



## GENDER EQUALITY OF CHILDREN CARE RIGHTS FAZLUR RAHMAN'S HERMENEUTIC PERSPECTIVE

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**Abstract:** This study aims to analyze gender equality in child custody rights (*ḥaḍānah*) through Fazlur Rahman's double movement hermeneutic framework. The research focuses on the relevance of Qur'anic and Prophetic texts regulating parental responsibilities, particularly QS Al-Baqarah: 233, QS At-Tahrim: 6, and several hadiths addressing custody arrangements. This study employs a qualitative library research design with a historical-contextual analytical approach. Through Rahman's hermeneutics, the research re-evaluates classical Islamic legal formulations that often prioritize mothers in custody decisions without considering contemporary social transformations. The findings reveal that sociocultural contexts and patriarchal structures of early Muslim societies significantly influenced classical custody rulings. Therefore, modern custody decisions should emphasize child welfare, parental capability, psychological stability, and shared responsibility rather than gender-based assumptions. The study concludes that Islam fundamentally offers equal opportunities for both parents to assume childcare responsibilities. Accordingly, custody arrangements must prioritize the child's best interests and align with the moral principles of justice, compassion, and cooperation embedded in Islamic teachings. This hermeneutic reinterpretation highlights the necessity of contextual legal reasoning to ensure gender-balanced and child-centered custody practices.

**Keywords:** Gender Equality, Child Custody Rights, *Ḥaḍānah*, Hermeneutics, Fazlur Rahman, Islamic Family Law

**Abstrak:** Penelitian ini bertujuan menganalisis kesetaraan gender dalam hak pengasuhan anak (*ḥaḍānah*) melalui perspektif hermeneutika double movement Fazlur Rahman. Fokus kajian diarahkan pada relevansi teks-teks Al-Qur'an dan Hadis yang mengatur tanggung jawab orang tua, khususnya QS. Al-Baqarah: 233 dan QS. At-Tahrim: 6, serta beberapa hadis mengenai penetapan hak asuh. Penelitian menggunakan metode kualitatif berbasis studi pustaka dengan pendekatan analisis historis-kontekstual. Melalui hermeneutika Rahman, penelitian ini meninjau ulang perumusan hukum klasik yang sering kali menetapkan ibu sebagai pihak yang lebih berhak atas pengasuhan anak tanpa mempertimbangkan perubahan sosial modern. Hasil penelitian menunjukkan bahwa penetapan hak asuh dalam literatur klasik sangat dipengaruhi kondisi sosial pada masa turunnya wahyu dan budaya patriarkal yang kuat. Dengan demikian, keputusan pengasuhan anak pada masa kini perlu mempertimbangkan prinsip maslahah, kemampuan orang tua, kondisi psikologis anak, serta kesetaraan tanggung jawab antara ayah dan ibu. Kajian ini menegaskan bahwa Islam memberikan peluang yang sama bagi kedua orang tua untuk menjalankan pengasuhan, dan keputusan hak asuh harus didasarkan pada kepentingan terbaik bagi anak, bukan pada stereotip gender.

**Kata Kunci:** Kesetaraan Gender, Hak Pengasuhan Anak, *Ḥaḍānah*, Hermeneutika, Fazlur Rahman, Hukum Keluarga Islam

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## INTRODUCTION

The relationship between parents and their children occupies a central position within Islamic teachings, as it functions not only as a biological or sociological bond, but also as a moral and religious responsibility entrusted by Allah. The Qur'an regulates this relationship to ensure that the family, established through the marital union of a husband and wife, becomes a harmonious and morally grounded institution (Alon et al., 2020). Parenting, as an essential aspect of this relationship, is repeatedly emphasized in Islamic sources. One of the foundational texts that articulates parental responsibility is QS At-Tahrim: 6, which states:

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاطٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

"O you who believe! Protect yourselves and your families from the Hellfire whose fuel is people and stones; over it are angels, stern and severe, who do not disobey Allah in what He commands them, and they do whatever they are commanded".

This verse situates both father and mother as equal bearers of responsibility for safeguarding their families, particularly their children, from moral and spiritual harm. Although social reality often constructs the father as the sole "*imam*" of the household, responsible for external, material, and financial matters, the Qur'anic instruction transcends such sociocultural boundaries. The obligation to protect, educate, and guide the family is not gender-specific; rather, it is a shared moral and religious mandate equally imposed on both parents (Chung et al., 2021).

In contemporary society, the understanding of parental roles in child-rearing is significantly influenced by the construction of gender norms. Gender as a social concept distinct from biological sex is shaped by cultural expectations and societal practices. Across various communities, especially within Muslim-majority contexts, women are frequently perceived as the primary caregivers in the domestic sphere. This expectation persists even as many women now actively participate in public, professional, and educational arenas alongside men. Consequently, women often carry a "double burden" by navigating responsibilities in both public and domestic spheres. The persistence of traditional gender stereotypes has contributed to the belief that childcare, emotional guidance, and household duties naturally fall within the mother's inherent domain (Li et al., 2022).

However, Islamic teachings do not exclusively place domestic responsibilities on women. The Qur'an and Hadith emphasize principles of justice (*'adl*), cooperation (*ta'āwun*), compassion (*rahmah*), and mutual support (*musyārahah*) within the family system. These principles imply that childcare is a shared obligation based on capability, compassion, and commitment rather than gender alone. In fact, the spiritual and educational roles of fathers are repeatedly highlighted in the Qur'an, as in the stories of the Prophets Luqman, Ibrahim, and Ya'qub, all of whom exemplified fatherly involvement in nurturing and educating their children (Mahyudin et al., 2021).

Legal provisions further underline the joint responsibility of parents. In the context of Indonesian law, both civil (positive) law and Islamic legal compilations emphasize that parents must care for, educate, and protect their children, regardless of marital status. The purpose of these regulations is to ensure the well-being of children as future contributors

to society. Effective parenting requires awareness, cooperation, and commitment from both the father and the mother. Divorce, however, introduces challenges concerning child custody (*ḥaḍānah*). Although both parents retain obligations toward their children even after separation, custodial rights are often contested. The Qur'an, particularly in Al-Baqarah: 233, emphasizes shared responsibilities in providing for and nurturing children, regardless of marital status. Nevertheless, legal instruments, especially the Compilation of Islamic Law (KHI), stipulate that custody of young children typically belongs to the mother. Article 105(a) of the KHI states that children who have not reached the age of discernment (*mumayyiz*) should be placed under the custody of the mother following divorce (Saiful & Fendri, 2020).

This provision, while grounded in certain juristic traditions, is frequently criticized for failing to ensure gender equity. In practice, it tends to position mothers as default custodians while placing fathers in a secondary role. Critics argue that such formulations overlook contextual realities, the child's best interests, and the evolving socioeconomic capabilities of fathers in modern contexts. Moreover, the assumption that mothers are "naturally" more capable of childcare reflects gendered cultural constructs rather than objective assessments of parental competence. Historical influences also play a significant role. Indonesian society has long been shaped by patriarchal patterns that inform expectations surrounding gender roles in marriage, work, and family responsibilities. This cultural background helps explain why legal provisions in the Marriage Law and KHI often reflect gendered assumptions, assumptions that no longer align with contemporary realities in which both men and women may be equally capable, educated, and economically independent.

Furthermore, granting custody exclusively to the mother without evaluating the specific conditions of both parents risks undermining the principle of justice. Islamic jurisprudence, when examined comprehensively, stipulates that custody must be determined based on the child's welfare, taking into account emotional, psychological, educational, and moral needs. Custody is not an absolute right of either parent; rather, it is a trust (*amānah*) prioritizing the child's best interests. Even when custody is granted to one parent, the non-custodial parent retains visitation rights and must continue fulfilling financial, moral, and spiritual obligations (Megasari, 2024).

Contemporary adjudication of child custody cases in Indonesia tends to rely heavily on normative arguments and general notions of *maslahah*. However, the incorporation of hermeneutical, sociological, and contextual methods, such as Rahman's approach, remains limited. This hermeneutic perspective allows for more holistic and equitable interpretations of Qur'anic and Hadith teachings by illuminating the moral objectives the texts intend while remaining sensitive to present-day social realities. In this research, the author employs a library-based methodology, collecting data through systematic reading, identifying relevant materials, and analyzing them through qualitative, deductive reasoning. The focus includes themes of custody rights, gender equality, and Fazlur Rahman's hermeneutics. Through this approach, the study aims to contribute fresh insight into the discourse on gender-equitable child custody within Islamic law.

## LITERATURE REVIEW

Literature on gender equality and child custody in Islamic law has grown significantly over the past several decades, particularly as contemporary Muslim scholars and legal practitioners seek to reconcile classical juristic frameworks with modern social realities. This section reviews key scholarly contributions related to: (1) gender perspectives in Islamic family law; (2) the interpretation of child custody rights in classical and contemporary jurisprudence; and (3) the application of Fazlur Rahman's hermeneutics in the reformulation of Islamic legal concepts. This review also identifies gaps within existing research that the present study seeks to address.

### 1. Gender Equality in Islamic Legal Discourse

Scholars from multidisciplinary backgrounds, including Islamic studies, gender studies, and sociology of law, have widely explored the discourse on gender equality in Islam. Fatima Mernissi, Amina Wadud, and Asma Barlas, for instance, have been influential in advocating Qur'anic interpretations grounded in justice (*'adl*) and equality (*musāwah*) (Duderija, 2020). Their works argue that patriarchal interpretations of Islamic texts are essentially products of historical and cultural biases rather than inherent directives of the scripture itself. Qur'an and Woman emphasizes that Qur'anic exegesis must prioritize universal ethical values that uphold human dignity, compassion, and equality. Although Wadud does not explicitly address child custody, her overarching argument, that gender roles in Islam must be viewed through a justice-oriented hermeneutic, lays an essential foundation for gender-sensitive interpretations of family law. Likewise, Islamic *fiqh* emerged through male-dominated structures that shaped legal formulations concerning marriage, divorce, and parental roles. In her view, gendered assumptions about men's authority and women's domestic roles profoundly influenced classical rulings on custody and guardianship (*wilāyah*). These insights support the notion that custody laws cannot be detached from broader gender dynamics in Muslim societies (Koburtay et al., 2020).

In Indonesia, the discourse on gender equality has been developed by Asmawi, Musdah Mulia, and Siti Musdah Mukti, who highlight how cultural patriarchy shapes religious interpretations. Their work observes that gender bias frequently appears in the implementation of the Compilation of Islamic Law (KHI) and the Marriage Law. These studies collectively emphasize that achieving gender equality requires reinterpretation of religious sources through more contextual and justice-oriented methodologies (Fitri et al., 2021).

### 2. Child Custody in Classical and Contemporary Islamic Law

Child custody (*ḥaḍānah*) has traditionally been treated in classical Islamic jurisprudence as a matter primarily concerning the child's welfare. However, jurists historically assigned custody of young children to mothers, especially infants, based on the assumption that women possess natural nurturing abilities. Classical jurists also applied age thresholds to determine when custody might transfer from mother to father, reflecting social norms of their time. Ibn Qudāmah (in *al-Mughnī*) and al-Nawawī (in *al-Majmū'*) both state that mothers have priority in the custody of young children due to their compassion, availability, and emotional attachment. However, classical scholars also recognized conditions under which custody could be revoked, such as neglect or

inability to provide proper care. These conditions indicate that *ḥaḍānah* is ultimately guided by the principle of child welfare (*maṣlaḥah al-walad*), despite gendered presuppositions. Modern scholarship revisits these classical doctrines in light of changing family dynamics (Fasiha et al., 2023). Muslim societies often reinterpret custody laws to reflect modern parenting roles, in which both men and women may share caregiving responsibilities more equally. His work highlights a shift from gender-based custody awards toward assessments based on parental competence and child welfare (Isla et al., 2023).

Within the Indonesian context, child custody has been widely discussed by academics examining the legal implications of Articles 105 and 156 of the Compilation of Islamic Law (KHI). Several scholars, including Nurul Huda, M. Atho Mudzhar, and M. Faisal Aulia, argue that KHI provisions reflect the sociocultural context of the 1980s, when traditional gender roles were more firmly embedded. Their studies emphasize that these articles may no longer be responsive to current realities in which fathers are equally capable of nurturing children and mothers increasingly participate in public life. Muhamad Faisal Aulia et al. (2020) demonstrate that many custody arrangements disproportionately favor mothers without evaluating the father's suitability, thereby leading to gender imbalance. Similarly, Ahmad Zaenal Fanani (2021) asserts that the persistent division between domestic and public roles in society reinforces gender-biased custody decisions. Together, these studies reveal a pressing need to reassess custody regulations in light of contemporary gender frameworks and child welfare principles.

### **3. Hermeneutics and Contextual Interpretation of Islamic Texts**

Hermeneutics has become an essential method in modern Islamic thought, especially for scholars seeking to interpret the Qur'an and Hadith in dynamic socio-historical contexts (Alak, 2023). Fazlur Rahman emerges as one of the most influential Muslim thinkers in this domain. His hermeneutical model, known as the double movement, proposes two interpretive steps: a) Moving from the present situation to the historical context of revelation to understand the moral objectives behind Qur'anic teachings. b) Moving back to the contemporary context to derive practical norms consistent with those moral objectives.

Rahman's seminal works, including *Islam and Modernity* (1982) and *Major Themes of the Qur'an* (1980), emphasize that Qur'anic rulings should not be interpreted as rigid, literal directives but rather as expressions of overarching ethical principles such as justice, compassion, and human dignity. His approach aims to preserve the normative authority of the Qur'an while ensuring its relevance in modern contexts. Several scholars have applied Rahman's hermeneutics to areas of Islamic family law. Abdullah Saeed (2006), for instance, extends Rahman's approach by developing a contextualist methodology, arguing that family-related Qur'anic verses must be reinterpreted in light of changing social structures. Saeed maintains that the hermeneutical lens allows Islamic law to adapt in a manner consistent with *maqāṣid al-sharī'ah* (objectives of Islamic law). However, the specific application of Rahman's hermeneutics to child custody issues remains relatively limited in academic literature. Most existing studies focus on broader themes such as gender relations, legal reform, or Qur'anic ethics. It creates a significant gap that the present research addresses: applying Rahman's framework directly to

reinterpret custody rights from both a gender-equality perspective and a child-welfare-centered paradigm (Zulfa, 2024).

## RESEARCH METHODOLOGY

This study employs a qualitative library research design (library-based qualitative research) to examine gender equality in children's care rights through Fazlur Rahman's hermeneutic perspective. The research design is grounded in an interpretative paradigm, focusing on textual analysis and conceptual reconstruction. This approach is appropriate because the study's objective is not to measure empirical variables but to interpret classical Islamic texts, scholarly commentaries, and Rahman's hermeneutical theory to produce normative-ethical conclusions (Frandsen et al., 2021). The design follows three main stages: 1) Text Identification Stage: Identifying primary Islamic texts (the Qur'an and Hadith), Fazlur Rahman's original works, and authoritative secondary literature on gender, childcare, and Islamic family law. 2) Contextual Interpretation Stage: Applying Rahman's double movement to interpret selected texts by (a) moving from present issues to historical context and (b) returning to contemporary conditions with reconstructed ethical principles. 3) Conceptual Synthesis Stage: Integrating the interpretive results to formulate a gender-equitable framework for children's care rights in Islamic thought (Lowenstein et al., 2021).

This systematic design ensures that the study remains theoretical, analytical, and aligned with Rahman's hermeneutic methodology.

### Data Collection

Data collection in this study is conducted through documentary methods, focusing on gathering textual sources relevant to the research theme. The steps are: 1) Primary Data Collection (a. Works by Fazlur Rahman, including *Islam and Modernity*, *Major Themes of the Qur'an*, and selected articles in which he elaborates on his hermeneutical theory. b. Islamic classical sources, such as tafsir works, fiqh literature on childcare (*ḥaḍānah*), and Hadith collections related to parental responsibilities. c. Legal documents, including contemporary Islamic family law regulations that address gender equality and childcare arrangements. 2) Secondary Data Collection (a. Scholarly books and peer-reviewed journal articles on gender studies, Islamic law reform, hermeneutics, and Rahman's intellectual contributions. b. Research reports, conference papers, and institutional publications that discuss modern interpretations of childcare rights).

### Data Validation Techniques

1. Source criticism to evaluate the authenticity, relevance, and academic reliability of each text.
2. Triangulation of textual sources to ensure interpretive consistency between classical, modern, and Rahmanian perspectives (Meydan & Akkaş, 2024).

### Data Analysis

Data analysis is performed using a hermeneutic analytical method explicitly grounded in Fazlur Rahman's double movement theory. The analysis consists of three concrete and systematic steps: 1) Step Historical-Contextual Analysis (a. Identifying the socio-historical background of scriptural texts related to childcare and gender roles. b. Examining the *sabab al-nuzul*, cultural norms, and socio-legal practices during early

Islamic society. c. Understanding Rahman's emphasis on distinguishing between universal moral values and context-bound legal rulings. 2) Step Normative-Ethical Reconstruction ( a. Extracting the universal ethical principles (justice, compassion, human dignity, child welfare) from the textual analysis. b. Reinterpreting gender-related rulings through Rahman's conceptual framework of *maqāṣid* and moral objectives. c. Reformulating childcare rights as shared parental responsibilities rather than fixed gender roles. 3) Step Contemporary Application and Synthesis (a. Applying reconstructed principles to modern socio-legal contexts. b. Reviewing contemporary family law cases and gender equality issues to test the relevance of Rahman's hermeneutic model. c. Producing a synthesized framework that supports equitable childcare rights consistent with Islamic teachings and modern human rights standards (Carpenter, 2024).

This structured analytical process ensures that the findings are grounded in textual evidence while responsive to contemporary gender issues.

## FINDINGS AND DISCUSSION

### CHILDREN'S RIGHTS IN ISLAMIC LAW

#### Definition of Child Custody (*Ḥaḍānah*) in Islamic Law

In Islamic jurisprudence, the concept of child custody, known as *ḥaḍānah*, refers to the obligation of parents or qualified guardians to ensure a child's physical, emotional, intellectual, and spiritual well-being until the child reaches an age of independence and maturity. Linguistically, the term *ḥaḍānah* derives from *ḥiḍn*, which literally means "the lap" or "the bosom", symbolizing the nurturing, protective position in which a mother holds her child. Classical Arab expressions such as *ḥaḍanat al-ṭayr bayḍahā* ("a bird holding its eggs beneath its wings") illustrate this deeply intimate notion of care, emphasizing tenderness, protection, and closeness (Malik & Kurniawan, 2025).

Across Islamic scholarship, various jurists define *ḥaḍānah* with slight differences in emphasis, yet they consistently view it as a comprehensive responsibility that extends far beyond merely supervising a child's physical needs. Rather, *ḥaḍānah* embodies a holistic concept of upbringing, covering moral education, spiritual guidance, and emotional support (Ramadhan et al., 2025). Several authoritative definitions include the following:

1. Wahbah az-Zuhaylī – *Fiqh al-Islām wa Adillatuhu*

Az-Zuhaylī describes *ḥaḍānah* as an aspect of guardianship that deals with nurturing and protecting a child physically and mentally. He highlights that, in many circumstances, women are naturally better suited to this responsibility because of their tenderness, patience, and habitual involvement with young children. However, he distinguishes between *ḥaḍānah* and *ta'lim* (education). According to him, *ḥaḍānah* is a right specifically belonging to the custodian (*ḥāḍin*), whereas individuals outside the family may sometimes provide education. Thus, while education may be delegated, the guardianship dimension of *ḥaḍānah* in classical fiqh is more strictly defined.

2. Sayyid Sābiq – *Fiqh al-Sunnah*

"The act of caring for a young boy or girl, or an intellectually disabled person who is unable to manage their own affairs, by preserving their well-being, protecting them from harm, and providing physical, psychological, and intellectual nourishment until they are capable of bearing the responsibilities of life". This definition underscores the

multidimensional nature of custody responsibilities, combining physical care with emotional and moral development.

3. Abdur Raḥmān al-Ṣābūnī – *Dirāsāt Islāmiyyah*

Al-Ṣābūnī states: "The purpose of *ḥaḍānah* is to raise a child and oversee all their affairs in a manner that best serves their interests". He stresses that Islamic law assigns early childhood care primarily to the mother because she is generally more affectionate, patient, and emotionally attuned to her young children's needs.

4. Muḥammad al-Dusūqī – *Aḥwāl al-Shakhṣiyyah fī Madhhab al-Shāfi'ī*

Al-Dusūqī views *ḥaḍānah* as:

"Guardianship over a minor to provide upbringing. This guardianship occurs in two stages: from birth until the child is capable of managing basic needs, and from that stage until the child reaches maturity". His formulation highlights that custody evolves as the child's capabilities develop.

5. Muḥammad Muḥyiddīn 'Abd al-Ḥamīd – *Aḥwāl al-Shakhṣiyyah fī al-Sharī'ah al-Islāmiyyah*

He defines *ḥaḍānah* as:

"Raising a child who is incapable of managing their own affairs until a certain age, by those among their maḥram relatives who possess the right to do so". Synthesis of Classical Definitions

Taken together, these definitions illustrate a broad scholarly consensus that custody is required for children who are too young to care for themselves or have not reached maturity. *Ḥaḍānah* includes physical care, emotional nurturing, moral instruction, and religious upbringing. Custody traditionally prioritizes the mother in early childhood due to her biological closeness and emotional attentiveness, but this is not an exclusive or permanent rule.

### Critical Reflections from a Gender-Equality Perspective

While classical jurists often prioritized mothers in matters of *ḥaḍānah*, their reasoning rested on assumptions about women's traditional domestic roles and their close involvement in childcare. However, from a gender-equality standpoint, several points warrant reconsideration:

1. Emotional tenderness and patience are not exclusive to women. Many contemporary fathers demonstrate equal levels of affection, sensitivity, and nurturing capability.
2. Not all women necessarily embody stereotypical caregiving traits. Thus, assigning custody solely based on gender is insufficient and may produce unjust outcomes.
3. Socioeconomic realities have shifted. Many women today work outside the home and may not be full-time caregivers, while some men assume more significant domestic responsibilities.
4. Best-interest-of-the-child standards demand an evaluative, not categorical, approach, one that assesses each parent's moral integrity, mental stability, emotional availability, financial capacity, and caregiving competence.
5. Classical fiqh was shaped within patriarchal societies, and some conclusions reflect sociocultural contexts rather than absolute divine mandates.

Therefore, while granting early custody to mothers may remain reasonable in cases involving breastfeeding infants (up to two years), beyond this stage, both parents may



possess equal legitimacy to act as custodians. It aligns with broader Islamic principles of justice (*'adl*), compassion (*rahmah*), and the preservation of children's welfare (*maṣlaḥah al-ṭifl*) (Idris et al., 2024).

### Legal Basis for Child Custody

Small children who are still being given care and living expenses until they reach maturity or puberty are part of the *ḥaḍānah*. Conditions like this make children have the right and must be given custody so that their body, soul, and religion can be well preserved (Multazam, 2024). Matters related to this can be found in the following texts:

QS. At-Tahrim: 6

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

"O you who believe! Protect yourselves and your families from the fire of hell, whose fuel is people and stones, guardians of harsh and harsh angels, who do not disobey Allah in what He commands them and always do what is commanded".

QS. Al-Baqarah: 233

وَالْوَالِدَاتُ يُعْرَضْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَتِّمَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَأُتْضَارَ وَالِدَةُ بَوْلِدِهَا وَلَامَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

"And mothers should breastfeed their children for two whole years, for those who want to breastfeed completely. And the father has to properly provide for their maintenance and clothing. A person is not burdened more than he can bear. A mother should not suffer because of her child, and neither should a father suffer because of his child. The heirs are (obligated) like that too. If both want to wean by agreement and deliberation between them, then there is no sin on either of them. And if you want to nurse your child to someone else, then there is no sin for you to pay for it properly. Fear Allah and know that Allah is All-Seeing of what you do".

Hadith *ḥaḍānah* Given to Mother

حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ السُّلَمِيُّ، حَدَّثَنَا الْوَلِيدُ، عَنْ أَبِي عَمْرٍو يَعْني الْأَوْزَاعِيَّ، حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو، أَنَّ امْرَأَةً قَالَتْ: يَارَسُولَ اللَّهِ، إِنَّ ابْنِي كَانَ بَطْنِي لَهُ وَعَاءٌ وَتُدْيِي لَهُ سِقَاءٌ وَجَجْرِي لَهُ جَوَاءٌ، وَإِنْ أَبَاهُ طَلَّقَنِي وَأَرَادَ أَنْ يَنْتَزِعَهُ مِنِّي، فَقَالَ لَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكَحِي. رواه أحمد وأبو داود وصححه الحاكم.

It was narrated from Abdullah bin Ammar that a woman said, "O Messenger of Allah, verily this is my child, it is my belly that bears it, my milk that gives her water, and my lap protects her. But his father who divorced me wanted to take it from me. So, the Messenger of Allah said to him, "You are more entitled to him as long as you are not married." (HR Ahmad Abu Dawud. Sahih Hadith according to Al-Hakim)

أَخْبَرَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى قَالَ: حَدَّثَنَا خَالِدٌ قَالَ: حَدَّثَنَا ابْنُ جُرَيْجٍ قَالَ: أَخْبَرَنِي زِيَادٌ عَنْ هِلَالِ بْنِ أَسَامَةَ عَنْ أَبِي مَيْمُونَةَ قَالَ: بَيْنَا أَنَا عِنْدَ أَبِي هُرَيْرَةَ فَقَالَ: إِنَّ امْرَأَةً جَاءَتْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ: فِدَاكَ أَبِي وَأُمِّي إِنَّ زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بِابْنِي وَقَدْ نَفَعَنِي وَسَقَانِي مِنْ بُرٍّ أَبِي عِنَبَةَ فَجَاءَ زَوْجُهَا وَقَالَ:

مَنْ يُخَاصِمُنِي فِي ابْنِي فَقَالَ: (يَا غُلَامُ هَذَا أَبُوكَ وَهَذِهِ أُمُّكَ فَخُذْ بِيَدِ ابْنِهِمَا شِئْتَ). فَأَخَذَ بِيَدِ أُمِّهِ فَأَنْطَلَقَتْ بِهِ.

Muhammad ibn 'Abd al-A'la told us, Khalid told us, he said: Ibn Juraih told us, he said: Ziyad informed me from Hilal ibn Usamah, from Abi Maimunah, he said: I was with Abu Hurairah, then he said: that a woman said: "O Messenger of Allah, my husband wants to bring my son, even though he is useful for me to take ablution water from Abu 'Inabah's well for me". The Prophet SAW said: "O son, this is your father and this is your mother. Take hold of the hand of which of them you will." Then he took his mother's hand and he carried her away.

Hadith *ḥaḍānah* Given to Dad

عَنْ رَافِعِ بْنِ سِنَانٍ أَنَّهُ أَسْلَمَ وَأَبَتْ أُمُّهُ أَنْ تُسَلِّمَ. فَأَقْعَدَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْأُمَّ فِي نَاحِيَةٍ، وَالْأَبَ فِي نَاحِيَةٍ. وَأَقْعَدَ الصَّبْيَ بَيْنَهُمَا. فَمَالَ إِلَى أُمِّهِ، فَقَالَ: اللَّهُمَّ اهْدِهِ، فَمَالَ إِلَى أَبِيهِ فَأَخَذَهُ. أَخْرَجَهُ أَبُو دَاوُدَ وَالنَّسَائِيُّ وَصَحَّحَهُ الْحَاكِمُ.

From Rafi' bin Sinan Radhiyallahu Anhu, that he converted to Islam, but his wife refused to convert to Islam. So, the Holy Prophet sat the mother in one corner, the father in another, and the son he sat between the two. Then the child tends to follow the mother. So, he prayed: O Allah, guide him. Then he tends to follow his father, so he takes his father with him. (Narrated by Abu Dawud and An-Nasa'i. Hadith according to Al-Hakim)

In the verses of the Qur'an and Hadith presented above, there is a basis for child custody from parents to their children. The text above emphasizes that child custody is an obligation for the child's father or mother. It means that fathers or mothers can parent to provide what children need through the division of roles between parents. As for the sound of QS At-Tahrim: 6 conveys that the order to protect the family is an obligation that both father and mother must carry out. This verse does not specifically mention whom it is intended for, so it is in a general form, applicable to people regardless of gender, status, or role (Ilyasa et al., 2025).

This message, of course, is not much different from Al-Baqarah: 233, which divides roles in caring for children and families. Although this verse speaks to the husband's support for his wife and children, as well as the wife's support through breastfeeding, it also relates to child custody. That verse imposes on the husband the obligation to provide for his family according to his ability, based on his work, because the wife, in her biological condition, is still unable to work. It is because the wife, who still has to care for and breastfeed her child for up to 2 years, is entitled to earn a living from her husband. Even so, it is not justified because family and children are made into a burden for both the husband and the wife (Putri et al., 2024). Therefore, the link between the paragraph and post-divorce child custody is that both the husband and the wife have the right to care for their children. Even though he has divorced his wife and the wife who is the caretaker of his children, the husband still must provide for his children because child custody rights are not only managed from a spiritual perspective, but also educational and physical. Vice versa, if child custody is given to the husband and the baby is under two years old, the husband may breastfeed his child to someone else with the mutual consent of the ex-wife or biological mother of the child. Husbands still must provide a living for their children because child custody is not only in terms of spiritual management, but also education and physical care. (Ulya et al., 2021).

In line with the verse above, the sound in the text of the hadith also gives equal rights to the father or mother in the custody of their child. The granting of child custody is not based on gender but in terms of the goodness of both the child and the parents. As in the above hadith, a child chooses his mother because she needs her child's help more to fetch water from the well for daily needs, and this is at the child's own choice, without any coercion. As for the hadith that the custody of the child is given to the mother while she is not married, it is because the mother's attention before marriage will be given more to her child. Therefore, the hadith above is proof that in child custody, both husband and wife have the same obligations and positions, regardless of gender role status imposed by society.

### **GENDER EQUALITY OF CHILD CUSTODIAL RIGHTS**

Every married couple has different goals and dreams they wish to achieve and build within their household. Among the goals of marriage that every couple aspires to achieve is creating a peaceful, loving, and compassionate family, reared in piety. Therefore, when a household has children to complete the family, as parents, it is their duty and responsibility to them. A child certainly cannot stand alone and be independent until they are old enough. Therefore, the presence of parents is necessary for their upbringing, including in educational, social, and cultural matters, as well as in meeting daily needs. Some households are destined to be just a grain of corn, while others must end without ending. In situations where a household must end, the children who have been brought into the family remain a shared responsibility (Manalu et al., 2024). The care of minor children is the responsibility of both parents. Their children will remain in good care if both parents continue to care for and cooperate even after their marriage has ended. Attention to joint custody of children will create a positive environment and relationship between children and a husband and wife who have broken up. Therefore, good fathers and mothers are those who maintain a sense of belonging to their children without becoming jealous of the current court-appointed legal guardian (Azzahra et al., 2024).

Divorce should not be a factor in the loss of parental attention and responsibility after separation. If the court decides in favor of the father or mother, it does not mean they retain full custody of everything. If child custody is awarded to the mother due to psychological factors, the child still needs the mother, the father can continue to provide for his child, such as school fees and teaching other subjects that can be taught jointly by the father and mother. Similarly, if the court awards child custody to the father, the mother remains responsible for her children and continues to provide for their needs. Indonesian law stipulates that child care is a shared responsibility between parents. However, the status and role of women, which are always associated with children and the household, continue to evolve. Given this, it's not surprising that many believe women have greater rights over their children. This belief is further supported by the biological role of children, which is believed to place women closer to their children than their fathers. This provision is enshrined in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law. This written regulation also provides legal certainty for both parents and children (Hanafi & Satria, 2023).

Regarding child custody, Article 31 of the Marriage Law indirectly stipulates that husband and wife have equal status and rights in society. Similarly, in line with Article 80, paragraphs (3) and (4), a husband is obligated to provide education for his and his wife's children, including covering their educational costs. The husband's obligations in the Compilation of Islamic Law (KHI) article indicate that the wife is not the only one who may assume this role in child custody. It is, of course, also in line with the moral message that the verses of the Qur'an and the hadith above want to convey regarding child custody rights, which can be given equally to both parties, both father and mother, by considering the welfare and other social considerations (Hidayah et al., 2023).

It is strong normative evidence that parental care for children after divorce remains equal. Therefore, if custody of a child is granted to the mother, the father cannot simply assume responsibility for it, and vice versa. Article 105 of the Compilation of Islamic Law (KHI) states that the guardianship of a minor child is granted to the mother. This article, of course, cannot be decided; it must be viewed from a broad perspective. Therefore, the judge must view the situation holistically and consider the interests of both the child and the parent. The equality of child custody and parental responsibility for children is also found in Surah At-Tahrim: 6, which illustrates that providing both social and religious education can begin within the family environment. This verse applies generally to both men and women. Therefore, both fathers and mothers must be responsible for their families, including teaching religious values in a warm, supportive relationship. Therefore, the message of this verse is that every Muslim should educate their children, relatives, and family members in accordance with what God has commanded and prohibited. Society still believes that women hold a more dominant position in childcare and household matters than men. It stems from long-standing cultural heritage and the instinctive perception that women are gentler, more patient, and more diligent in household chores. It is due in no small part to women's persistence in nurturing and caring for their children. These factors are what lead many people to place mothers in the role of caregiver after a divorce.

Empirical evidence suggests that women are consistently associated with childcare and household chores in most societies. This may be appropriate in some families where the husband is responsible for providing for the family. This division of roles is considered fair for families that remain harmonious, although it has not been explicitly stipulated in the Quran. Historically, this has given women greater rights to custody of their children, especially if the child is still young enough to be given to their mother. However, any division of child custody based on historical household roles would be considered unfair to the husband if he loses in a custody case. Becoming a child's guardian after a divorce is not easy, as it requires many aspects, such as morality, health, and the ability to educate and care for children. Therefore, this role cannot be determined solely by gender; it can be performed by both the father and the mother. Likewise, the quality and ability to educate and care for children cannot be monopolized by a particular gender. It would be better if child custody rights were awarded not only based on gender, but also considering aspects of the father and mother, such as morality, social standing, qualities, leadership, capabilities, and abilities. Many scholars argue that mothers have a greater right to child custody than fathers because women are patient, gentle, and can

spend more time with their children. Therefore, it is not surprising that Article 105 of the Compilation of Islamic Law (KHI) grants child custody to mothers if the child is not yet mumayyiz. The existence of Article 105 of the KHI implements hadiths regarding the provision of hadith to mothers. On the other hand, there are also hadiths regarding the provision of hadith to fathers, but these have received less attention.

Practice *ḥaḍānah* This can be done with the concept of mutuality between father and mother, even though their marriage has been broken. Both father and mother must continue to work together to create the concept *ḥaḍānah*, which remains ideal for her children in all aspects. This mutual concept can play an active role in giving in both material and non-material ways. As in the idea of a living that can be earned together, custody can also be handled together. Therefore it shouldn't *ḥaḍānah* become a barrier after divorce for father and mother (Widiani, 2022).

## FAZLUR RAHMAN'S HERMENEUTICS

### Hermeneutics Study

Hermeneutics, classically defined as *the art and science of interpretation*, derives from the Greek word *hermeneuein*, meaning "to interpret," "to translate," or "to make clear." In its earliest philosophical use, hermeneutics addressed the challenge of interpreting ancient texts, myths, and symbolic language. Over time, it evolved into a comprehensive methodology used in theology, philosophy, literary analysis, and the social sciences. In Islamic intellectual history, interpretive activity has long existed, especially in *tafsīr*, *uṣūl al-fiqh*, *kalām*, and hadith studies. Although pre-modern Muslim scholars did not label their work as "hermeneutics", many of their methods, such as examining *asbāb al-nuzūl*, *al-nāsikh wa al-mansūkh*, linguistic analysis, and contextual interpretation, closely correspond to hermeneutic principles (Eriksson et al., 2021).

The hermeneutic study generated groups with pro and contra opinions. The groups that are pro and contra the hermeneutic method are (Zahrani, 2023):

- a. Hasan Hanafī is the first figure to introduce the hermeneutic method through the study of *uṣul al-fiqh*. According to Hasan Hanafī, conveying the message of the Qur'an and hadith requires first understanding the content and engaging in critical analysis to facilitate interpretation.
- b. Mohammed Arkoun argues that the textual studies used by previous scholars are out of sync or left behind when applied in the current era. So, the old way of interpreting and understanding will not be able to address the problems that occur in society.
- c. Fazlur Rahman, through the double movement method, illustrates that the study of messages from the contents of the texts is considered imperfect if one has not received a moral message from the text. This double movement is used to convey the ideal moral message of the Qur'an and hadith, leading to the text's literal-particular content.
- d. Farid Esack, in his opinion, said that this hermeneutic method is not a new development in Islamic studies, as it has been applied to conventional interpretive studies. Things like this can be seen in *Nashik Mansukh* and *Asbab Nuzul*: there are groups of Shia, Sunni, and Mu'tazilah commentators, and the background of the mufassir determines the results of his interpretation. Therefore, Islam has applied hermeneutics since the beginning, but at that time, hermeneutics was still in theory.

Some opinions are pro or contra hermeneutics for the following reasons:

- a. Conventional interpretation has a defect in its epistemology because it is considered unable to provide answers or solutions for today's society.
- b. The hermeneutic method can understand the Koran through a scientific-historical approach without reducing its sacred character.
- c. Hermeneutic methods can apply human interpretation.
- d. The hermeneutic method leads to a specific group of interpreters because it correlates with the author, the text, and the reader.
- e. Muslim scientists have long used hermeneutics, although some of them reject it.

In addition to hermeneutic groups, some groups are against hermeneutics, including:

- a. Adian Husaini, it is feared that the use of the hermeneutic method leads to interpretations motivated by interests and results that are too relative and broad. Hermeneutics is considered a way of viewing the Qoran without any sacredness. This is also due to similarities between the Koran and the Bible, arising from the use of hermeneutics.
- b. Some groups consider those hermeneutics to be a method of philosophical interpretation rather than the interpretation of the Koran in Islam. Hermeneutics is not only an interpretation but also a method of interpretation and a philosophy that differs from the interpretation and ta'wīl found in the Islamic tradition. Hermeneutics is also considered more in favor of the Christian group because it originated in the West. Hermeneutic interpretation is also considered an interpretive method whose results are too relative because it lacks a procedure or method for interpreting the Qur'an. Therefore, hermeneutics is considered capable of introducing imperfections into faith and Islam.

### **Fazlur Rahman's Hermeneutics**

Hermeneutics (hermeneutics), which comes from the Greek word hermeneutics, has the meaning of translating or interpreting. Epistemologically, hermeneutics is a tool for understanding the Qur'an and its interpretive methodology. The role and function of hermeneutics is to criticize an understanding. It can also be interpreted that hermeneutics is part of a new perspective on the science of interpretation, which is equipped with theories and concepts originating in the figures of critical and philosophical hermeneutics (Ibrohim & Muhammad, 2022).

Rahman prefers hermeneutics because it is a method of understanding appropriate to the elaboration of the Islamic science tradition, where the object is closer to the human sciences, which are the central focus of hermeneutic studies. The object of these human sciences is the expression of life (*Lebensäußerung*), including human concepts, actions, and appreciation (*Erlebnis*). In contrast to the natural sciences, which use the *erklären* method (explaining causal relationships), the human sciences use the *verstehen* method (understanding). What *Verstehen* seeks is not causality, but the meanings contained in experience and the symbolic structures that result from it in this world. As part of the *verstehen* method, the main task of hermeneutics is to interpret a classical text or a socio-historical reality in the past and across different cultures. Therefore, hermeneutics is

always concerned with understanding the text broadly, including historical events, symbols, and myths (Romadhon, 2023).

The reasons above led Rahman to choose hermeneutics as a tool of analysis to perform *ijtihād* and understand the messages in the texts of the Qur'an and Hadith, so that these messages remain alive and dynamic in today's society. Therefore, hermeneutics is needed not only for the horizontal deduction of law, but also for the vertical development to find the *ratio legis* (*'illat al-hukm*), so that hermeneutics remains a way of comprehensively understanding the Qur'an as a whole, not in separate parts.

An understanding of the principles of the Qur'an and Sunnah is found in the movement's first part. This understanding stems from the Qur'an's historical context in early Islamic Meccan society. Fazlur Rahman uses the term "the situational character of the Qur'an" to refer to the phenomenon of the Qur'an's revelation. Rahman argues that every verse of the Qur'an revealed at that time was due to the social conditions that existed at the time. Therefore, Rahman conducted an exploration of the ideal law through the hermeneutics of the Qur'an, commonly called the systematic interpretation method, which technically involves two movements: interpreting the situation of the Qur'an at that time, then returning to the present.

Rahman's contribution to Hadith studies has significant urgency for the renewal of Islamic thought, especially in its approaches and methods. Rahman offers a historical approach that makes a positive contribution to the study of Hadith, which has so far focused solely on sanad criticism. According to him, although the study of hadith sanad is sufficient to provide related biographical matters, it is not enough to make Hadith the basis of an absolute proposition to solve a problem. Today's Islamic society also needs a methodology to identify Hadith so that their values are revived (*living sunnah*) and specific legal and moral ideas (Hidayati & Nurhalisa, 2025).

Fazlur Rahman uses the basic theory to formulate a new interpretation methodology that has been neatly arranged as follows:

- a. The meaning of the Qur'anic text can be found through a historical approach. The socio-historical side of the Qur'an must be studied and understood in its chronological and earlier-revelation context. Therefore, a very thorough and accurate study can be conducted based on the existence of the Islamic movement. This method will thus provide a clear understanding of the texts' overall meaning.
- b. The specific legality of the Qur'an and the moral ideal of the Qur'an must be distinguished. The importance of dividing this difference is to provide information that the Qur'an not only offers specific legal rulings but also embodies ideal moral values that can be applied in today's Islamic society.
- c. The moral ideal of the Qur'an is understood as requiring complete attention to its sociological context at the time of its revelation.
- d. Rahman's emphasis on the condition of society at the time the texts were revealed was to provide an interpretation of legal statements and their socioeconomic conditions.

Rahman adopted this historical approach to distinguish between the objectives of specific legal provisions and the moral ideals of the Qur'an, because the latter's ethical values are more appropriate to apply than the former.

- e. The things Rahman did above were not aimed at reviving the old tradition, but at re-expressing its principles. Therefore, Rahman argues that revelation should be examined more deeply, rather than interpreting a text in a particular way. Through this study, contemporary society becomes a more valid and newer social order.

## **DISCUSSION**

### **GENDER EQUALITY OF CHILDREN CARE RIGHTS FAZLUR RAHMAN'S HERMENEUTIC PERSPECTIVE**

Muslims use the Al-Quran and Hadith as the primary sources of Islamic law, which serve as references in their daily lives. Some of the problems that usually arise in everyday life are problems related to household and marriage. However, it is also through marriage that God makes humans in pairs to work together and complement each other, especially to build a happy household life. Among the household matters are child custody issues, which can be handled together in the best possible way. In QS. Al-Baqarah: 233, QS At-Tahrim: 6, and the hadith on child custody is regulated. This text message is intended for the community to use as one of the studies in cases of child custody disputes. Islamic law governs child custody in QS Al-Baqarah: 233, QS At-Tahrim: 6, and the above hadith (Aini, 2024).

The obligation of custody is the same as the obligation to provide a living, as stated in QS Al-Baqarah: 233, as a teaching guide for husbands and wives to divide their income according to their children's portions. This verse contains the obligation of husband and wife to provide a living in a good and capable way without forcing. Therefore, both parents have the right to custody of their biological children. Likewise, QS At-Tahrim: 6, which contains an order to teach something good, can be started in the family environment. Family members included in this scope are children. Therefore, childcare is mandatory because it is a right that must be protected by body, mind, and religion (Mughni & Marzuk, 2022). Young children are obligated to receive care from their parents, regardless of whether their parents are still married.

On the other hand, it has already developed around the stigma of women or wives who are naturally patient and gentle with others. As a life partner or someone who has lived with a partner, they naturally have a sense of affection for their children and are willing to do their best for them. This is in line with Article 77, paragraph (3), of the KHI, which states that wives and husbands must take care of their children on all fronts, including their needs. This care is not given only to the mother because of her instinctive nature, but also to the father.

Islam teaches its people about faith and worship. Seeing this, if the mother violates Islamic law or does not have the status of Islam, she is not allowed to take care of her children, because it is feared that there will be more harm than benefit. In the event of a divorce, the father may also be granted custody of his children, provided he meets the legal requirements. Therefore, the existence of Article 105 of the KHI in point (a) cannot be applied absolutely by the religious court without looking at the existing social reality.



Providing care for minor children is considered obligatory because failing to do so is the same as exposing the child to danger. Situations like this make it clear that children have the right to receive care because they still need it, as well as people who educate them and provide supervision.

In connection with the existing social reality related to the provision of custody of underage children to mothers, of course, it cannot be separated from the existing sources of Hadith. Meanwhile, from Fazlur Rahman's hermeneutical perspective, it is necessary to examine the socio-historical context of the Hadith and the social realities of the time, as well as the Prophet's reasons for offering solutions through the hadith. Looking at the hadith above, it turns out that child custody is not given to the mother alone, but there is also a hadith that states that child custody can also be given to the father. Therefore, it is necessary to conduct a broad assessment to demonstrate that there is no gender gap in the provision of child custody. There are the hadiths above, which are supported by QS Al-Baqarah: 233 and QS At-Tahrim: 6. This is proof that there is gender equality in terms of child custody.

The hadith narrated by Ahmad Abu Dawud is a ḥasan hadith that does not reach the level of ṣaḥīḥ. According to the opinion of al-Ḥākim, the sanad of this hadith is ṣaḥīḥ. In this hadith, the reason for child custody is given to the mother because it takes a woman's nature into account. In this hadith, the husband divorces his wife. So in this case, custody is given to the mother so that her biological child is taken care of by her mother, who has instincts that are closer to her child.

On the other hand, we all know that the historical context of the existence of this second hadith is because there was a child whose father wanted to take him, then his mother complained to the Prophet that custody be given to the mother because her son was very useful to help fetch ablution water for his mother. However, in this second hadith, it is not absolute that child custody is given to the mother only because of this hadith and because of the nature of women. In this hadith, the Prophet gave children a choice, indicating that there is no prohibition on choosing their father or mother (Hidayah et al., 2023).

Custody of the child was given to his father in the hadith because his biological mother refused to convert to Islam. In this hadith, it is judged ḥasan by al-Suyūṭī, but in the sanad there is much controversy because of differences in pronunciation, and al-Ḥākim judges that the hadith is ṣaḥīḥ. Regardless of whether a non-Muslim mother is allowed to raise her child, in this hadith there is the permissibility and validity of a father being a caregiver for his child. In the socio-historical context, there is no prohibition at all on fathers being caregivers. The understanding of hadiths and Qur'anic verses related to child custody cannot be interpreted independently of one another. The existence of these laws must be harmonized with socio-historical studies of the past, which are then sought for benefits aligned with current events to obtain a set of moral values appropriate for the life of today's Muslim community (Hanafi & Satria, 2023).

Hadith about child custody, historically given to fathers and mothers to address problems at the time, based on a logical ratio for the good of the child and the parents who had custody. Therefore, if there is a dispute over child custody today, it is not possible to use any of these hadiths as proof to resolve the current conflict. It is necessary

to conduct a study first to determine matters related to hadith. It is also essential to understand the hadith so that moral values can be applied in the present. The granting of child custody is not only for mothers or fathers. This can be seen from the hadiths and verses of the Qur'an that are instructions for solving problems. The Qur'an or the hadith does not provide custody of children based on gender alone, but both fathers and mothers have the right to care for their children after a divorce. This is seen in QS. Al-Baqarah: 233 and QS. At-Tahrim: 6, which does not mention gender alone (Alak, 2023).

Based on the hadith above, if there are many reasons and opinions that mothers are more entitled to custody because they are more patient, more loving, and have more time at home, then this is no longer in line with current case law. Not a few fathers have a sense of affection for their children that is not inferior to a mother's. Likewise, many women today are making a living outside the home after a divorce. So, on contemporary issues like this, it can no longer be decided solely based on hadith, whose historical value is very different from what it is now.

After a divorce occurs, one of the parents who is a caregiver, based on a court decision, does not close the door for the father or mother who is no longer with their children. Parenting can be done together and cooperatively. This makes parenting seem very important, to be shared for the benefit of the child and the close relationship between parents, both now and in the future.

## CONCLUSION

Based on the analysis above, this study concludes, first, that Islam grants equal rights and obligations to both husbands and wives in caring for their children. There is no inherent distinction between fathers and mothers in fulfilling parental responsibilities. Children are equally entitled to protection and affection from both parents, even after the dissolution of marriage. Second, from Fazlur Rahman's hermeneutical perspective on child custody, *ḥaḍānah* may be granted to either the mother or the father based on Qur'anic verses or Prophetic traditions. However, these texts cannot be applied rigidly to resolve contemporary custody issues, as their socio-historical contexts differ from present conditions and their underlying rationales may not always be directly transferable. QS Al-Baqarah: 233 and QS At-Tahrim: 6 provide equal opportunities for both parents to share responsibility for their children's upbringing. Therefore, societal assumptions that place women as the primary caregivers are not fully consistent with the ethical ideals conveyed by the Qur'an and Hadith when interpreted through a hermeneutical approach.

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