents, implementing standardized training, strengthening monitoring, and fostering collaboration among agencies. These efforts are crucial for ensuring positive outcomes and the well-being of fostered children in Malaysia.

Contribution/Originality: This study contributes to the existing literature by providing a legal analysis of foster care in Malaysia, highlighting gaps in the legal framework, and proposing improvements. The paper's primary contribution is its systematic examination, offering insights for enhancing the effectiveness of the country's foster care system

1. Introduction

Alternative or substitute care is a significant component of the child protection system. When children cannot stay with their parents because of certain circumstances, they may be placed in alternative care. In such situations, most children reside with other families, such as relatives or foster families. However, some end up in non-family settings like institutions, which can adversely affect their development and well-being. Numerous nations are actively striving to reduce the count of children in institutional care and, when feasible, to maintain their placement with their families. This aligns with the

United Nations Convention on the Rights of the Child (CRC) and the Guidelines for the Alternative Care of Children. These guidelines advocate for keeping children with their families whenever possible, and when that's not feasible, it becomes the state's responsibility to ensure the protection of the child's rights. The state ought to provide appropriate alternatives for care, such as kinship care, foster care, other family-based arrangements, or group homes. Alternative care should only be employed when essential, and its primary aim should be the child's well-being, including, if possible, the reunification with their family (UNICEF, 2023).

Foster care is a vital support system for children in Malaysia facing challenges like neglect, abuse, or abandonment, providing an essential alternative care option within the country's child protection system. The purpose of alternative care is to replace the care provided by biological parents, either partially or entirely (Hunt, 1982).

According to the [Encyclopedia of Children's Health \(2022\)](#), foster care entails providing full-time substitute care for children, removing them from their biological or legal guardians' homes and placing them under the care of individuals other than their biological or adoptive parents. This arrangement arises from diverse circumstances, with foster parents typically having clearly defined responsibilities toward the foster child, often outlined in a legally binding contract.

Furthermore, according to the [Dewan Bahasa Dan Pustaka \(2017\)](#), "care" (*jagaan*) translates to supervision or control, while "foster" (*pelihara*) means to protect, care for, or nurture, for example, a child until they reach adulthood. In general, foster care may refer to the supervision and control of children with the intention of protecting, caring for, or nurturing them until they reach adulthood.

In legal terms, the [Adoption and Foster Care Analysis and Reporting System \(AFCARS\) \(2020\)](#) in the United States, in accordance with the Code of Federal Regulations (CFR), characterizes foster care as the provision of 24-hour substitute care for children, taking them out of their own homes. However, under Malaysian law, there is no specific definition related to foster care. Nevertheless, section 2 of the [Child Act 2001](#) provides definition for a "foster parent," as someone who is not the mother, father, or sibling of a child. In Malaysia, the concept of foster care is somewhat less familiar compared to adoption. It is also crucial to be aware that adoption and foster care represent two distinct concepts although both forms of care are based on family care (Chan, 2008).

1.1. Problem Statement

Foster care is an alternative care model centered on providing family-based care for children in need of care and protection. In accordance with section 17 of the [Child Act 2001](#), the category of children requiring care and protection encompasses those who are orphaned, abandoned, subjected to abuse, or exposed to neglect. Significantly, there is a global trend towards an increasing preference for family-based care for children. In line with this, amendments to the Child Act 2001 in 2016 in Malaysia prioritize family-based care for these children, considering institutional care as a last resort ([Government of Malaysia, 2016](#)). The initiation of family-based care in 2017, prompted by the amendments, underscores the priority for biological and foster parents in offering care, protection, and rehabilitation to children. This move strives to place these children in family-based settings rather than institutions (Chan, 2015; Joyce, 2023). Nevertheless, the implementation of family-based care in Malaysia lacks a dedicated legal framework

for the arrangement of children into foster care, with only limited provisions outlined in the [Child Act 2001](#).

1.2. Research Objectives

This article explores the concept and legal implementation of foster care, considering it as one of the alternative care options available in Malaysia. By scrutinizing existing legislation, the article aims to identify areas where improvements can be made to enhance the effectiveness of foster care as part of the child protection system in Malaysia. Legal policy improvement suggestions will be provided to enhance the quality of foster care, ensuring the best protection for the health, safety, and stability of children within the foster care system practiced in Malaysia.

2. Literature Review

2.1. Concept of Foster Care

[King \(1989\)](#) illustrates the emotional, financial, legal, and practical implications of taking children or others' children into one's care. The book explains the distinctions between the concepts of foster care and adoption and their effects on biological parents and foster parents. Although there is no explanation from an Islamic perspective, the comparison of these two concepts serves as a basis for the research approach to understanding the actual concept and critical analysis in this study.

[Stahl \(1990\)](#) provides practical guidance on how to nurture foster children, emphasizing the emotional impact of their placement and their specific needs and issues from infancy to adolescence. While this general guide offers advice to those interested in becoming foster parents and addresses foster care-related matters, it is not specifically linked to legislation or legal perspective.

[Frost's \(2005\)](#) collection focuses on the welfare of children in a specific aspect, namely, welfare and social interventions with children and youth managed by government or non-governmental organizations. The term 'child welfare' is used differently in various international settings, with examples such as in the United Kingdom, where it tends to refer to individual programs for children experiencing problems in their lives including foster care. However, there is no discussion about foster care from the Malaysian perspective in this collection.

Several literature discuss foster care in Islamic law, referring to it as "*kafalah*." [Ahmad \(1999\)](#) elucidates that Islam permits a form of adoption known as *kafalah*, outlined in the Family Code of Algeria, where individuals promise to fulfill the responsibilities of caring, educating, and protecting a minor child without remuneration. This stands in contrast to Western adoption, with Islam emphasizing the maintenance of blood ties and denying adopted children recognition. [Al Jawdah \(2020\)](#) and [M Usang and Sloth-Nielson \(2014\)](#) explore *kafalah* as a protective measure in Islam, aligning with Article 20 of the CRC addressing alternative care. [Grosz \(2006\)](#) notes that *kafalah*, akin to permanent foster care, does not confer the foster family's name or inheritance rights on the child.

2.2. Foster Care in Malaysia

[Mohd \(2008\)](#) and [A.Kadir \(2011\)](#) have emphasized that foster care and adoption are crucial mechanisms for protecting children in need of care and protection, especially children without parental care in Malaysia. [Chan \(2008\)](#) conducted a comparative

analysis to investigate the concepts of foster care and adoption based on practices in Malaysia. Furthermore, focusing on the concept of foster care in Malaysia, [Bajuri, Sarnon@Kusenin, Saim, and Ibrahim \(2018a\)](#) investigated foster parents' knowledge, revealing that experiential learning played a crucial role. [Bajuri, Sarnon@Kusenin, Saim, and Ibrahim \(2018b\)](#) delved deeper into foster parents' knowledge, examining potential misunderstandings between foster care and adoption. Similarly, [Chan and Raja Halim \(2019\)](#) assessed foster parents' understanding, focusing on key aspects like the lack of a clear "foster child" definition, motivations for applying, and post-placement feelings. While these studies provide insights into foster care practices, there remains a notable gap concerning the legal and policy dimensions of foster care in Malaysia.

[A.Kadir \(2011\)](#), [Mohd and A.Kadir \(2012; 2014\)](#), [A.Kadir and Mohd \(2022\)](#) have extensively researched the foster care concept and its application in Malaysia, taking into account the constraints within the Child Act 2001 and incorporating Islamic viewpoints. They underline the pivotal role of the Department of Social Welfare in regulating foster care. [A.Kadir and Mohd \(2021\)](#) specifically investigated the engagement of the private sector in providing foster care services for parentless children in Malaysia. Despite active involvement in institutional care, the private sector, including non-governmental organizations, faces constraints in delivering family-based foster care services. According to [A.Kadir and Mohd \(2021\)](#), the Department of Social Welfare holds exclusive authority over the arrangement of foster care services in Malaysia. However, OrphanCare, a non-governmental organization, has been allowed to manage foster care for abandoned children but is subject to approval from the Department of Social Welfare. In the absence of dedicated legislation for foster care in Malaysia, the processes related to fostering a child rely on the established practices of the Department of Social Welfare. Relevant details, including the process for applying to become a foster parent, the qualifications required, and information about allowances, can be accessed on the official website of the [Department of Social Welfare \(2023b\)](#). However, these studies offer a limited perspective on the guidelines and the importance of amendments made to the Child Act 2001 in 2016, particularly from the perspective of foster care as family-based care. As a result, there is still a gap in understanding the implications of these legal changes on foster care practices in Malaysia, emphasizing the need for further research in this area.

3. Research Methodology

This study employs a qualitative approach, utilizing the method of pure legal research to achieve its objectives. The focus is on doctrinal legal research, exploring legal issues related to foster care and its concept in Malaysia. The study relies on literature, including primary sources (laws and court cases) and secondary sources (journals or articles by academic experts discussing the legal perspective of foster care).

The primary method for data collection is through literature review, accessing both primary and secondary sources. After gathering the data, analysis is conducted using a comparative approach and critical analysis. The comparison will center on foster care and its concept in Malaysia, international law, and Islamic perspectives. Critical analysis will be applied to evaluate principles, regulations, or cases discussed in the study.

4. Research Findings

4.1. Foster Care: Legal Protection Mechanisms in Contrast with Adoption

Foster care is a system designed to provide temporary care for children facing challenges that prevent them from living with their biological parents, such as issues of abuse, neglect, or abandonment. The primary objective of foster care is to ensure a secure and nurturing environment for these children while waiting for reunification with their biological family or permanent placement through adoption (Stahl, 1990). For example, in the United States, the Child Welfare and Adoption Assistance Act of 1980 grants the government legal authority to remove children from homes when they are in danger under the care of their parents. Legally, the government becomes the legal guardian of the foster child without transferring legal rights from biological parents to foster parents. However, there are challenges in selecting qualified foster parents, leading to overcrowding in institutions. To enhance the foster care system, more support needs to be provided for both foster children and parents, including counseling services and financial assistance. While the system provides essential services, further efforts are required to ensure that each child receives adequate care and support while in the foster care system (King, 1989; Stahl, 1990).

When compared to foster care, adoption refers to a legal process in which individuals or couples become the legal and permanent parents of a child who is not their biological offspring (The New Encyclopaedia Britannica, 1989). Adoption typically occurs when a child cannot receive adequate care from their biological parents or when the biological parents voluntarily choose to relinquish their rights. Adoption is also defined as the action or process of taking an adopted child (Merriam-Webster, 2023). Moreover, it is a complex legal process that can vary depending on jurisdiction, the type of adoption being pursued (domestic, international, etc.), and other factors. It often involves extensive legal and social work assessments to ensure that the adoption aligns with the child's best interests. Upon adoption, the adopted child shares all the rights of a biological child, including those related to care, financial support, and inheritance, and attains an equal status in terms of blood relation and family (The New Encyclopaedia Britannica, 1989). According to the United Nations (2020) and UNICEF (2023), adoption serves as a crucial means to secure a permanent family for children unable to reside with their biological parents. In this context, prioritizing the best interests of the child should be the central consideration in all matters related to children, including adoption (United Nations, 2020; UNICEF, 2023). This emphasizes that the adoption process should consistently prioritize the child's best interests, placing their well-being as the utmost priority.

In the case of *Re TSY (An Infant)* [1988] 3 MLJ, a boy was placed with foster parents shortly after birth and spent almost four and a half years under their care, forming a strong attachment to the foster family. When the natural parents sought to reclaim him, the foster parents applied for adoption under the Adoption Act 1952. The natural mother's poor health, financial difficulties, and a belief rooted in Chinese superstition—that the boy, born with two teeth, would be challenging to raise—all contributed to the initial placement in foster care. Notably, the foster father had a prior relationship with the natural father, having been his employer. Given their familiarity, the foster parents were entrusted with the child's care. The court, taking the circumstances of the case into account including the welfare of the child, granted the petition for adoption. This case highlights how the practice of foster care, in certain situations, may eventually lead to adoption when deemed most beneficial for the child.

Foster care is commonly seen as a temporary arrangement, primarily aimed to facilitate the reunion of the child with their biological family. The overarching goal is family reunification, emphasizing the potential for the child to return to their original home. However, if this reunification is deemed unattainable, adoption becomes a viable consideration, particularly after a specific period of time. Unlike foster care, adoption represents a permanent placement for the child. In the adoption process, the child becomes an integral part of a new family, establishing legal and emotional ties that endure indefinitely. This fundamental shift transforms the child's status from a temporary guest in foster care to a full-fledged member of an adoptive family, providing them with a stable and enduring home environment. Furthermore, a crucial distinction between foster care and adoption lies in the legal status of the child. Adoption involves the permanent termination of legal rights of biological parents, transferring full parental rights to adoptive parents. This legal process establishes a new and permanent family structure for the child. Conversely, in foster care, the biological parents usually retain their legal rights. Foster parents, in this scenario, are granted temporary custody and responsibility for the child's care. The intent is to provide a supportive environment for the child until the circumstances allow for potential reunification with the biological family. As such, the legal ties between the child and their biological parents remain intact during the period of foster care (A.Kadir, 2011; Mohd, 2008). It is crucial to acknowledge that while long-term foster care is an option, it does not grant the same legal rights to the foster child and foster parents as adoption does. Adoption results in a complete legal and familial transformation for the child. Another noteworthy difference pertains to financial support. Foster parents receive an allowance for caring for the foster child, as stipulated by the [Department of Social Welfare \(2023a\)](#). In contrast, adoptive parents are not eligible for any allowance or financial assistance, as they assume full financial responsibility for raising the child, considering the child as their own. This financial distinction reflects the contrasting nature of temporary foster care and the permanent commitment associated with adoption.

Therefore, foster care and adoption stand as distinct methods of caring for children who are unable to reside with their biological parents. Each option has its benefits and challenges, and it is crucial to carefully consider them before making a decision. Ultimately, the best choice for a child depends on their circumstances and the potential caregiver's ability to provide the best protection for the child.

4.2. International Policies Shaping Foster Care Systems

The CRC is an international agreement outlining the fundamental rights of children and ratified by nearly all countries worldwide, except for the United States. The CRC establishes the rights and responsibilities of governments, parents, and individuals in ensuring the welfare and protection of children. It recognizes every child's right to grow up in the best possible environment, ideally with their biological parents. However, in situations where a child cannot live with their parents or family, the CRC emphasizes the importance of alternative care, such as foster care and adoption, for the child's best interests.

Article 20 of the CRC states that children experiencing temporary or permanent deprivation of their family environment, or whose best interests cannot be realized within that context, are afforded special protection and assistance from the State or government. This article acknowledges the right of children to a family environment but also recognizes that, in certain situations, it may be in the child's best interest to be

placed in institutional care. Thus, when a child lacks a family to care for them, the government must provide special protection or assistance, including alternative care such as adoption, foster care, *kafalah*, and other forms of support, to ensure the child's physical, emotional, and psychological needs are met. Overall, Article 20 of the CRC aim to ensure that children unable to be cared for by their families receive the necessary protection, care, and support to thrive and develop in a safe and nurturing environment including foster care. When deciding on suitable long-term care for these children, three key factors come into consideration, namely, solutions centered on family, lasting resolutions, and national approaches (Inter-Parliamentary Union and UNICEF, 2004). This highlights the crucial significance of family-centric care in offering children without parental care a supportive family setting.

As the CRC lacks detailed standards for foster care, the United Nations General Assembly addressed this gap by adopting a Declaration on Social and Legal Principles concerning the Protection and Welfare of Children in 1986 (Inter-Parliamentary Union and UNICEF, 2004). This declaration, encompassing Articles 10 and 13, underscores the significance of legislating foster placement and ensuring competent supervision by relevant authorities or agencies to safeguard the child's well-being. Alternatively, the United Nations (2010) has issued guidelines and principles regarding alternative care for children, including foster care, known as the "Guidelines for the Alternative Care of Children." These guidelines were formulated to guarantee the well-being and protection of children unable to reside with their biological families. While not imposing specific legal obligations, they provide a framework for countries to shape their policies and practices related to foster care and other alternative care forms. Notably, the Guidelines prioritize the best interests of the child in any decision about alternative care, guiding actions and decisions related to the child's care and protection. Emphasizing the importance of a family environment in the child's development, the guidelines specifically address foster care by stressing the careful matching of foster parents with children and the establishment of a pool of accredited foster carers. It is essential to identify and establish support systems for these foster carers, ensuring their readiness to provide a nurturing environment (United Nations, 2010).

Therefore, the adoption of the Declaration on Social and Legal Principles in 1986, along with the "Guidelines for the Alternative Care of Children," highlights the importance of legislating foster placement and ensuring the well-being of children without parental care. The ultimate goal is to ensure that children in foster care receive the necessary care and support to thrive in secure and loving family homes.

4.3. Islamic Principles Guiding Foster Care Practices: An Overview

In Islam, the concept of foster care is known as "*kafalah*." *Kafalah* refers to the act of caring for foster children or children in need by providing them with love, support, and protection as if they were part of one's own family. It is considered a highly commendable action in Islam, emphasizing the importance of caring for vulnerable children and ensuring their well-being (Ahmad, 1999).

In the Islamic tradition, foster care through *kafalah* involves taking in foster children and providing a conducive environment to support their well-being. This includes meeting their physical, emotional, educational, and spiritual needs. Foster families are expected to treat the children with love, respect, and kindness, providing them with a stable and caring home. It is essential to note that *kafalah* does not establish a legal parent-child relationship between foster parents and the child. The child retains their

biological lineage and inheritance rights from their biological parents. However, foster parents are responsible for the welfare of the child and are encouraged to raise them according to Islamic values and teachings (M Usang and Sloth-Nielson, 2014).

In [Surah Al-Baqarah \(2:83\)](#), Allah states:

And remember We took a covenant from the Children of Israel (to this effect): Worship none but Allah; treat with kindness your parents and kindred, and orphans and those in need; speak fair to the people; be steadfast in prayer; and practise regular charity. Then did ye turn back, except a few among you, and ye backslide (even now).

This verse emphasizes the responsibility of Muslims to care for orphans and treat them with kindness and compassion. Islam also emphasizes justice and fair treatment of foster children. In [Surah An-Nisa \(4:127\)](#), Allah says:

They ask you [O Prophet] regarding women. Say, "It is Allah Who instructs you regarding them. Instruction has 'already' been revealed in the Book concerning the orphan women you deprive of their due rights but still wish to marry, also helpless children, as well as standing up for orphans' rights. And whatever good you do is certainly well known to Allah."

This verse reminds believers to fulfill the rights of orphans and safeguard their interests.

In the Islamic perspective, adoption is not permitted as it recognizes adoptive parents as biological parents. However, the concept of *kafalah*, which also reflects foster care, is allowed to protect orphans or abandoned children who do not have a family. In the system of *kafalah*, the connection between the child and their biological parents is preserved, and the foster child is unable to inherit unless it occurs through a gift or will. (Mohd, 2008). Under the Islamic family law in Malaysia, there exists no explicit provision specifically addressing foster care. Furthermore, foster care remains undefined in any of the State Enactments. Section 78 of the [Islamic Family Law \(Federal Territories\) Act 1984](#) contains a broad provision outlining a man's responsibility to support a child not biologically related to him but embraced into the family and acknowledged as one of its members. While this provision doesn't explicitly define foster care, it becomes relevant when an individual takes a child without a blood relation into the family for care. In essence, this provision mirrors the broader concept of foster care or *kafalah* under Islamic law.

Therefore, it can be observed that the Islamic perspective mutually recognise *kafalah* as a mechanism or form of care for protecting children. This is crucial to ensure the well-being of children in need of care and protection, particularly in family-based care. Even without the legal transfer of parental rights to foster parents, these children can still be nurtured in a family environment, fostering healthy growth in physical, mental, and emotional aspects.

4.4. Legal Framework for Foster Care in Malaysia

4.4.1 Child Act 2001 (2016 Amendment)

Part V of the [Child Act 2001](#) is the primary legislation regulating the care and protection of children in Malaysia. The [Child Act 2001](#) also provides several provisions related to foster care for children in need of care and protection. Formal foster care is regulated by

the Department of Social Welfare to place abandoned or children without parents in the care of suitable foster parents under a court order, as provided under section 30(1)(c)(i) of the Child Act 2001 (Amendment 2016). The child will be fostered for a period of two years or until they reach the age of eighteen, whichever is shorter. Pending finding a suitable foster parent, the child is placed in a place of safety or institution.

Before the court order under this provision is made by the Court For Children, the Department of Social Welfare will advertise to find parents or guardians for the child. If no one claims the child after thirty days, the Department of Social Welfare will recommend the court place the child in the care of foster parents. Foster parents need to be approved as suitable by the Director-General of the Department of Social Welfare through the Foster Care Program (A.Kadir, 2011). In making the order, the court shall consider the best interests of the child as the primary consideration and take into account the report prepared by the officer from the Social Welfare Department (Child Act 2001, ss. 30(5), 30(6)). This report generally consists of information regarding the child's background and medical history.

For abandoned children, the court may make an order under section 30(4) of the Child Act 2001 for the foster child to be adopted either by the foster parents or someone else when the two-year period ends, and the biological parents cannot be located after specific steps have been taken. In this regard, the consent of the child's parent or guardian will be dispensed with (Child Act 2001, s. 30(4)(aa)). The adoption process must be made according to the adoption statutes in Malaysia, namely, the Adoption Act 1952 (exclusively for non-Muslims), the Registration of Adoptions Act 1952, Sabah Adoption Ordinance 1960 and Sarawak Adoption Ordinance (Child Act 2001, s. 30(4)(bb)).

In addition to these provisions, the Child (Family-Based Care) Regulations 2017 are regulated in the implementation of family-based care. These regulations are also applicable to the placement of children in foster care under section 30(1)(c)(i). The regulations cover the selection and qualifications of foster parents, the responsibilities of foster parents, and the obligations of parents or guardians to support the practice of the Department of Social Welfare.

4.4.2 Practice of the Department of Social Welfare

The Department of Social Welfare Malaysia is a crucial government agency in charge for delivering social welfare services to Malaysian citizens. Its primary objective is to enhance the quality of life by offering financial assistance, healthcare, education, and other social services to those in need. The department has played a significant role in assisting vulnerable groups such as the elderly, persons with disabilities, and low-income families. Additionally, it has addressed issues related to child abuse and neglect, including abandoned infants, through the Child Foster Program.

According to the Department of Social Welfare (2023b), a foster child is defined as a child ordered by the Court For Children for care, custody, and control by foster parents under section 30(1)(c)(i) of the Child Act 2001. Foster parents are individuals or couples offered a foster child by the Director-General of Social Welfare Malaysia, responsible for nurturing, caring, and overseeing the child. However, the definition of a foster child differs from an adopted child. According to section 6(1) of the Registration of Adoptions Act 1952 (Act 253), an adopted child refers to a child who has been continuously fostered, cared for, and raised by someone or a couple as their de facto adopted child for

for a continuous period of two years preceding the adoption application date ([Department of Social Welfare, 2023b](#)).

The introduction of foster care seeks to provide childless couples and foster children with the experience of family life and encouraging family-based care. Additionally, foster parents can provide love and care to foster children, offering them opportunities for holistic growth in physical, mental, social, emotional, and psychological aspects. Foster care also facilitates foster children to receive a better and more comprehensive holistic education ([Department of Social Welfare, 2023b](#)).

However, several application requirements are imposed for fostering children, as outlined by the Department of Social Welfare. Firstly, foster parents must be Malaysian or non-Malaysian citizens residing in Malaysia, aged 25 and 18 years older than the foster child, with a valid marriage of at least five years. For marriages less than five years, applications will be considered if they are experiencing reproductive health complications, late marriages, or other health difficulties. Single applicants may also be considered. Moreover, applicants must have a sustainable income to support the family's livelihood. Applicants should also be mentally and physically healthy. The proposed residence for the foster child must be suitable and safe ([Department of Social Welfare, 2023b](#)).

For applicants seeking to foster a child, several supporting documents are required during the application process. These include passport-sized photos of both spouses, a medical officer's confirmation letter regarding the health status of the applicants (husband/wife), copies of identification cards (husband/wife), and marriage certificates or marriage registration certificates. Proof of income (husband/wife) such as salary slips or income verification is also necessary during the application process. Additional supporting documents like Medical Expert Reports, other support letters, and the like can be included ([Department of Social Welfare, 2023b](#)).

Finally, once all required documents are complete, applicants can submit their applications online through the Foster Child Application System website or physically attend the District/Sectoral Social Welfare Office (PKMD/J) where the applicant resides. Applicants must cooperate with the Social Welfare Department Officer for interviews and home visits during the assessment process. It needs to be noted that the application remains valid for a specified duration. Applications considered by the State Director of Social Welfare will be registered in the foster parent list for a valid period of 2 years from the date of consideration, with an additional 1-year extension. If the applicant does not receive an offer within this 3-year period, a new application must be resubmitted to the nearby District/Municipal Social Welfare Office ([Department of Social Welfare, 2023b](#)).

The Director-General of Social Welfare will offer foster children to applicants placed on the waiting list after the Foster Child Placement Panel Meeting. This marks the beginning of the matching process between the child and suitable foster parents ([A.Kadir, 2011](#)). The Department of Social Welfare also provides Foster Child Assistance starting at a rate of RM250 per month per child. However, a maximum of RM500 per month is paid for a family fostering two or more children. Foster parents appointed through a court order or through the Social Welfare Department's Foster Child Program can apply for this Foster Child Assistance ([Department of Social Welfare, 2023a](#)). When a successful foster care placement occurs, the Department of Social Welfare conducts

observations over two years to ensure the foster child is not neglected and is well cared for by the foster parents (A.Kadir, 2011).

4.5. Discussion

Foster care in Malaysia lacks specific legislation, with only limited provisions in the Child Act 2001 addressing it. The Department of Social Welfare plays a crucial role in the placement of children in need of care and protection into foster care, managing their well-being. However, there is room for improvement by the Department of Social Welfare to strengthen the foster care system in Malaysia.

To enhance the effectiveness of the foster care system, the Department of Social Welfare in Malaysia can actively collaborate with non-governmental organizations and child welfare agencies. This collaborative approach would facilitate the identification of potential foster parents and the thorough assessment of their suitability to provide a nurturing environment for children in need. By fostering strong partnerships with external entities, the Department can tap into additional resources and expertise, thereby enriching the overall support system for foster families.

In addition to collaboration, it is crucial to establish and enhance support mechanisms for foster parents. This includes implementing standardized training programs to equip them with the necessary skills and knowledge to address the unique challenges of foster care. Support groups can serve as valuable forums for foster parents to share experiences, seek guidance, and build a sense of community.

Moreover, the introduction of comprehensive monitoring provisions, aligned with the Child (Family-Based Care) Regulations 2017, is essential. This would ensure that foster parents not only fulfill their responsibilities but also adhere to established guidelines for the well-being of foster children. Regular monitoring and evaluation processes can help identify areas for improvement and guarantee that the rights and welfare of children in foster care are consistently upheld. Through these measures, the Department of Social Welfare can contribute to the continuous enhancement of the foster care system in Malaysia, promoting the long-term well-being of children in need.

5. Conclusion

The [Child Act 2001](#) in Malaysia appropriately acknowledges the significance of offering suitable alternative care for children in need of care and protection, including the provision of foster care when deemed necessary. This aligns with international standards, such as the CRC and reflects Islamic principles concerning the care of children without a family environment. However, there are notable shortcomings in the current provisions related to foster care that warrant improvement to ensure the comprehensive protection of these vulnerable children. By prioritizing collaboration, support, and effective monitoring, the welfare and rights of children in foster care will be better protected, fostering a nurturing environment for their long-term well-being. Thus, addressing these shortcomings through proactive measures will not only align Malaysia's foster care system more closely with international and Islamic principles but also contribute to a more robust foster care system in Malaysia.

Acknowledgement

This paper was presented at the Persidangan Kebangsaan Sarjana Muda (PERSADA) 2023.

Funding

This study received funding from the Geran Galakan Penyelidik Muda (GGPM) Universiti Kebangsaan Malaysia [GGPM-2022-059]

Conflict of Interest

The authors reported no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

References

- A.Kadir, N. (2011). *Foster care: Concept and provisions of the law in Malaysia*. (Unpublished Master thesis, International Islamic University Malaysia).
- A.Kadir, N. & Mohd, A. (2021). The role of the private sector in providing foster care service for children without parental care in Malaysia. In Sayed Sikandar Shah Haneef et al., *Family fiqh in Malaysia: An analysis of the selected issues*. (pp. 351-368). Kuala Lumpur: Contemporary Fiqh Research Unit, IIUM & Islamic Book Trust.
- A.Kadir, N. & Mohd, A. (2022). Foster care as a child protection measure in Malaysia: A literature review. *Malaysian Journal of Social Sciences and Humanities*, 7(12), 1-14. doi: 10.47405/mjssh.v7i12.2002.
- Adoption and Foster Care Analysis and Reporting System (AFCARS) US, Code of Federal Regulations (CFR). (2020). <https://www.federalregister.gov/documents/2020/05/12/2020-09817/adoption-and-foster-care-analysis-and-reporting-system>.
- Ahmad, I. (1999). The Islamic view of adoption and caring for homeless children. In *Adoption Fact Book III*. Washington: National Council for Adoption.
- Al Jawdah, C. (2020). Challenges to the fostering and adoption of muslim children in the british care system. *Journal of the Contemporary Study of Islam*, 1(2), 61-87. DOI 10.37264/jcsi.v1i2.6
- Bajuri, M. Sarnon@Kusenin, N., Saim, N. J. & Ibrahim, F. (2018a). Konsep jagaan peliharaan berasaskan keluarga di Malaysia: Definisi, kaedah pengambilan anak peliharaan dan ciri-ciri ibu bapa peliharaan. *Human Sustainability Procedia*. Retrieved from <https://publisher.uthm.edu.my/periodicals/index.php/hsp/article/view/1217>
- Bajuri, M. Sarnon@Kusenin, N., Saim, N. J. & Ibrahim, F. (2018b). Konsep jagaan peliharaan berasaskan keluarga: Penerokaan pengetahuan dalam kalangan ibu bapa peliharaan di Malaysia. *e-BANGI*, 13(3), 145-157.
- Chan, A. (2015, December 11). Ministry aims for family-based option for displaced kids from 2017. *The Star Online*. [news/nation/2015/12/11/better-child-care-soon-ministry-aims-for-familybased-option-for-displaced-kids-from-2017/](https://www.thestar.com.my/news/nation/2015/12/11/better-child-care-soon-ministry-aims-for-familybased-option-for-displaced-kids-from-2017/)
- Chan, C. C. (2008). Jagaan peliharaan (foster care) dan pengangkatan (adoption): Satu perbandingan. In *Pembangunan kanak-kanak: Teori, isu dan cabaran*. (pp. 93-104). Arah Pendidikan, Shah Alam. ISBN 9789833718528

- Chan, C. C. & Raja Halim, R. N. F. (2019). Pemahaman pemohon anak jagaan terhadap konsep jagaan pelihara (*foster care*) di Malaysia. *e-BANGI*, 16(7), 1-13.
- Child Act 2001 [Act 611] (Laws of Malaysia).
- Department of Social Welfare (2023a). *Bantuan Anak Pelihara*. Department of Social Welfare
<https://www.jkm.gov.my/jkm/index.php?r=portal/left&id=VkUyUm1GV0VSWEWzcG1ra2lXTE4rdz09>.
- Department of Social Welfare. (2023b). *Kanak-Kanak: Permohonan Anak Pelihara*. Department of Social Welfare
<https://www.jkm.gov.my/jkm/index.php?r=portal/content&id=RlpWbWN2NEN4czl6RjJWUVRESWIFUT09>.
- Dewan Bahasa dan Pustaka. (2017). *Kamus Dewan* (Edisi Keempat). Kuala Lumpur, Malaysia: Dewan Bahasa Dan Pustaka.
- Encyclopedia of Children's Health. (2022). Foster care. In E. J. Simonsen (Ed.), *Encyclopedia of Children's Health* (2nd ed., Vol. 1, pp. 348-349). ABC-CLIO.
- Frost, N. (2005). *Child Welfare: Major Themes in Health and Social Welfare Vol. III*. Routledge.
- Government of Malaysia (2016). *Penyata rasmi parlimen dewan negara, parlimen ketiga belas, penggal keempat, mesyuarat pertama, bil. 11*.
<http://www.parlimen.gov.my/files/hindex/pdf/DN-04052016.pdf>
- Grosz, M. (2006). Provisions for Alternative Care for Children Deprived of Their Family Environment. In Todres, J., Wojcik, M.E and Revaz, C.R (eds.), *The U.N Convention on the Rights of the Child. An Analysis of Treaty Provisions and Implications of U.S Ratification*. Transnational Publishers, Inc.
- Hunt, R.M. (1982). Child Welfare. In *The Encyclopedia Americana* (International Edition) (Vol. 6. pp. 463 - 464). Danbury, Conn: Grolier Incorporated.
- Inter-Parliamentary Union & UNICEF. (2004). *Child Protection A Handbook for Parliamentarians*.
http://www.unicef.org/publications/files/Guide_Enfants_OK.pdf.
- Islamic Family Law (Federal Territories) Act 1984 [Act 303] (Laws of Malaysia).
- Joyce, J. (2023, March 21). [COLUMNIST] Urgent need of protection and welfare of institutionalised children in Malaysia. *Astro Awani*.
<https://www.astroawani.com/berita-malaysia/columnist-urgent-need-protection-and-welfare-institutionalised-children-malaysia-411665>
- King, A. (1989). *Child Care: Adoption and Fostering. United Kingdom: The Crowood Press LTD*
- M Usang, A. & Sloth-Nielson, J. (2014). Islamic kafalah as an alternative care option for children deprived of a family environment. *African Human Rights Law Journal*, 14, 322-345.
http://www.ahrlj.up.ac.za/images/ahrlj/2014/ahrlj_vol14_no2_2014_chapter2.pdf
- Merriam-Webster. (2023). *Adoption*. Merriam-Webster.com dictionary.
<https://www.merriam-webster.com/dictionary/adoption>.
- Mohd, A. (2008). *Protection and adoption of abandoned children in Malaysia: A comparative overview with Islamic Law*. Selangor: International Law Book Services.
- Mohd, A. & A.Kadir, N. (2012). Protection of children in Malaysia through foster care legislation and policy. *International Journal of Social Sciences and Humanity Studies*, 4 (1), 63-72.
- Mohd, A. & A.Kadir, N. (2014). Children foster care and practice: What Malaysia can learn from foster care (*ihthidhan*) in Jordan. *IIUM Law Journal*, 2(2), 295.
- Re TSY (An Infant)* [1988] 3 MLJ.

- Stahl, P.M. (1990). *Children on Consignment: A Handbook for Parenting Foster Children and Their Special Needs*. New York: Lexington Books.
- Surah Al-Baqarah (2:83), Quran.com
<https://quran.com/2/83?translations=31,43,19,101,84,95,22,85,21,20,17,18>
- Surah An-Nisa (4:127), Quran.com
<https://quran.com/4/127?translations=17,18,21,20,84,19,22,85,95,101>
- The New Encyclopaedia Britannica (1989). *Family and Kinship*. 15th Edition (Vol. 19. p. 66). Chicago: Encyclopaedia Britannica, Inc.
- UNICEF. (2023). *Children in alternative care*. <https://data.unicef.org/topic/child-protection/children-alternative-care/>
- United Nations. (2010). *64/142. Guidelines for the Alternative Care of Children*. blob:<https://resourcecentre.savethechildren.net/1e2920ac-fde7-4f6f-bfa8-df3473cdc408>