

Child Protection and Family-Based Care: Addressing Implementation Hurdles in Foster Care and Adoption in Malaysia

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Abstract

Purpose: Family-based care is instrumental in providing children with safe, nurturing environments conducive to their emotional and psychological development. However, numerous obstacles hinder its smooth execution. This qualitative study investigates the challenges inherent in the implementation of family-based care, encompassing foster care and adoption, and their far-reaching implications for child welfare in Malaysia.

Design/methodology/approach: This research employs a qualitative approach that involves library research and content analysis. Primary data sources encompass statutes, international legal agreements, government publications, and classic literature. Secondary data sources encompass academic journals, conference papers, articles, relevant textbooks, and any materials related to family-based care, with a particular focus on foster care and adoption. Content analysis is utilized to extract insights from these sources.

Findings: The research reveals that the legal and regulatory complexities of family-based care require robust legal frameworks to protect the rights and welfare of children and caregivers effectively. Social perceptions and misconceptions about foster care and adoption are also identified as formidable barriers, highlighting the importance of community awareness campaigns to dispel myths and foster acceptance. In addition, resource constraints emerge as a critical challenge, particularly in providing adequate training and support to caregivers.

Research implications: The study underscores the importance of holistic, collaborative efforts. Strengthening child protection systems requires concerted action from governments, non-governmental organisations, and communities. It calls for the development of robust legal frameworks, public awareness initiatives, and caregiver training programs. By addressing these complexities, societies can enhance their capacity to provide children with the loving, supportive homes they deserve.

Practical implications: This study illuminates the multifaceted challenges surrounding family-based care, providing valuable insights for stakeholders committed to improving child welfare systems. It calls for a collective commitment to overcome these hurdles, ultimately promoting the rights and well-being of vulnerable children and ensuring they find their place in caring, stable families.

Originality/value: There has not been much examination of the challenges that come with implementing family-based care via foster care and adoption and how these challenges impact child welfare. Even though foster care and adoption are essential for providing care and protection to children in need, it is crucial to closely examine the existing obstacles and intricacies in making them work.

Keywords: Family-based care, foster care, adoption, child protection, children's rights

Introduction

Children, as the most vulnerable members of society, require the utmost care and protection, typically provided by their parents. However, some children, such as orphans, abandoned, abused, or neglected ones, lack this natural parental care. Various factors, including natural disasters, conflict, and diseases like HIV/AIDS, leave many children without families worldwide (Ward, 2009). In cases where birth parents are absent, disqualified, incapable, or unwilling to provide care, substitute care becomes essential for the children's welfare and protection. According to The Encyclopedia Americana (1982), substitute care refers to services aimed at replacing natural parental care, either partially or entirely, and is a vital component of child protection. It encompasses adoption, foster placement, kafalah-based placement, and residential care. While these alternative care options exist globally, not all of them offer the advantage of family care, which is generally considered superior to institutional care for children without parental care.

Over the years, there has been a growing emphasis on addressing the needs, well-being, and rights of children, resulting in significant attention within evolving policies and practices, particularly in child protection. The state is now widely acknowledged as having a fundamental responsibility to safeguard, intervene, and offer support when children face risks or challenges. This role covers early, supportive interventions involving birth parents, the temporary arrangement of foster care, court interventions when initial measures prove inadequate or ineffective, and the potential placement of children in alternative family settings, typically either through foster care or, in certain nations, adoption (Simmonds, 2018).

Presently, it cannot be guaranteed with absolute certainty that children placed in foster care will invariably thrive and undergo positive development. Nevertheless, it remains a viable and preferable alternative for children in need of care and protection to be placed in a stable and secure home environment, shielding them from the potential turmoil or neglect they may have previously encountered (Font & Gershoff, 2020). This stable environment raises a sense of safety and emotional well-being, thereby establishing a robust foundation for their future growth, provided that foster and adoptive parents are suitably qualified, dedicated, and trained. Moreover, foster and adoption children also have the potential to evolve into accomplished and well-rounded individuals. This transformation typically occurs when they are raised in families filled with love, support, respect, and understanding.

Transitioning children into family-based care can be emotionally and behaviorally challenging. To address these issues effectively, a holistic and collaborative approach is essential. This means that governments, non-governmental organisations (NGOs), and communities must work together. It involves creating strong legal frameworks, raising public awareness, and providing training for caregivers. By tackling these complexities, societies can improve their ability to offer children the loving and supportive homes they need. Thus, this study highlights the various challenges associated with family-based care and provides insights for those working to improve child welfare systems. It further emphasizes the need for a collective effort to overcome these challenges, ultimately safeguarding the rights and well-being of vulnerable children and ensuring they can thrive in caring and stable families.

Literature Review

Family-Based Care through Foster Care and Adoption

The preamble of the United Nations Convention on the Rights of the Child (UNCRC) emphasizes that, for a child's complete and balanced personality development, they should be raised within a family environment marked by happiness, love, and understanding. This emphasis highlights the belief that children ideally thrive within their biological families. However, this perspective also acknowledges that in certain cases, families may be incapable of fulfilling their responsibilities to children due to deviant behavior by parents (Spicker, 2022). Such situations, marked by maltreatment and trauma, can lead to substantial and enduring human and systemic costs. Children exposed to these conditions may suffer from various health and developmental challenges, comprising emotional, behavioral, and learning difficulties, as well as related physical and mental health issues (Cerulli et al, 2021). Consequently, safeguarding children from harm, abuse, and even mortality has become a universally significant and long-standing concern. Many democratic nations in the Western world are grappling with the task of formulating policies and practices that can bring about substantial changes in this regard (Khan et al, 2018). The literature recognizes the pivotal role of the foster carer-child relationship in promoting emotional well-being and facilitating recovery from developmental trauma. Interactions that promote emotional understanding can enhance a foster child's emotional literacy, enabling them to comprehend both their own emotions and those of others (Harkness, 2019). Foster parents occupy a unique position, as they can effectively provide therapeutic care to children who have been removed from their birth families due to complex trauma. By cultivating stable, secure, and thoughtful environments where children receive developmentally appropriate care, witness the regulation of emotional responses, and encounter positive reinforcement, foster parents possess the potential to mitigate the effects of complex trauma. This is achieved through the practical application of widely accepted cognitive and behavior-based strategies (Kemmis-Riggs & McAloon, 2020). Within the foster care system, various agencies and entities within the child welfare system assume responsibility for the child's welfare. Children in foster care may find a residence in individual foster families, group homes, or other supervised residential settings, all carefully selected to safeguard them from further harm at the hands of caregivers (Washington et al, 2018).

Certainly, the primary objective of foster care is to provide a secure and nurturing home environment, facilitating the recovery of foster children who have faced adversities. Nevertheless, despite this core objective, a significant number of foster children continue to grapple with adjustment difficulties and encounter academic underachievement (Goemans et al., 2018). Their past experiences have instilled in them a sense that adults can be unreliable, intrusive, or, in the worst cases, abusive. The upheaval of leaving behind all that is familiar compounds their trauma, as both foster and adopted children are expected to adapt to entirely unfamiliar surroundings during periods of confusion and distress (Atwool, 2018). Consequently, they often experience feelings of isolation and turmoil following their transition to the new environment (Doughty, 2018). Furthermore, while adopted children may be fortunate to join a new family, the crucial matter of whether they will find happiness and a sense of belonging within that caring family is a deeply personal right (Anastasov & Kochoska, 2020) and a matter of paramount importance that necessitates evaluation. Adoptive placement is generally regarded as an intervention strategy involving the relocation of children from unfavorable caregiving situations to nurturing families (Schoemaker et al., 2019). It is also considered a preferred permanent care option in the child protection system, especially when reuniting the child with their birth family or placing them under the care of a relative is not feasible (Sebba, 2020). In addition, adoption is generally favored as the placement option for

children in public care over foster homes. This preference might reflect a trend towards refamilializing children back into private family spheres (Skivenes & Benbenishty, 2023). However, these works could delve deeper into the allocation of resources to support these systems and what challenges exist in this regard.

Family-Based Care from the Perspective of Malaysia

UNICEF EAPRO (2006) discusses alternative care options in Malaysia, including adoption, foster care, guardianship (for Muslim orphans), kinship care, and residential care. Residential care is the primary child protection service for children without families in Malaysia, as highlighted by UNICEF EAPRO. Malaysia's initial report on the Convention on the Rights of the Child (2005) further highlights that children deprived of a family environment may be placed under the care, custody, and control of foster parents. This initiative underscores the importance of fostering a supportive and nurturing atmosphere for children in need of care and protection. Alternatively, Mohd (2008) and A.Kadir (2011) emphasize the significance of adoption and foster care in safeguarding such children, particularly abandoned children in Malaysia. Chan (2008) offers insights into the concepts of foster care and adoption through a comparative analysis. Furthermore, the role of social workers in foster care is explored, with a focus on the practices of the Social Welfare Department in providing foster care services in Malaysia. The study reveals that the Child Act 2001 lacks comprehensive information about foster care and social work practices in Malaysia. The role of social workers in foster care is also discussed by Chan (2005). Various scholars and experts have further explored the impact of the Child Act 2001 on foster care provisions. Thambapillay (2002) delves into the implications of Child Act 2001, particularly section 30. The author examines whether natural parents can reclaim their children after court-ordered foster placements. Rasamani (2004) compiles and analyses the relevant laws applicable to children, highlighting the Child Act 2001 provisions concerning foster care. This includes court orders for temporary foster care placement under section 30(1)(e) of the Child Act 2001 before the amendment in 2016. Mohd (2004; 2008) explores foundling laws, considering both Islamic legal principles and Malaysian law. The author emphasizes the role of adoption and foster care in safeguarding abandoned children. A.Kadir (2011) and Mohd and A.Kadir (2014) also discuss the practice of foster care in Malaysia, highlighting the limited Child Act 2001 provisions related to foster care and the Malaysian Social Welfare Department's role in the process. Much of the literature mentions that the Child Act 2001 lacks detailed procedures for foster care, leaving much to be determined by the practices of the Social Welfare Department. The literature often focuses on the legal framework and the role of government agencies but provides limited information on other challenges in the implementation of foster care.

While Ibrahim (1997), Kamariah (1999), Chua (2006), Pillai (2009), Suhor (2008) and Najibah et al. (2016) have provided valuable insights into adoption practices in Malaysia, these scholars primarily focus on the legal and Islamic aspects of adoption, including its forms and implications under Malaysian adoption statutes, namely, the Adoption Act 1952 and the Registration of Adoptions Act 1952. Thus, there is limited exploration of the practical obstacles and complexities that individuals and families may encounter in the adoption process. A more comprehensive analysis of the challenges, both legal and societal, faced by adoptive parents, birth parents, and adopted children in Malaysia would enhance the understanding of adoption dynamics in the country.

Bajuri et al. (2018a) conducted a study examining the knowledge of foster parents who have provided care to foster children. Their research was centered on the concept of foster care. The

findings revealed that foster parents' understanding of family-based foster care primarily stems from their personal experiences as foster parents. In another study by these authors (2018b), they delved into the knowledge of foster parents regarding the concept of family-based foster care, focusing on three key aspects. These aspects encompass the misinterpretation of family-based foster care, the conflation of family-based foster care with adoption, and the acquisition of knowledge through experiential sources. Similarly, Chan and Raja Halim (2019) examined the understanding of foster care applicants regarding the concept of foster care in Malaysia. Their research considered three aspects: (1) the absence of a foster child definition, (2) the initial intentions behind seeking foster care, and (3) the feelings of deception after receiving a foster child. These studies emphasize the critical role of foster parents and their experiences in shaping their understanding of family-based foster care. They shed light on misconceptions surrounding this concept and the frequent confusion between family-based foster care and adoption. Nevertheless, the author do not delve into these deeply or propose strategies to address them effectively.

Resource constraints, especially in delivering sufficient training and support for foster and adoptive parents, can pose significant challenges. This means that there may not be enough resources, both in terms of funding and personnel, to provide the necessary training and assistance to foster and adoptive parents. This constraint can hinder the ability to prepare caregivers adequately and provide ongoing support, potentially affecting the quality of care provided to vulnerable children. In essence, limited resources can make it difficult to meet the diverse needs of foster and adoptive families, which can impact the overall success of these caregiving arrangements (Harlow, 2022). The literature on resource constraints in the context of foster care and adoption in Malaysia is relatively limited. While there is some research on the challenges associated with resource constraints in the broader child welfare and protection sector, specific studies focusing on resource limitations in foster care and adoption are scarce. This gap in the literature is significant because it means that there is a lack of in-depth understanding of how resource constraints impact the implementation and effectiveness of foster care and adoption in Malaysia.

Currently, a substantial portion of recent literature has centered its attention on emphasizing the importance of child protection and family-oriented care, including foster care and adoption. In general, foster care can be a pre-requisite or a step in the process leading to adoption. In many adoption cases, potential adoptive parents go through a period of foster care for the child they intend to adopt. This allows authorities to assess the prospective adoptive parents' suitability and the child's adjustment to the new family before finalizing the adoption. It also gives the child an opportunity to form a bond with their potential adoptive parents before the adoption becomes official. However, there has been a relative lack of analysis regarding the obstacles inherent in executing these practices and the extensive consequences they hold for child welfare. While it is indisputable that both foster care and adoption offer caregiving solutions for children requiring care and protection, it is equally imperative to delve into the existing hindrances and difficulties in their implementation in Malaysia.

Method

The research adopts a qualitative research methodology comprising library research and content analysis. Primary data include statutes, international legal instruments, government documents and classical books. Secondary data include academic journals, conference papers, articles, related textbooks and any relevant documents regarding family-based care, particularly foster care and adoption.

Findings & Discussion***The Concept of Family-Based Care in Child Protection***

Children in need of care and protection, as defined in section 17 of the Malaysian Child Act 2001, encompass those who are needy, orphaned, abandoned, abused, or neglected. These children face the unfortunate situation of being deprived of a family environment, either because they have no families to care for them or because they need to be separated from their families for their own well-being. In Malaysia, it is notable that institutional or residential care has been the predominant response for vulnerable children, even though specific statistics are lacking (UNICEF EAPRO, 2006). However, there is a global trend toward emphasizing family-based care for vulnerable children. The UNCRC's preamble acknowledges the fundamental right of children to grow up in a family environment characterized by happiness, love, and understanding. Furthermore, it emphasizes that the best interests of the child should be the primary consideration in all actions concerning children. Under the UNCRC, state parties are obligated to provide special protection and assistance to a child who is deprived of their family environment, whether temporarily or permanently. States are also required to ensure that national laws offer alternative care options for such children. These alternatives encompass foster placement, kafalah according to Islamic law, adoption, and institutional care. This is provided for by Article 20 of the UNCRC, which further emphasizes that residential care should only be considered as a last option for children who are deprived of a family environment. Alternatively, the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally 1986 contains provisions pertaining to child protection and placement, specifically in the context of foster care and adoption, whether it is within a country or across international borders. Therefore, it is essential for states to take measures to strengthen their child protection systems, with a particular focus on family-based care options like foster care and adoption, in alignment with these international principles and guidelines.

Malaysia has aligned with this trend following the amendment to the Child Act 2001 in 2016, prioritizing family-based care for children and considering institutional care as a last resort (Government of Malaysia, 2016). The Act defines family-based care as the care of a child in a family environment, including care by a parent, guardian, relative, foster parent, fit and proper person, or in a center. Among the various alternative care options, family-based care can be achieved through foster care that also leads to adoption, providing vulnerable children with a family setting that offers stability and permanency. Following the amendment to the Child Act 2001, to implement family-based care, the government, in collaboration with the Ministry of Women, Family and Community Development and the Social Welfare Department, has partnered with OrphanCare, an NGO, to establish the Negeri Sembilan State Action Plan (SAP) on the Deinstitutionalization of Children for the period 2018-2022. This initiative is being piloted in Negeri Sembilan, with intentions for future nationwide expansion. The SAP entails thorough research, including financial needs, resource distribution, expertise, phased implementation, risk evaluation, monitoring, evaluation procedures, and expected outcomes. Notably, crucial partners like Yayasan Hasanah and UNICEF have offered financial backing and assistance for this endeavor, showcasing their dedication to the initiative (Yayasan Hasanah, n.d.; Chow, 2017). This process involves the deinstitutionalization of children, aiming to move them out of institutions and into family-based settings, including kinship care, adoption, foster care, and small group homes (Chan, 2015). Compared to institutional care, family-based care offers numerous advantages, particularly for children's physical, intellectual, and mental development. Studies have shown that children in institutions often face health

issues, malnutrition, emotional neglect, and abuse, which can significantly impact their growth (Shapiro, 2008; Zeanah & Humphreys, 2020). Therefore, for children in need of care and protection, especially those without families, adoption and foster care can provide a permanent family setting where they can lead lives similar to other children, with their own homes and substitute parents (Shapiro, 2008). UNICEF's East Asia and Pacific Regional Office (EAPRO) (2006) also supports the idea that children whose parents are no longer able to care for them should be considered for adoption, emphasizing the importance of finding stable family environments for these vulnerable children.

Challenges Inherent in the Implementation of Family-Based Care through Foster Care and Adoption

a. The legal and regulatory complexities

The Child Act 2001 is the primary legal framework governing the care and protection of children in Malaysia. Section 30(1)(c)(i) of the Child Act 2001 outlines the official process for organizing foster care placements in Malaysia. According to this provision, foster care placements are arranged by the Social Welfare Department in cases involving abandoned children or children without parents who require alternative care. This provision of the Child Act is crucial for ensuring the well-being and protection of vulnerable children who do not have parental support. The Social Welfare Department assesses and identifies suitable foster parents who are willing and able to provide a safe and caring environment for the identified children. This assessment may include evaluating the foster parents' capacity to meet the child's physical, emotional, and psychological needs through interviews or home visits. To become a foster parent in Malaysia, an individual can apply directly to the Social Welfare Department in person or online (JKM, 2023a). Foster parents also receive financial support from the Social Welfare Department, around RM 250 per month for one child or RM 500 for two children (JKM, 2023b). At the national level, a panel reviews applications each month and matches foster children with suitable parents. Since there's no specific law on foster care in Malaysia, the Social Welfare Department follows guidelines such as the Main Quality Administration 9 (Pengurusan Kualiti (PK) Utama 9) and the draft Guidelines of Foster Child's Placement (A. Kadir, 2011).

The Social Welfare Department also initiates a family tracing process to locate the child's biological parents or guardians. If biological parents are identified and deemed capable and willing to provide adequate care, the child may be reunited with them. In cases where it is determined that foster care is in the best interests of the child, the Social Welfare Department seeks a court order to formalize the foster care placement. The court's decision is based on the principle of the child's best interests. Once the court order is obtained, the child is placed in the care of the approved foster parents. The foster parents assume the responsibility of providing for the child's day-to-day needs, including shelter, food, education, and emotional support. Throughout the foster care placement, the Social Welfare Department conducts regular monitoring and oversight to ensure the child's well-being and safety. This includes periodic visits and assessments of the foster home (A. Kadir, 2011).

The same provision of the Child Act 2001 specifies that children can be placed in foster care for a maximum of two years or until they reach the age of eighteen, whichever comes first. The duration may vary depending on the child's circumstances and best interests. In cases where the child remains in foster care for the maximum allowable duration and it is determined that reunification with biological parents is not possible or in the child's best interests, the child may

become eligible for adoption either by foster parents or others (Child Act 2001, s. 30(4)). The transition from foster care to adoption involves a separate legal process governed by the Adoption Act 1952 (for non-Muslims only) and the Registration of Adoptions Act 1952.

In West Malaysia, the Registration of Adoptions Act 1952 is applicable to both Muslims and non-Muslims, while the Adoption Act 1952 exclusively pertains to non-Muslims. Notably, adoption under the Adoption Act 1952 is granted through a formal court order, whereas adoption under the Registration of Adoptions Act 1952 involves the registration of the adoption with the National Registration Department. In essence, while the Registration of Adoptions Act 1952 allows adoptive parents to assume certain responsibilities and roles in the child's life, it does not terminate the legal connection between the child and their birth parents. This is in contrast to adoptions under the Adoption Act 1952, where the legal relationship with the birth parents is typically severed, and the adoptive parents assume full parental rights and responsibilities (Adoption Act 1952, s. 9). The adoption process under these statutes must observe all the requirements including age, probationary or fostering period, ordinarily resident and consent before an adoption can be finalised.

These legal procedures and distinctions are critical in ensuring that the adoption process is carried out in accordance with the respective statutes, with full adherence to the stipulated requirements and legal frameworks. To illustrate, the probationary period specified in section 4 of the Adoption Act 1952 is three consecutive months, whereas section 6 of the Registration of Adoptions Act 1952 mandates a probationary period of two consecutive years. There is no specific period prescribed for residence requirement. Additionally, from an Islamic view, the court's decision in the case of *Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener)* [2020] 2 MLJ 277 confirmed that even in cases of adoption, where legal rights of biological parents may be transferred to adoptive parents, the biological parents' status as the child's biological parents remains unchanged. Additionally, when it is discovered that the child was born a Muslim, the Adoption Act 1952 does not apply. The case of *PEN v KAL & Anor* [2022] 10 CLJ 456 reaffirmed the significance of consent in adoption applications, as outlined in section 6 of the Adoption Act 1952, by the ruling of the High Court. While a child's welfare is of utmost importance, obtaining the consent of the child's mother holds the highest significance in an adoption application. In this case, the applicant could not provide evidence that she had diligently tried to find the child's mother. As a result, she could not persuade the court that there were justifiable reasons for consent to be dispensed with. However, in instances involving abandoned children or those without parents, the requirement for parental consent in the adoption process may be dispensed with. It is important to note that these adoption laws are specific to Peninsular Malaysia, and Sabah and Sarawak have their own adoption ordinances. There are also no clear provisions for intercountry adoption, apart from a residence requirement for prospective foreign adoptive parents to stay in Malaysia for a certain period.

Based on the discussion above, it is important to note that foster care and adoption in Malaysia face several complexities and challenges, including legal, procedural, and practical issues. One of the primary challenges is the absence of comprehensive and specific legislation solely dedicated to foster care. Foster care is not governed by a separate law but is incorporated within the broader Child Act 2001. This lack of specific legislation can lead to ambiguities and inconsistencies in the foster care process. As a result, the legal framework for foster care may not address all the unique aspects and complexities of foster care arrangements. For instance, the establishment of foster care agencies is currently limited. While NGOs actively participate

in providing institutional care for children, they face restrictions in offering foster care services. Presently, only the Social Welfare Department holds the exclusive authority to arrange foster care placements (A.Kadir & Mohd, 2021). Similarly, there is an absence of adoption agencies in Malaysia. Instead, the Social Welfare Department collaborates with OrphanCare, an NGO, to facilitate foster care arrangements with a view to adoption. OrphanCare offers adoption services for unwanted babies, including those left at their Baby Hatch, or children in the care of the Social Welfare Department. Prospective adoptive parents can apply online to OrphanCare, specifying their preferences for the child's gender and age. The application then undergoes approval by the Social Welfare Department. In cases where the birth mother is involved, adoptive parents are selected and matched directly with the baby, expediting the process through a commission of oath. For abandoned children, prospective adoptive parents must first obtain a letter of appointment as foster parents from the Social Welfare Department. They can initiate the adoption process after completing a two-year fostering period with the child. This simplified procedure aims to streamline adoption and ensure prompt placement of the child with suitable adoptive parents (A. Kadir, 2011). However, despite these efforts to streamline foster care and adoption processes, challenges and complexities persist.

While the Child Act 2001, allows for children to be placed in foster care, it does not establish a clear legal guardianship framework for foster parents. It is essential to recognize that in foster care, the legal guardianship of the child remains under the jurisdiction of the state agency, and foster parents do not acquire full legal guardianship rights over the child (The Gale Encyclopedia of Childhood and Adolescence, 1998). Thus, foster parents may not have the same legal rights and responsibilities as biological parents, which can create legal uncertainties in decision-making, particularly in matters like education and healthcare. Furthermore, the selection and approval of suitable foster parents rely on guidelines rather than formalized legislation. The criteria for assessing the suitability of foster parents may vary, leading to inconsistencies in the approval process. In addition, foster care often serves as a precursor to adoption in Malaysia. The transition from foster care to adoption involves a separate legal process. Malaysia operates under a dual legal system, with Islamic law governing Muslims and civil law governing non-Muslims. This duality creates different legal frameworks for adoption in which navigating the legal requirements for each adoption can be challenging. Alternatively, intercountry adoption involves additional complexities, including adherence to the laws and regulations of both Malaysia and the adoptive parent's home country. It requires coordination between government authorities in both countries. Besides that, determining what is in the child's best interests can be intricate and subjective, especially in cases where biological parents may still be involved or contesting custody. In cases where the identity of an abandoned child's parents is unknown, legal representation and the process of securing citizenship for the child can be legally complex and require coordination with relevant authorities.

Hence, the complexities and nuances surrounding foster care and adoption in Malaysia highlight the need for a comprehensive and well-defined legal framework, increased awareness and education, efficient coordination between relevant authorities and organizations, and a focus on the best interests and welfare of the children involved.

b. Social perceptions and misconceptions about foster care and adoption

Perceptions and misconceptions surrounding foster care and adoption significantly shape public opinion and influence individual decisions related to these critical child welfare practices. It is imperative to comprehend these perceptions and dispel misconceptions to bring

informed and compassionate support for foster care and adoption. One of the misconceptions of is that adoption is the same as foster care. Adoption and foster care are basically distinct processes. Adoption results in permanent legal parental rights, while foster care often involves temporary placement of children. Some foster care placements may lead to adoption, but they are not the same. In this regard, comparative legal research was employed by Abu Bakar & Chan (2018) as a methodology to compare the concepts of adopted child, breastfed child, and foster child within both Muslim and non-Muslim communities in Malaysia. The study highlighted that the misconception of foster children and adopted children is foreseeable among the society at large as it also happened among academicians. Bajuri et al. (2018a; 2018b) and Chan and Raja Halim (2019) conducted in-depth studies to assess how well prospective foster care applicants understood the concept of foster care in Malaysia. These studies show that the understanding of the concept of foster care among foster parent applicants is relatively low. This lack of understanding is mainly due to the absence of the term "foster child" with most people being more familiar with the concept of an adopted child. Many foster parents only recognized the concept after making an application or after receiving an offer to foster a child. There are also no sufficient explanations regarding the procedures and differences between applications for foster children and adopted children. The foster parents also lack clarity on the legal processes, timeframes, and the true purpose of applying for foster children. A few foster parents also mentioned that their primary intention was to adopt, and they were not well-informed about the concept of foster children when they applied. This sentiment is more common among non-Muslim applicants since they can expedite the adoption process using the Adoption Act 1952 (Chan and Raja Halim, 2019). Significantly, these studies have predominantly shed light on the realm of foster care and adoption as forms of family-based care from the standpoint of foster parents.

There is also a perception that foster parents may not undergo thorough screening, potentially posing risks to the children. However, in reality, foster parents go through extensive background checks, training, and home assessments to guarantee the safety of the children. In Malaysia, the Social Welfare Department takes on the responsibility of evaluating the suitability of foster parents (JKM, 2023a; A.Kadir, 2011). Ensuring the best interests and welfare of the child are paramount in foster care and adoption. Thus, assessing and ensuring the suitability of prospective parents is a complex process that requires careful consideration. This underscores the significance of selecting appropriate foster parents, which is why only the Social Welfare Department, and not any other agencies, is authorized to arrange foster care placements for children in need of care and protection.

Many children may spend extended periods in foster care, with some eventually finding permanent homes through adoption by their foster parents. Significantly, the Child Act 2001 allows for the legal adoption of abandoned children after a two-year fostering period. However, societal attitudes towards adoption can still be somewhat conservative in Malaysian society. This can deter adoptive families from seeking support services due to concerns about privacy or fear of societal judgment. In this regard, efforts are required to shift these societal attitudes and raise awareness about the importance of providing stable and loving families to children in need of care and protection. In response, OrphanCare has taken proactive steps to change societal perceptions regarding orphans. They provide training sessions on adoption to increase awareness about the significance of placing children in need into family environments through adoption. OrphanCare also organizes annual conferences and forums that focus on the process of transitioning children out of institutions, a practice known as deinstitutionalisation (A.Kadir, 2018).

Furthermore, there is a misconception that foster parents do not love their children as much. It is also often assumed that children in foster care do not receive proper support or resources. In many cases, they have access to medical, educational, and therapeutic services to address their unique needs. Foster parents play a role similar to that of biological parents and love their children deeply. Love and attachment are not determined by biology but by nurturing and caring for a child. When foster parents have a clear understanding of their role, it creates a positive experience not only for themselves but also for the foster child. This clarity helps reduce conflicts within the foster family. Foster parents who care for a foster child are also committed to ensuring the child's well-being. This includes providing access to essential aspects of life, such as formal and informal education, a stable home environment, and proper supervision (Bajuri et al., 2018a; 2018b). In essence, they act as guardians for the foster child. It is commonly observed that foster parents are often perceived as individuals who possess remarkable selflessness and compassion, providing stable and affectionate homes for vulnerable children without any conditions (Bajuri et al., 2018a). Such perceptions typically elicit admiration and respect from society. There is also an underlying assumption that foster caregivers are driven either by self-centered emotional or financial incentives or by a profound altruistic sense of moral or social duty to offer assistance (Harding et al., 2020). There is also a misconception that foster parents are primarily motivated by financial gain. In truth, the allowance provided to foster parents often does not fully cover the costs of raising a child, leading foster caregivers to often use their personal funds for additional needs like clothing, recreational activities, toys, and school-related costs (Chan, 2018). Placing these vulnerable children in care settings that are more likely to succeed better aligns with the unique needs of each child and has the potential to enhance the satisfaction of caregivers. This, in turn, can lead to more favorable long-term outcomes for both parties involved (Haysom et al., 2020). Additionally, foster care and adoption are widely regarded as integral elements within child welfare systems, with the primary goal of safeguarding and enhancing the lives of children who have encountered adversity or neglect. They are perceived as mechanisms designed to secure the safety and well-being of children. Latzman et al. (2018) corroborate this perspective by asserting that when young individuals are placed in foster care, the state assumes the duty of providing a secure and stable temporary environment.

Conversely, children within the foster care system are likely to have endured some form of trauma. When caregivers exhibit abusive or neglectful behavior to an extent necessitating removal and custody loss, it can profoundly affect the child's capacity to establish a healthy attachment to their caregiver. The absence of stability, coupled with the experiences of being uprooted from their initial caregivers, placed in foster care, and potentially relocated to different foster placements, can hinder the child's ability to form a secure bond with any available caregiver. The foster care journey and the process of being removed from their home present formidable challenges for many foster care youths. Nevertheless, providing support and clinical care during this transition can mitigate the risk of multiple attachment disruptions and the development of an insecure attachment style (Miranda et al., 2019).

Apart from that, there were concerns about challenging behaviors exhibited by children, their acceptance within the family, and the potential financial impact of adoption on the existing household. These concerns reflect a prevalent public perception that children in foster care may carry some form of emotional or behavioral difficulties (Luu et al., 2019). Not all foster children have behavioral or emotional issues. Children enter foster care for various reasons, including abandonment, abuse, neglect, or family circumstances. Many are resilient and adapt well to stable, loving and supportive adoptive families. In light of these findings, it is plausible to suggest that effective strategies should aim to address these specific concerns by disseminating accurate information regarding the diverse backgrounds of children placed in foster care and the underlying reasons for their placement. Additionally, emphasizing the advantages of adopting a child, both for the child and their prospective adoptive parents, can be integral in countering these concerns.

Older children also need loving families and are available for adoption. In this regard, there is a misconception that foster care and adoption are limited to infants. This preference arises because many prospective adoptive parents tend to favor adopting infants over older children. This bias is partly due to the lack of information that not all infants are easy to care for, and conversely, not all older children have behavioral issues. In Malaysia, there is a general reluctance to adopt older children because potential adoptive parents often question their ability to manage the child's behavior. Consequently, older children who have spent time in institutions may struggle with low self-esteem, lack of confidence, and behavioral challenges. As a result, it becomes challenging to find suitable adoptive families for many children older than two years (A.Kadir, 2018).

Malaysia's multicultural society means that considerations related to religion, race, and cultural preferences can impact the placement of children, potentially leading to longer waiting times for adoption and fostering. For instance, the identification of Baby Hatch babies as Muslims, despite no initial indication of their race or religion upon abandonment, can be a source of concern for many non-Muslims. Besides, the preferences and specific requirements of prospective adoptive parents can complicate the placement of children into adoptive families. Some adoptive parents have strict criteria, such as gender or age limitations, and may not be open to children born out of wedlock or from certain backgrounds, preferring children from families they perceive as "poor" or "good." Stereotypes can also play a role, with some Malays and Indians expressing preferences for adopting Chinese children, influenced by perceptions of intelligence, appearance, and skin color. This can make it more challenging to find adoptive families for Indian children, and Chinese couples may experience longer waiting times due to the limited availability of Chinese children in institutional care (A.Kadir, 2018).

Thus, it is imperative to grasp the social perceptions and misconceptions related to foster care and adoption to debunk falsehoods and promote a more precise and compassionate perception of these vital child welfare procedures. The core objective of foster care and adoption is to offer secure, affectionate, and enduring homes for children, and society's support and informed viewpoints play a pivotal role in realizing this objective.

c. Resource constraints

It is undeniable that the arrival of a new foster or adopted child can bring a wave of new responsibilities that may feel overwhelming to foster and adoptive parents. The transition to caring for a new child, especially one with unique needs or backgrounds, can be challenging. In some cases, a child's specific needs may only become apparent after their placement, necessitating a transition to a caregiver equipped with the requisite skills for adequate care (Leathers et al., 2019). To manage these added responsibilities effectively, foster and adoptive parents necessitate social support, training, and the assistance of a cohesive team of professionals. However, resource constraints imply that there might be insufficient resources, encompassing funding and staff, to deliver the essential training and support required for foster and adoptive parents.

The Director General of the National Population and Family Development Board (LPPKN) in Malaysia recommends that a parenting course is a mandatory requirement for married couples who wish to adopt children. Its purpose is to ensure that these couples are mentally, physically, and psychologically prepared for parenthood. LPPKN also intends to submit this proposal to the Social Welfare Department and engage in discussions regarding its inclusion in the adoption legislation. Furthermore, LPPKN provides counseling sessions to assist couples in preparing for adoption and making informed decisions (Mohamad, 2019). It follows that aspiring foster and adoptive parents must attend these parenting courses, orientations, or counseling sessions to grasp their roles and responsibilities, thus reducing the potential for harm or abuse to the children under their care (Hashim, 2021). As of now, it appears that regulation 3 of the Child (Family Based Care) Regulations 2017 requires prospective foster parents to attend the parenting course or counselling session as determined by the Social Welfare Department. This seems to suggest that resources should be allocated to provide training and support for the prospective foster or adoptive parents.

Alternatively, when it comes to the adoption process with OrphanCare, prospective adoptive parents are required to attend and successfully complete a one-day pre-adoption training workshop. During this workshop, participants will receive guidance on how to manage their expectations, and they will also have the chance to connect with other prospective adoptive parents. These connections could potentially lead to the development of supportive friendships, allowing them to stay in touch and share their adoption experiences (OrphanCare, n.d.). In addition, the presence of a cooperative and supportive interdisciplinary team of experts plays a pivotal role in mitigating stress, enhancing satisfaction, and reducing burnout among foster and adoptive parents (Malette et al, 2020). Similarly, in residential care, resources are necessary for enhancing staff training and maintaining appropriate child-to-caregiver ratios. Resources are also crucial for effectively monitoring and ensuring the optimal operation of these care institutions (Li et al., 2017). Thus, the challenge of resource constraints is a common factor in both family-based care and residential care. Addressing these constraints through investments in training, support, and facility improvements is essential to ensure the well-being and development of vulnerable children in these care systems.

Conclusion and Recommendations

In conclusion, the implementation of foster care and adoption in Malaysia faces various hurdles and challenges. These challenges include the existence of multiple laws and regulations governing adoption and foster care, as well as differences between Islamic and civil laws which can create confusion and complexities in the adoption process. Besides that, Malaysia's multicultural society means that considerations related to religion, race, and cultural preferences can impact the placement of children, potentially leading to longer waiting times for adoption and fostering. Adoption can also still be viewed as a taboo subject in Malaysian society, and efforts are needed to change societal attitudes and increase awareness about the importance of providing children without parental care with stable and loving families. In addition, prospective adoptive parents may have specific preferences that limit the pool of available children for adoption. This can result in challenges in finding suitable matches and may lead to delays in placing children in adoptive families. Furthermore, resource constraints within the child protection system, including the availability of social workers and support services, can affect the efficiency of the foster care and adoption processes.

The following recommendations are to address the challenges and improve the implementation of family-based care through foster care and adoption in Malaysia:

1. Develop specific legislation and regulations focused on foster care, outlining comprehensive guidelines for foster parent selection, training, rights of foster children, matching processes, monitoring and support mechanisms.
2. Consider harmonizing adoption laws to create a more unified legal framework that simplifies the adoption process, reduces complexities, and ensures equal treatment for all children, regardless of their religious backgrounds.
3. Launch nationwide recruitment, education and awareness campaigns to change societal attitudes toward foster care and adoption by highlighting the benefits of providing children with loving families and dispelling misconceptions and taboos. This campaign should not only emphasize the importance of foster care and adoption but also provide information on how interested individuals can get involved in the process.
4. Provide comprehensive training and support for prospective foster and adoptive parents. This should include education on the needs of children who have experienced trauma or abuse and guidance on culturally sensitive parenting.
5. Simplify and streamline adoption and foster care procedures, making them more efficient and accessible. For example, by implementing a central adoption authority like the Social Welfare Department to coordinate efforts and reduce bureaucratic hurdles with assistance from NGOs.
6. Encourage closer collaboration between government agencies, NGOs, and other stakeholders involved in child welfare by establishing clear communication channels and standard operating procedures to ensure smoother processes.
7. Allocate sufficient resources to the child protection system, including funding for social workers, counselors, and support services. Adequate staffing levels are critical for timely assessments and placements.
8. Offer counseling and support services to birth parents who may be considering adoption, emphasizing that it is a voluntary and loving choice for the child's best interests.

9. Implement a robust monitoring and evaluation system to track the well-being of children in foster care. Regular assessments can identify challenges early and ensure the child's best interests are upheld.
10. Study international best practices in adoption and foster care systems and adapt them to Malaysia's context where applicable.

These recommendations aim to make the foster care and adoption systems in Malaysia more child-focused and effective, ultimately providing vulnerable children with the care and love they need to thrive in safe family environments. By addressing the challenges and implementing these strategies, Malaysia can enhance its child protection system and contribute to the well-being and development of its children.

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