



## Child Adoption in Modern Islamic Family Law: A Comparative Study of Child Adoption in Turkey, Morocco, and Indonesia

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### **Abstract:**

One of the academic gaps in the study of child adoption in Muslim-majority countries lies in the diverse interpretations and applications of Islamic law, particularly in balancing religious principles with modern legal frameworks. While adoption is widely practiced, its legal recognition and implementation vary significantly across Muslim countries. This study focuses on the adoption regulations in Morocco, Turkey, and Indonesia, three countries that represent distinct approaches to integrating Islamic family law with national legal. This research is a library study, using a juridical-normative approach to examine literature and related national regulations. The article is discussed comparatively, referring to the theory of Prof. Mr. Lodewijk Wilem Christian van den Berg (1845-1927), a Dutch legal scholar who argued that Islamic law should fully apply to all Muslims. The findings indicate consistency with Anderson's perspective on the reform of Islamic law. Differences in the regulation of child adoption in Turkey, Morocco, and Indonesia reflect varying interpretations and implementations of Islamic law in different Muslim countries. Turkey has undergone the most significant changes by adopting a more secular legal system, while Morocco has reformed family law to maintain fundamental Islamic principles with adjustments to meet modern societal needs. Indonesia continues to uphold many traditional aspects of Islamic law in adoption regulations, despite efforts to protect the rights of adopted children in accordance with the best interests of the child principle. This study contributes to the understanding of the flexibility of Islamic law in adapting to modernity and its implications for child rights protection. The findings can serve as a reference for policymakers in designing more inclusive regulations aligned with the best interests of the child.

### **Abstrak:**

Salah satu kesenjangan akademik dalam studi tentang pengangkatan anak di negara-negara mayoritas Muslim terletak pada beragamnya interpretasi dan penerapan hukum Islam, terutama dalam menyeimbangkan prinsip-prinsip keagamaan dengan kerangka hukum modern. Meskipun praktik pengangkatan anak banyak dilakukan, pengakuan dan implementasi hukumnya sangat bervariasi di berbagai negara Muslim. Penelitian ini berfokus pada regulasi pengangkatan anak di Maroko, Turki, dan Indonesia, tiga negara yang mewakili pendekatan berbeda dalam mengintegrasikan hukum keluarga Islam dengan sistem hukum nasional. Jenis penelitian ini adalah penelitian kepustakaan, dengan pendekatan yuridis-normatif yang mengkaji literatur dan regulasi perundang-undangan negara terkait. Artikel ini dibahas secara komparatif, dengan merujuk pada teori Prof. Mr. Lodewijk Wilem Christian van den Berg (1845-1927), seorang ahli hukum Belanda yang berpendapat bahwa hukum Islam harus berlaku penuh bagi seluruh umat Muslim yang memeluknya. Hasil penelitian mengindikasikan adanya

	<p>konsistensi dengan pandangan Anderson tentang reformasi hukum Islam yang berpendapat bahwa hukum Islam bersifat fleksibel dan mengalami transformasi untuk menyesuaikan dengan kebutuhan masyarakat modern. Perbedaan dalam regulasi pengangkatan anak di Turki, Maroko, dan Indonesia menunjukkan adanya variasi dalam interpretasi dan implementasi hukum Islam di berbagai negara Muslim. Turki mengalami perubahan yang paling signifikan dengan mengadopsi sistem hukum yang lebih sekuler, sementara Maroko telah melakukan reformasi hukum keluarga yang tetap mempertahankan prinsip-prinsip dasar Islam namun dengan penyesuaian untuk memenuhi kebutuhan masyarakat modern. Indonesia masih mempertahankan banyak aspek tradisional dari hukum Islam dalam regulasi pengangkatan anak, meskipun telah ada upaya untuk melindungi hak-hak anak angkat sesuai dengan prinsip kepentingan terbaik bagi anak. Studi ini berkontribusi pada pemahaman tentang fleksibilitas hukum Islam dalam menghadapi modernitas serta implikasinya terhadap perlindungan hak anak. Hasilnya dapat menjadi referensi bagi pembuat kebijakan dalam merancang regulasi yang lebih inklusif sesuai dengan prinsip kepentingan terbaik bagi anak.</p>
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## A. Introduction

Orphans and children who have lost family care have been a social reality since ancient times, as have the methods for caring for these children. The models for child care vary significantly across cultures. In Western countries, adoption creates a legal relationship between the adopter and the adopted child, which has become the primary instrument for integrating abandoned and orphaned children into new families.<sup>1</sup> However, Islamic law adopts a different approach. While it prohibits legal adoption that severs a child's original lineage (*nasab*), it strongly encourages the care and protection of orphans through the practice of *kafalah*—a guardianship system that maintains the child's biological identity.<sup>2</sup> The Islamic prohibition of full legal adoption is grounded in the preservation of lineage, which is essential for determining inheritance, familial roles, and marital boundaries.

Nonetheless, the principle of the best interests of the child (*maslahah al-mawlūd*) is not alien to Islamic law. This principle aligns with the moral and legal obligation in Islam to ensure a child's physical, emotional, and spiritual well-being. Therefore, rather than conflicting, the Islamic emphasis on *nasab* and the international legal standard of prioritizing the child's best interests can be understood as complementary when interpreted within a context-sensitive and holistic legal framework.<sup>3</sup>

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<sup>1</sup> Fransiska Hildawati Tambunan, Tinjauan Yuridis Pengangkatan Anak Warga Negara Indonesia oleh Warga Negara Asing (Intercountry Adoption), *UNNES Law Journal*, Vol 2 No. 2, (2013): 96-104.

<sup>2</sup> Faisal Kutty, *Islamic Law and Adoption*, (UK: Cambridge Scholars Publishing, 2014).

<sup>3</sup> Faisall Kutty, ...

To better understand how these two principles are negotiated in practice, it is important to examine how different Muslim-majority countries implement adoption within their legal systems. This is especially relevant since each country applies Islamic law in varying degrees and blends it with national legal reforms and socio-political considerations. The discussion on the lineage of adopted children and the principle of the best interests of the child becomes crucial because these two concepts often find themselves in conflicting positions. In several Muslim-majority countries, the nasab of adopted children is not recognized, which impacts their legal and social rights.

For instance, Indonesia, with a predominantly Muslim population, follows a legal system that integrates Islamic law, customary law, and state law;<sup>4</sup> Turkey has undergone secularization of its legal system, adopting Western legal principles; while Morocco applies Islamic law with certain adjustments to accommodate social needs and modernization.<sup>5</sup> This diversity illustrates how the relationship between Islamic legal values and the child's best interests is interpreted and implemented differently across contexts.

Each Muslim-majority country has its own regulations in place to govern family law, which are tailored to the social, cultural, and religious contexts of that society.<sup>6</sup> In these countries, the primary basis for creating legal frameworks is Islamic Sharia law. Due to the flexible nature of Islamic law, it evolves over time to adapt to the changing needs of society.<sup>7</sup> This flexibility means that the regulations in a country may shift away from strict adherence to Sharia in response to contemporary demands.<sup>8</sup> For example, Turkey has reformed its legal system to align with secular and Western norms, effectively separating adoption laws from religious doctrine. Morocco, on the other hand, retains core Islamic principles but allows adjustments through kafalah, reflecting both religious values and modern legal reform.

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<sup>4</sup> Rohmawati and Ahmad Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on the Protection of Biological Children's Civil Rights," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 1–19, <https://doi.org/10.18326/ijtihad.v21i1.1-19>.

<sup>5</sup> Valérie SCOTT and Denise HELLY Julie RANGER, *Immigration and Adoption of Children under Kafalah: A Judicial Journey* (Revue du Barreau, 2013). See also Muannif Ridwan, Ahmad Syukri Saleh, and Abdul Ghaffar, "Islamic Law In Morocco: Study on The Government System and The Development of Islamic Law," *ARRUS Journal of Social Sciences and Humanities* 1, no. 1 (2021): 13–22, <https://doi.org/10.35877/soshum539>.

<sup>6</sup> Zainal Azwar et al., "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey," *Journal of Islamic Law* 5, no. 1 (2024): 62–85, <https://doi.org/10.24260/jil.v5i1.2326>.

<sup>7</sup> Jean Philippe Dequen, "Filiation and Adoption among Muslims in India: The Quagmires of a Religious Minority Law," *Journal of Law and Religion* 25, no. 3 (2020): 336–55, <https://doi.org/10.1017/jlr.2019.39>.

<sup>8</sup> Delfina Serrano-Ruano, "The Duration of Pregnancy in Contemporary Islamic Jurisprudence (Fiqh) and Legislation: Tradition, Adaptation to Modern Medicine and (In)Consequences," *Muslim World* 112, no. 3 (2022): 367–84, <https://doi.org/10.1111/muwo.12442>.

Indonesia applies a hybrid model that integrates Islamic law with national law, ensuring that adoption policies respect Islamic norms while addressing current social realities. These diverse approaches demonstrate how the adaptability of Islamic law influences the development of adoption regulations in different Muslim-majority countries.

Previous research has revealed that not all Islamic provisions can be integrated into national laws, especially in Indonesia, a country with a Muslim majority population.<sup>9</sup> Bunyan Wahib's study highlighted legal reforms in Muslim countries, reflecting the flexibility within Islamic Family Law, where the legal systems of these countries do not fully implement Islamic law principles. The focus of this study is on the historical development of reforms in Islamic family law in Muslim nations.<sup>10</sup> Additionally, Miftachul Huda and colleagues' research on the minimum marriage age standards in Egypt, Pakistan, Tunisia, and Indonesia found that Islamic law in these countries has undergone reforms, which indicates flexibility in the application of Islamic Family Law.<sup>11</sup> In contrast, this research offers a new perspective by focusing specifically on the intersection between Islamic legal principles and international child welfare standards in the context of adoption. Through a comparative analysis of Turkey, Morocco, and Indonesia, this study adopts a legal-doctrinal and socio-legal approach to fill a gap in existing literature by highlighting how different legal systems reconcile Islamic values with contemporary child protection norms.

Legal transformations in Kuwait as a Muslim-majority country also revealed a shift from strictly applying Islamic law to incorporating influences from foreign legal systems such as those of France, England, and Egypt.<sup>12</sup> Muannif Ridwan and colleagues' study on legal developments in Morocco showed that although 98% of Morocco's population is Muslim, Islamic law is not fully implemented in the country.<sup>13</sup> In contrast to previous studies, this article compares the national laws regarding the civil rights of adopted children, which impact the identity, inheritance rights, and kinship relations of children in Turkey, Morocco, and

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<sup>9</sup> Khairuddin and Idzam Fautanu, "Institutionalization of Islamic Law In Indonesia," *Al-'Adalah* 18, no. 1 (2021): 1–16, <https://doi.org/10.24042/adalah.v18i1.8362>.

<sup>10</sup> Ahmad Bunyan Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim," 1967, 1–19.

<sup>11</sup> Ahmad Ropei et al., "MANAGING BALIGH IN FOUR MUSLIM COUNTRIES: Egypt, Tunisia, Pakistan, and Indonesia on the Minimum Age for Marriage," *Al-Ahwal* 16, no. 1 (2023): 112–40, <https://doi.org/10.14421/ahwal.2023.16106>.

<sup>12</sup> Desteny Layla et al., "Religious Courts in Muslim Countries: The Grip of the Western Legal System on the Transformation of the Kuwaiti Judiciary," *Hukum Islam* 23, no. 2 (2024): 168–83, <https://ejournal.uin-suska.ac.id/index.php/hukumislam/article/view/20509>.

<sup>13</sup> Ridwan, Saleh, and Ghaffar, "Islamic Law In Morocco: Study on The Government System and The Development of Islamic Law."

Indonesia. The selection of these countries is based on their differences and similarities in legal concepts and treatment of adopted children, providing significant comparative insights. Turkey represents a secular legal approach, Morocco adopts a reformed Islamic family law system, and Indonesia maintains many traditional Islamic legal principles. By comparing these three countries, this study highlights the varying interpretations and applications of Islamic law in child adoption and their impact on children's rights.

This research is crucial in examining how the concepts of nasab (lineage) and the best interests of the child are applied in various Muslim-majority countries, particularly in Turkey, Morocco, and Indonesia. Therefore, this article aims to explore and understand the differences through a comparative analysis, focusing on the civil rights of adopted children in Turkey, Morocco, and Indonesia. The goal of this research is to provide an in-depth comparative analysis of how each country addresses the dilemma between nasab and the best interests of the child. With a deeper understanding of the practices of family law in these countries, this article seeks to offer valuable insights for readers to comprehend the complexities and dynamics of Islamic legal systems in the current global context.

Furthermore, this study contributes to the development of Islamic legal theory by offering a contextual and comparative perspective on how adoption regulations can be harmonized with Sharia principles. By analyzing practical implementations in different national legal systems, the research enriches the discourse on contemporary interpretations of Islamic law regarding child welfare and lineage.

## **B. Method**

This study uses a juridical-normative approach<sup>14</sup> supported by library research, focusing on the analysis of legal norms and doctrinal interpretations relevant to child adoption in Muslim-majority countries. Data is collected from a variety of primary legal sources, including national legislation, international conventions, court decisions, and fatwas, as well as secondary sources such as journal articles, books, and academic commentaries. The library data is discussed comparatively using the juridical-normative approach and analyzed through the theory of Prof. Mr. Lodewijk Willem Christian van den Berg (1845-1927), a Dutch legal scholar known for his view that Islamic law applies fully to all Muslims who adhere to it. According to van den Berg, because Muslims have embraced Islam, they must fully submit to

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<sup>14</sup> P. Ishwara Bhat, *Idea and Methods of Legal Research*, 1st ed. (New Delhi: Oxford University Press, 2020).

Islamic law, which covers all aspects of life, including family law, inheritance, and civil matters.<sup>15</sup> However, on the other hand, the development of law in the Islamic world has shown the flexibility of Islamic family law, with legal reforms in Muslim countries where the principles of Islamic law are no longer fully applied.<sup>16</sup> Lodewijk Willem Christian van den Berg's theory is relevant in the context of this study because it highlights the fundamental premise that Islamic law holds full authority within Muslim communities. Therefore, it can serve as a benchmark to assess the extent to which Muslim-majority countries—such as Turkey, Morocco, and Indonesia—implement or reform Islamic law in regulating child adoption.

To further understand this phenomenon, this study also employs J.N.D. Anderson's theory of Islamic legal reform. Anderson argues that Islamic law is not static but undergoes transformations to adapt to social changes and the needs of modern societies. In the context of adoption law, Anderson's theory helps explain how some Muslim countries, such as Turkey, Morocco, and Indonesia, have adjusted their adoption regulations in response to legal developments and broader social demands. Therefore, the analysis in this study examines the extent to which adoption law reforms in these three countries reflect the flexibility of Islamic law as explained by Anderson while also assessing the relevance of van den Berg's theory in modern family law practices.

### C. Result

The child adoption regulations in Morocco, Turkey, and Indonesia illustrate varying degrees of adaptation between Islamic law, modern legal reforms, and national legal standards. Turkey has implemented the most secular approach, granting adopted children the same legal status as biological children, including lineage recognition, to uphold the best interests of the child. Morocco integrates core Islamic principles with modern legal considerations, allowing adopted children to share family names with their adoptive parents to enhance social integration while maintaining key aspects of Islamic identity. Indonesia, while preserving traditional Islamic legal norms, has incorporated legal protections to safeguard the welfare of adopted children in line with international human rights standards. These differences reflect the legal pluralism within Muslim-majority countries, demonstrating how adoption laws are shaped by the interaction between religious doctrines, national legal frameworks, and societal

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<sup>15</sup> Sayuti Thalib, *Receptio A Contrario* (Jakarta: Bina Aksara, 1980).

<sup>16</sup> J.N.D. Anderson, "Modern Trends in Islam: Legal Reform and Modernization in the Middle East," *The International and Comparative Law Quarterly* 20, no. 1 (1991): 1–21.



needs. This study highlights that despite variations in implementation, the overarching trend in these countries is to reconcile Islamic principles with modern legal reforms, ensuring that adoption regulations prioritize the best interests of the child while maintaining cultural and religious considerations.

## **D. Analysis and Discussion**

### **1. Child Adoption in Islamic Law**

Referring to the definition presented by Wahbah al-Zuhaili, adoption (tabbanni) refers to the act of taking a child with a clear lineage by someone and declaring the child as their own. In another context, tabbanni is when a person, either a man or a woman, intentionally declares a child as their own, even though the child already has a clear lineage from their biological parents. Such adoption, as defined above, is in direct contradiction to the principles of Islamic law,<sup>17</sup> as stated in the Qur'an, Surah Al-Ahzab, verses 4-5. Therefore, in Islamic law, adoption only involves acts of care, nurturing, providing sustenance, education, and fulfilling the child's needs, without making the child a legal child of the adopter. Granting the same status between adopted children and biological children contradicts Islamic law.

According to Islamic law, adoption is only permitted under the following conditions: First, it does not sever the child's blood relationship with their biological parents. Second, the adopted child does not inherit from the adoptive parents and remains the heir of their biological parents, and vice versa. Third, the adopted child cannot bear the name of the adoptive parents, except as a form of identification. Fourth, the adoptive parents cannot act as the guardian (marriage guardian) in the marriage of their adopted child.<sup>18</sup>

From these provisions, the purpose of adoption in Islamic law is to protect the child from being neglected during their growth and development. Childcare is directed toward parents who are unable or incapable of ensuring the fulfillment of the child's rights, both physically, spiritually, mentally, and socially. This care includes nurturing, education, the development of intelligence, and talent until the child matures or becomes independent.<sup>19</sup>

As a result, the legal consequences of adoption in terms of inheritance are that the adopted child does not have the right to inherit directly from the adoptive parents. The

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<sup>17</sup> Kamil and Ahmad M. Fauzan, *Hukum Perlindungan Dan Pengangkatan Anak Di Indonesia* (Jakarta: PT RajaGrafindo Persada, 2010).

<sup>18</sup> Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam Di Indonesia* (Jakarta: Prenada Media group, 2011).

<sup>19</sup> Muhammad Sayyid Sabiq, *Fiqh Sunnah* (Jakarta: Pena Pundi Aksara, 2007).

adopted child can only receive a portion of the inheritance from the adoptive parents through a bequest (*wasiat wajibah*), which cannot exceed one-third of the total estate. This regulation is made to safeguard the inheritance rights of the biological children and close relatives, thus providing protection to the adopted child without disrupting the inheritance rights of the immediate family.<sup>20</sup>

## 2. The Principle of the Best Interests of the Child in The Child Adoption

Initially, the main purpose of adoption in Indonesia was to continue and preserve the family lineage in families without biological children. However, with the increasing awareness of child protection and welfare, there has been a gradual shift in the purpose of adoption. While the desire to have descendants remains a primary factor, the role of adoption for the benefit of the child has evolved and become more significant.<sup>21</sup>

Article 2 of Government Regulation No. 54 of 2007 concerning the Implementation of Adoption states that the goal of adoption is to prioritize the best interests of the child to ensure their welfare and protection.<sup>22</sup> In other words, the approval of adoption can only be granted based on considerations that focus on the interests of the child, not based on the interests of the prospective adoptive parents or other reasons.<sup>23</sup> This principle must also be upheld by the District Court in validating the adoption.<sup>24</sup>

The Child Protection Law, Law No. 35 of 2014, which amends Law No. 23 of 2002, emphasizes that, in principle, children should be raised by their biological parents and should not be separated from them. However, if there is convincing evidence that the child would grow better and have their rights fulfilled if raised or adopted by someone else, then separating the child from their parents is legally permissible. Article 14(1) affirms every child's right to be

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<sup>20</sup> Kamil and Fauzan, *Hukum Perlindungan Dan Pengangkatan Anak Di Indonesia*.

<sup>21</sup> Sri Widowati, *Anak Dan Wanita Dalam Hukum* (Jakarta, 1982).

<sup>22</sup> Indria Nurnaningsih Ismail and Hamid Pongoliu, "Pengangkatan Anak Dalam Perspektif Undang-Undang Perlindungan Anak," *As-Syams: Journal Hukum Islam* 2, no. 2 (n.d.).

<sup>23</sup> Evie Sompie, "Kajian Yuridis Pengangkatan Anak Dalam Upaya Perlindungan Anak," *Lex et Societatis* 5, no. 2 (n.d.).

<sup>24</sup> Kharisma Galu Gerhastuti and Herni Widanarti, Yunanto, "Kewenangan Pengadilan Negeri Dan Pengadilan Agama Dalam Pengangkatan Anak Yang Dilakukan Oleh Orang-Otang Yang Beragama Islam," *Diponegoro Law Journal* 6, no. 2 (2017).



raised by their own parents, unless there are valid legal reasons to separate the child in the best interests of the child, which should be the last consideration.<sup>25</sup>

In Morocco, the Moroccan government has taken new steps to combat all forms of discrimination and align its laws more closely with the provisions of the 1993 Hague Convention on Intercountry Adoption and other measures aimed at safeguarding children's rights. In Morocco, the decision on adoption, whether domestic or international, must be made with consideration for the child's best interests and respect for their rights. The child's best interest is the primary consideration in any decision involving the child.<sup>26</sup>

In the context of kafala (a form of guardianship), permission to take a child out of Morocco must be granted based on the child's best interests. The concept of kafala allows a guardian (kafil) to take responsibility for the care of a child who is not their biological offspring. According to Article 24 of the Kafala Law of 2002, the kafil is permitted to take the child they have adopted (makful) out of Morocco to live permanently with them. This aligns with both international principles and Moroccan law, which hold that the best interest of the child is to live with an adult who is legally responsible as a parent.<sup>27</sup>

Moroccan law now allows the kafil's parents to request from the King that the adopted child's official surname be changed to the surname of the kafil (if the kafil is married) or the mother's surname (if the kafil is a single woman). This change is made in the best interests of the child, with the belief that using the same family name between the kafil and the child can enhance the child's psychological well-being and facilitate their social integration.

However, this name change is not the same as granting filiative rights or registering the child in the kafil's family book, which remains prohibited. It does not grant the inheritance rights typically associated with filiation. Nonetheless, in everyday life, this measure strengthens the bond between the kafil and the adopted child (makful) and gives the child a sense of being treated similarly to a biological child. It also facilitates interactions with authorities, especially when the child's documents show the responsible adult's name.<sup>28</sup>

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<sup>25</sup> Hamsiri, "Interpretasi Hakim Terhadap Kepentingan Anak Dalam Perkara Pengangkatan Anak" (Pascasarjana Universitas Islam Negeri Raden Intan Lampung, 2023).

<sup>26</sup> Usang Assim Maria, "In The Best Interest of Children Deprived of a Family Environment: A Focus on Islamic Kafalah as an Alternative Care Option," no. January 2014 (2009): 1–83.

<sup>27</sup> Julie RANGER, *Immigration and Adoption of Children under Kafalah: A Judicial Journey*.

<sup>28</sup> Katherine E Hoffman, *Filiation and the Protection of Parentless Children, Filiation and the Protection of Parentless Children*, 2019, <https://doi.org/10.1007/978-94-6265-311-5>.

While the relationship between the kafil (adoptive guardian) and the makful (adopted child) is not a familial one, the makful child may be considered mahram (forbidden to marry), with the same status as a biological child born within marriage. Additionally, the makful child could become mahram to the kafil's biological children if the kafil's mother breastfeeds the adopted child a minimum of five times within the first two years of the child's life. Legally in Morocco, shared breastfeeding can help equalize the status of a non-biological child with a biological child in the context of family law and adoption.<sup>29</sup>

In Turkey, children who require protection and live in institutions under the Ministry of Family and Social Policy, if it is not possible to place them back with their biological families, are provided with foster care services chosen through an evaluation based on the best interests of the child.<sup>30</sup> According to Article 305 of the Turkish Civil Code, a child who is adopted by a family through a court decision, after a year-long period of monitoring and evaluation as a temporary foster care arrangement, is registered as a child of the adopting family, takes the adopting family's surname, and has the same legal rights as a biological child.<sup>31</sup>

In Turkey, the Ministry of Family and Social Policy is the official institution responsible for adoption services. This agency serves as the designated Central Authority for intercountry adoption in accordance with the Hague Convention. The adoption process is regulated by the signing of a foster care contract between the Social Services Directorate and the prospective adoptive parents for a period of one year. During this period, the relationship between the adoptive parents and the child is monitored and reported periodically to the Social Services Directorate. This ensures that the adoption process is in line with the child's best interests and is conducted in a legally sound manner.<sup>32</sup>

### 3. Specific Legislation on Child Adoption in Indonesia and Morocco

In Indonesia, adoption is regulated under the Compilation of Islamic Law (KHI) in Article 171. The explanation of this article states that through a court decision, the adoption

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<sup>29</sup> Hoffman.

<sup>30</sup> Lisamarie Deblasio, "Adoption Law," *Adoption and Law* 5080 (2020): 12–27, <https://doi.org/10.4324/9780429297298-2>.

<sup>31</sup> Tuija Suikkanen-malin and Minna Veistilä, "Childhood and Parenting in Contemporary Europe," 2018.

<sup>32</sup> Deblasio, "Adoption Law."

of a child results in the transfer of responsibility from the biological parents to the adoptive parents concerning daily care, educational costs, and other related matters.<sup>33</sup>

It is important to note that the legal relationships concerning lineage, marriage guardian for adopted girls, and inheritance rights with biological parents are not severed by the court's decision.<sup>34</sup> This means that even though an adoption takes place, certain legal relationships between the child and the biological parents are still recognized and continue. Therefore, this provision reflects the principles of Islamic law governing adoption, where certain duties and rights are transferred to the adoptive parents, but the lineage connection and other legal rights with the biological parents remain recognized.

As a country with a Muslim majority, Indonesia also has family law regulations largely inspired by Islamic principles, although not entirely, as elements from customary law are also incorporated.<sup>35</sup> Some views argue that Indonesia's family law system is essentially a modification of customary law with the application of Islamic principles.<sup>36</sup> The Indonesian government has established family law regulations, including Law No. 1 of 1974 concerning marriage. The legal foundation for adoption in Indonesia is derived from the Qur'an, Sunnah, and ijtihad applied in Indonesia, forming part of Islamic legal thought. The resulting products include fiqh, fatwas, court decisions, and regulations, including the Compilation of Islamic Law.<sup>37</sup>

In Morocco, religious affiliation in Morocco is predominantly Muslim, with Christian and Jewish minorities. The legal system of Morocco is a mixed civil law system based on French law and Islamic law. The Constitution of Morocco describes the country as a constitutional, democratic, parliamentary, and social monarchy, and a "sovereign Islamic state" that gives Islam the status of the state religion. The majority of Moroccans are Sunni Muslims.<sup>38</sup>

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<sup>33</sup> Kementrian Agama RI, "Kompilasi Hukum Islam" (2018). Article 171.

<sup>34</sup> Ravika Revira Ginting, "Hukum Pengangkatan Anak Di Negara Muslim," *Jurnal Keislaman* 6, no. 2 (n.d.).

<sup>35</sup> Zaka Firma Aditya dan Rizkisyabana Yulistyaputri, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 8, no. 1 (n.d.).

<sup>36</sup> Achmad Irwan Hamzani, *Hukum Islam: Dalam Sistem Hukum Di Indonesia* (Jakarta: Kencana, 2020).

<sup>37</sup> Jaya C. Manangin, "Pengangkatan Anak (Adopsi) Ditinjau Dari Perspektif Hukum Islam," *Lex Privatum* 4, no. 5 (n.d.).

<sup>38</sup> "The World Factbook, CIA, Morocco," accessed November 25, 2023, <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html>.

Until the late 1950s, the law applied in family matters was based on classical Islamic law, following the dominant Maliki doctrine. Since then, traditional family law matters, including marriage, divorce, child custody, maintenance, and inheritance, have been regulated by a law known as Moudawanat al-Usra or Moudawana. The latest revision of the Moudawana occurred in 2004, and it is based on Islamic law. This law applies to all Moroccan citizens, regardless of their religious beliefs, although Jewish citizens follow their own laws.<sup>39</sup>

Under current Moroccan law, adoption is not allowed.<sup>40</sup> Under current Moroccan law, adoption is not allowed.<sup>41</sup> However, children can be cared for through kafalah, where one or both biological parents entrust their child to another family for care according to the law.<sup>42</sup> Nevertheless, neither lineage nor inheritance rights are created through kafalah.<sup>43</sup> Since the legal bond with the biological parents is not severed by kafalah, the child retains inheritance rights from the biological parents' estate.<sup>44</sup>

In principle, kafalah has no effect on the child's name. If adoptive parents wish to bequeath their property to the child or divide their inheritance for the child's benefit, they must do so under the supervision of a competent judge in the child's place of residence.<sup>45</sup> As mentioned earlier, according to Islamic law (fiqh) – both Sunni and Shia – a person may bequeath up to one-third of their estate to someone with no blood relationship.

Turkey has adopted family law reforms through legislation. For Muslims in Turkey, the Hanafi school of thought is the formal basis for religious life,<sup>46</sup> before the advent of legislative policies that eclectically codified laws.<sup>47</sup> The Majallat al-Ahkâm al-‘Adliyah, or the

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<sup>39</sup> Margaret Liston, “From Laws to Last Names: Examining Popular Opinions of Adoption in Morocco,” *Submitted in Partial Fulfillment of the Requirement for MOR, SIT Abroad, Fall, 2015*.

<sup>40</sup> Brief Guide, “The Kingdom of Morocco,” *Intercountry Adoption Centre*, n.d.

<sup>41</sup> Ohud Alzahrani, *The Adoption Of Children: An Exploration Of Islamic Law In Kingdom Of Saudi Arabia And How It Compares To The International Standards Set By The Hague Convention On The Protection Of Children And Co-Operation In Respect Of Intercountry Adoption*, Published by ProQuest LLC, University of Pittsburgh (2018).

<sup>42</sup> Liston, “From Laws to Last Names: Examining Popular Opinions of Adoption in Morocco.”

<sup>43</sup> “Moroccan Kafalah Law” (n.d.). Article No. 2.

<sup>44</sup> Ishaque Shabnam, “Islamic Principles on Adoption: Examining the Impact of Illegitimacy and Inheritance Related Concerns in Context of a Child’s Right to Identity,” *International Journal of Law, Policy and the Family* 22 (2008).

<sup>45</sup> Moroccan Kafalah Law. Article 23.

<sup>46</sup> The Hanafi school holds a dominant position in Turkey, and its influence is reflected in the rational foundations of the Turkish state, consistent with the distinctive characteristics of the Hanafi tradition See Seyyed Hossein Nasr, “Islam,” Dalam Arvind Sharma (Ed.), *Our Religious* (New York: Harper Collins, 1993), 427–532.

<sup>47</sup> Tahir Mahmood, “Personal Law In Islamic Countries: History, Text and Comparative Analysis,” *New Delhi: Academy of Law and Religion*, n.d.

Islamic Civil Code, largely inspired by the Hanafi school, was drafted in Turkey starting in 1876. Although it was not entirely comprehensive, this law did not include provisions for adoption.<sup>48</sup>

In the Republic of Turkey, adoption regulations are governed by the Turkish Civil Code (TCC), the Adoption Implementation Statute, and the Hague Convention on Intercountry Adoption. All adoption processes, except in sibling adoption cases, fall under the responsibility of the General Directorate of Social Services and Child Protection.<sup>49</sup> Specifically, adoption in Turkey is regulated by Articles 305-320 of the Turkish Civil Code, which was enacted on November 22, 2001. Additionally, there is the Adoption Execution Statute, based on the Council of Ministers Decision No. 2009/14729. Furthermore, since September 1, 2004, the Hague Convention on Intercountry Adoption came into force in Turkey after it was incorporated into domestic law.<sup>50</sup>

#### 4. Requirements for Child Adoption

In Indonesia, the regulations concerning child adoption in Indonesia do not specify an age gap between the adoptive parent (adoptant) and the adopted child (adoptandus). However, Government Regulation No. 54 of 2007, regarding the Implementation of Child Adoption, Article 13(b), stipulates that the prospective adoptive parent must be at least 30 years old and not more than 55 years old.<sup>51</sup>

The conditions for adoption, as outlined in Article 13 of Government Regulation No. 54 of 2007, require adoptive parents to meet several criteria to ensure the child's well-being. Prospective adoptive parents must be in good physical and mental health, within the age range of 30 to 55 years, and adhere to the same religion as the adopted child. They must also demonstrate good behavior, have no criminal record, and be in a legally recognized marriage

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<sup>48</sup> Tahir Mahmood, *Family Law Reform in The Muslim World* (New Delhi: N.M. TRIPATHI PVT. LTD, 1972).; Isroqunnajah, "Hukum Keluarga Islam Di Republik Turki," n.d. dalam M. Atho' Muzdhar dan Khoiruddin Nasution, *Hukum Keluarga Di Dunia Islam Modern* (Jakarta: Ciputat Press, 2003). 36-52.

<sup>49</sup> Wendy Zeldin, "Adoption Law, The Law Library of Congress, Global Legal Research Directorate," n.d.

<sup>50</sup> İlayda Balkan, "Adoption of Children in Turkey," n.d., <http://www.admdlaw.com/adoption-of-children-in-turkey/>; Grand National Assembly Of Turkey, "Çocukların Korunması ve Ülkelerarası Evlat Edinme Konusunda İşbirliğine Dair Sözleşmenin Onaylanmasının Uygun Bulunduğu Hakkında Kanun [Law on Ratification of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption] La," n.d., <http://tbmm.gov.tr/kanunlar/k5049.html>.

<sup>51</sup> Sudargo Gautama, *Hukum Perdata Internasional Indonesia*, Jilid III (Bandung: Alumni, n.d.).

for at least five years. Additionally, adoption is restricted to those who are not in a same-sex relationship and either have no children or only one child.

Financial and social stability is another key consideration, ensuring that adoptive parents can provide adequate support for the child. Consent from the child, as well as written approval from the biological parents or legal guardians, is required. Furthermore, adoptive parents must submit a written statement affirming that the adoption is in the best interest of the child, prioritizing their welfare and protection. A social report from a local social worker is also necessary, and the prospective adoptive parents must have fostered the child for at least six months following the issuance of a foster care permit. Finally, adoption must receive approval from the Minister of Social Affairs before court authorization is granted.

In Islam, child adoption is governed by certain principles to ensure the process aligns with Islamic teachings and moral values. In Islamic law, child adoption is subject to specific guidelines to ensure that the rights of both the adopted child and their biological lineage are preserved. One fundamental principle is that adoption should not sever the blood relationship between the adopted child and their biological parents or relatives. The child's lineage must remain intact, and they should continue to be recognized as part of their birth family.

Regarding inheritance, Islamic law limits the adopted child's rights to receiving gifts or bequests (*wasiat*) from the adoptive parents, rather than granting them the same inheritance rights as biological children. This distinction is made to uphold the principles of Islamic inheritance law, which is based on predetermined shares for family members. Additionally, the adopted child is not permitted to take the surname of the adoptive parents, except for purposes of identification or address, as maintaining their original identity is an essential aspect of Islamic legal tradition.

Furthermore, in matters of marriage, the adoptive parents do not have the authority to act as guardians (*wali*) for their adopted child. This is based on the principle that guardianship in marriage is a responsibility tied to blood relations or specific legal appointments. Lastly, it is ideal for both the adopted child and the adoptive parents to follow the same religion, specifically Islam, to ensure the child's religious upbringing aligns with the faith and values they were born into.

In Morocco, individuals seeking to adopt a child through *kafalah* must be Muslim couples or single Muslim women. Additionally, the applicant must have sufficient financial



means to support the child and be free from contagious diseases or conditions that would impair their ability to fulfill their responsibilities.<sup>52</sup>

If these requirements are met, a judge, assisted by a committee, investigates the suitability of the applicants for kafalah. Before making a decision, children over the age of twelve must provide their personal consent.<sup>53</sup> If the applicants are deemed suitable, the judge will grant them the right to kafalah.<sup>54</sup> The law mandates that the kafalah parents must care for the child as their own, in accordance with the relevant provisions in the Moudawana concerning guardianship and care.<sup>55</sup>

The Ministry of Justice and Freedoms notes that there is no official age limit for kafalah, but in practice, only young children are adopted. The Moroccan League for the Protection of Children (LMPE) in Rabat states that only children under the age of three are adopted by new parents, and the Moroccan League for Children (LMPE) in Casablanca mentions that children are usually adopted by new parents before the age of one month.<sup>56</sup>

In Turkey, the minimum requirements for adoption state that the applicant must be at least 18 years older than the child.<sup>57</sup> If the applicant is unmarried, they must be over 30 years old. Married couples must have been married for at least five years. The law also stipulates that the consent of the biological parents is required for adoption, except in cases where the biological parents have abandoned the child. Under Turkish adoption law, an adopted child will have all the rights of a biological child, and the adoptive parents are also allowed to change the child's name.<sup>58</sup>

## 5. Mechanisms of Child Adoption

In Indonesia, the adoption procedure involves several stages to ensure the welfare of the child and the suitability of the adoptive parents. The process begins with the prospective

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<sup>52</sup> Moroccan Kafalah Law. Article 9 No. 1 and 2.

<sup>53</sup> Moroccan Kafalah Law. Article 12 and 16.

<sup>54</sup> Moroccan Kafalah Law. Article 171 No. 1 and 2.

<sup>55</sup> In several cases, children-especially girls-are exploited as a source of cheap labor under the kafala system. This is arguably one of the reasons why orphanages tend to house only boys. See Andrea Büchler dan Eveline Schneider Kayasseh, "Fostering and Adoption in Islamic Law – Under Consideration of the Laws of Morocco, Egypt, and the United Arab Emirates," *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)* 6 (2018).

<sup>56</sup> Danish Immigration Service, "Morocco Situation of Unaccompanied Minors," n.d.

<sup>57</sup> Turkish Civil Code" (n.d.). "Adoption Statute," Article 4 paragraph (1)

<sup>58</sup> Suikkanen-malin and Veistilä, "Childhood and Parenting in Contemporary Europe."

adoptive parents submitting an adoption permit request to the Head of the Social Affairs Department at the provincial, regency, or city level. This application serves as the initial step in evaluating the eligibility of the applicants. Following the submission, a suitability assessment is conducted over six months to determine whether the prospective adoptive parents meet the necessary criteria. This assessment involves social, economic, and psychological evaluations to ensure that the adoption aligns with the child's best interests. After the assessment period, a hearing is held by the Regional Adoption Consideration Team (PIPA), where the case is reviewed, and further deliberations take place regarding the adoption request.

If the prospective adoptive parents are deemed eligible, the Head of the Social Affairs Department at the provincial, regency, or city level issues a decision letter confirming that they may proceed with the legal adoption process. The final step requires the applicants to file for adoption at the District Court, where a formal court decision is issued, granting them the legal status as the adoptive parents of the child. This structured process ensures that all adoptions are carried out in accordance with national regulations and in the best interest of the child.<sup>59</sup>

In Morocco, the process of establishing *kafalah* (a form of child guardianship similar to adoption) involves several legal and administrative steps.<sup>60</sup> The process begins with the registration of abandoned children, where the Public Prosecutor (Royal Prosecutor) assigns them fictitious identities. This includes a first name, surname, and parental affiliations by adding the first names of both a mother and father to ensure proper civil documentation. Once registered, the initial placement of abandoned children takes place. Before *kafalah* is granted, children may be temporarily placed in state or private orphanages or under foster care. During this phase, authorities assess their circumstances while ensuring their basic needs are met. The next crucial step is the determination of abandoned child status, where a child must be officially declared abandoned to be eligible for *kafalah*. Under Moroccan law, an abandoned child is defined as anyone under 18 years of age who is orphaned, has been deserted, or whose parents are unable to fulfill their responsibilities.

For those seeking to adopt a child under *kafalah*, the application process requires submitting a request to the competent judge in the child's place of residence. The applicants must provide legal documentation, including the child's birth certificate and other necessary paperwork as outlined by law. The evaluation of the applicant's suitability follows, where a

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<sup>59</sup> Dessy Balaati, "Prosedur Dan Penetapan Anak Angkat Di Indonesia," *Lex Privatum* 1, no. 1 (2013).

<sup>60</sup> Kayasseh, "Fostering and Adoption in Islamic Law – Under Consideration of the Laws of Morocco, Egypt, and the United Arab Emirates."

judge, assisted by a designated commission, assesses whether the prospective guardians meet the necessary requirements. If deemed eligible, the judge issues a decision granting them kafalah rights. For children over the age of twelve, their personal consent is required before the court can grant kafalah, except when the applicant is a legal entity. Finally, once a decision has been made, the implementation of the court ruling must occur within 15 days from the date of the judgment. This structured legal process ensures that the child's welfare remains a priority while aligning with Morocco's legal framework and Islamic principles regarding child guardianship. This process reflects that before a child can be placed under kafalah, a series of steps must be followed in strict accordance with Moroccan laws in place since 1993 and revised in 2002.

The Turkish Civil Code stipulates that domestic adoption procedures are managed by the agency authorized by the Council of Ministers (Bakanlar Kurulu), the Turkish Cabinet.<sup>61</sup> The agency in charge is the Directorate-General for Social Services and Child Protection. There are two ways to adopt in Turkey. Prospective adoptive parents or couples can apply directly and in writing to the provincial Social Services Department to be matched with a suitable child. Alternatively, applicants can apply directly to the biological parents or legal guardians of the prospective adoptive child, with the process being supervised by the Social Services Department. Private adoption in Turkey, except for adoption within families, is currently not allowed; all other adoptions must be handled through Social Services.<sup>62</sup>

## 6. The Dynamics of Islamic Law Implementation

Prof. Mr. Lodewijk Wilem Christian van den Berg's theory argues that Islamic law must be fully applied to all Muslims, including in family law matters such as child adoption. However, in the context of adoption laws in Muslim countries, this theory is not entirely evident. For instance, Turkey has abandoned the application of Islamic law in adoption by adopting a secular legal system that grants adopted children the same legal status as biological children. Morocco still upholds Islamic principles through the kafalah system but has reformed it to align with modern social needs. Meanwhile, Indonesia maintains the principle that adopted children do not inherit lineage (*nasab*) from their adoptive parents but has established regulations to protect the rights of adopted children based on the principle of the child's best interests. These variations in legal implementation indicate that van den Berg's theory, which

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<sup>61</sup> "Turkish Civil Code," n.d. article. 320.

<sup>62</sup> Zeldin, "Adoption Law, The Law Library of Congress, Global Legal Research Directorate."

assumes that Islamic law must be applied uniformly across Muslim countries, is not applicable in the context of modern family law.

Conversely, the findings of this study align more closely with J.N.D. Anderson's perspective on the reform of Islamic law. Anderson argues that Islamic law is not static but undergoes transformation to adapt to social changes and the needs of modern society. This is reflected in the adoption policies of Turkey, Morocco, and Indonesia, which demonstrate flexibility in the implementation of Islamic law. Turkey has embraced secular principles, Morocco has reformed its *kafalah* system while retaining its foundation in Islamic law, and Indonesia has preserved a more conservative Islamic framework but supplemented it with regulations to protect the rights of adopted children. Thus, this study supports the notion that Islamic law is not always applied monolithically but can adapt to the social and legal dynamics of each Muslim country.

In Turkey, the regulation of child adoption leans more towards a secular national legal system. The country has adopted rules that grant adopted children nearly the same rights as biological children, including lineage recognition and inheritance rights. This indicates that Turkey's legal system has undergone significant secularization, where adoption is no longer restricted by Islamic legal principles, which traditionally do not recognize lineage relationships between adoptive parents and adopted children. This approach emphasizes the best interests of the child by ensuring they receive clear legal rights within their adoptive families.

In Morocco, the regulation of child adoption still adheres to Islamic legal principles through the *kafalah* system. In this system, adopted children are not recognized as biological children and do not automatically receive inheritance rights. However, they are provided with protection and responsibilities from their adoptive parents in terms of care and well-being. Morocco has undertaken family law reforms that allow adoption while considering the social and psychological aspects of the child, such as granting them the adoptive family's surname to enhance social integration. Thus, Morocco's regulations reflect a combination of adherence to Islamic law and adjustments to modern societal needs.

In Indonesia, child adoption is regulated by national law while maintaining certain Islamic legal restrictions. Although adopted children can be legally recognized, they do not acquire lineage status with their adoptive families and do not have inheritance rights unless granted through a *wasiat wajibah* (mandatory bequest). Additionally, under Islamic law in Indonesia, adoptive parents cannot act as marriage guardians (*wali nikah*) for their adopted daughters, as affirmed in the Compilation of Islamic Law. With this approach, Indonesia

strives to balance Islamic legal principles with the protection of adopted children's rights in accordance with international human rights standards.

The approaches taken by these three countries clarify how they accommodate the best interests of the child within different legal frameworks. Turkey adopts a secular system that grants full rights to adopted children, Morocco maintains the kafalah system rooted in Islamic law while adapting to social needs, and Indonesia applies a combination of national law while preserving certain Islamic legal restrictions.

Table 1. Comparison of Adoption Regulations in Turkey, Morocco, and Indonesia

Aspect	Turkey	Morocco	Indonesia
<b>Legal System</b>	Secular, based on European civil law	Dual: Islamic law and national law	Plural: Islamic law, customary law, and national law
<b>Legal Basis for Adoption</b>	Turkish Civil Code	Kafalah under the Moroccan Family Code	Government Regulation No. 54 of 2007 on Child Adoption
<b>Form of Adoption</b>	Full legal adoption, severing ties with biological parents	Kafalah (guardianship), maintains biological lineage	Legal adoption, but maintains child's original identity per Islamic principles
<b>Lineage (Nasab)</b>	Adopted child becomes a full legal member of the new family	Child retains original lineage	Child retains original lineage
<b>Inheritance Rights</b>	Adopted child can fully inherit from adoptive parents	No inheritance rights; can receive gifts or wills	No inheritance rights; can receive up to one-third via will
<b>Marriage Guardianship</b>	Adoptive parents can act as marriage guardians	Guardians under kafalah cannot act as marriage guardians	Adoptive parents cannot act as marriage guardians
<b>Requirements &amp; Procedure</b>	Civil court process, eligibility assessment, social supervision	Court petition, social evaluation, child's consent if over 12 years	Application to Social Affairs Office, 6-month evaluation, court decision

<b>Religious Considerations</b>	No requirement for religious compatibility	Must be of the same religion (Islam)	Preferably same religion to ensure religious upbringing
<b>Best Interests of the Child</b>	Main principle in adoption decisions	Considered within the framework of Islamic law and social needs	Primary principle accommodated in national regulations

The principle of the best interests of the child is a core value in international law, particularly enshrined in the United Nations Convention on the Rights of the Child (UNCRC). This principle mandates that all actions and decisions concerning children must primarily aim to ensure their well-being and holistic development. A comparison of Turkey, Morocco, and Indonesia illustrates varying approaches in integrating this principle with their national and religious legal systems:

Table 2. Alignment with the Principle of "The Best Interests of the Child"

<b>Country</b>	<b>Legal Framework</b>	<b>Approach to Best Interests of the Child</b>	<b>Alignment</b>
<b>Turkey</b>	Secular Civil Law	Full adoption with legal severance of biological ties	Strong alignment with international standards, weak on Islamic lineage principles
<b>Morocco</b>	Islamic Law (Moudawana) + modern reforms	Kafalah system preserves lineage but limits legal rights	Partial alignment; prioritizes care but limits legal integration
<b>Indonesia</b>	Hybrid: Islamic Law + State Law	Recognizes adoption, preserves lineage, allows limited inheritance	Moderate alignment; balances religious norms with child welfare

## E. Conclusion

This study finds that differences in adoption regulations in Turkey, Morocco, and Indonesia, which reflect diverse implementations of Islamic law tailored to each country's legal and social context. Turkey has adopted a significantly secular legal system, granting adopted children full legal status similar to biological children. Morocco maintains core Islamic



principles while reforming its family law to be more adaptable, including allowing adopted children to carry the adoptive family's name. Indonesia, in contrast, retains traditional Islamic legal norms that do not grant lineage rights to adopted children, though it has introduced laws that aim to protect children's rights in line with the best interests of the child.

This comparison demonstrates that approaches to adoption law in Muslim-majority countries are neither uniform nor universally based on Islamic law, challenging Van den Berg's theory of its universal application among Muslims. Instead, the findings support J.N.D. Anderson's argument that Islamic family law reform is contextual and continues to evolve in response to modern social values and needs. Thus, this study confirms that the application of Islamic law in adoption matters across the Muslim world is dynamic, flexible, and shaped by each nation's legal and societal frameworks.

## **F. Conflict of Interest Statement**

The authors declare that there is no conflict of interest in the publication of this article.

## **G. Acknowledgment**

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## I. Author's Biography

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