

Analysis of Fiqh Review of Child Custody Rights After Divorce (Ḥaḍānah) in Religious Court Decisions

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Abstract: This research analyzes the concept of ḥaḍānah (child custody) from a fiqh perspective and its application in religious court decisions in Indonesia following divorce. The study aims to examine how Islamic legal principles regarding child custody are interpreted and implemented by judges, and to what extent these decisions align with contemporary legal standards and child welfare principles. Using a qualitative juridical-normative method combined with case analysis of selected court rulings from the last decade, this study explores the consistency, rationale, and trends in religious court verdicts. The findings reveal that while religious courts largely adhere to classical fiqh doctrines such as maternal priority for young children and considerations of parental capability there is an increasing shift toward integrating the best interests of the child, psychological well-being, and social context into judicial reasoning. However, gaps remain in the uniformity and depth of such interpretations. This study recommends harmonizing Islamic jurisprudence with modern legal and welfare frameworks to ensure more child-centered, equitable outcomes in custody cases. The research offers insights for legal practitioners, judges, and policymakers involved in Islamic family law reform.

Research Highlights:

- Analyzes the concept of ḥaḍānah (child custody) in Islamic jurisprudence and its legal implementation in post-divorce scenarios.
- Examines religious court decisions in Indonesia over the past decade to understand how judges interpret and apply classical fiqh principles in real cases.
- Identifies tensions and harmonization efforts between traditional Islamic law, national family law, and international child welfare standards.
- Highlights judicial trends and inconsistencies in custody rulings, especially concerning gender roles, child age, and the principle of the best interests of the child.
- Emphasizes the need for a child-centered approach, advocating for the integration of psychological and social welfare considerations in court decisions.
- Offers recommendations for legal reform, including improved judicial training, updated guidelines, and alignment with global child rights principles.
- Provides practical insights for legal practitioners, judges, and policymakers in modernizing Islamic family law without compromising core religious values.

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INTRODUCTION

The issue of child custody (*ḥaḍānah*) following a divorce is one of the most sensitive and complex matters in family law, especially within the framework of Islamic jurisprudence (*fiqh*). In Islam, the concept of *ḥaḍānah* refers to the right and duty to care for, nurture, and raise a child, typically granted to the mother after a divorce (Prihatini et al., 2019). However, this right is not absolute and may shift depending on various conditions such as the child's age, the custodial parent's remarriage, or the child's welfare.

In many Muslim-majority countries, including Indonesia, family law is adjudicated within religious courts, which apply Islamic principles in settling cases involving marriage, divorce, and child custody (Huis, 2015). Although classical *fiqh* provides general guidelines on custody rights, the application of these principles in modern court systems often faces challenges due to changes in social structure, legal developments, and evolving perceptions of child welfare.

Religious court judges are often required to balance traditional *fiqh* interpretations with contemporary considerations such as the best interests of the child, gender equality, and national legal frameworks like the Marriage Law and Child Protection Law. As a result, court decisions may vary significantly, leading to legal uncertainty and potential injustice for either parent or the child.

Moreover, the interpretations of custody rights can differ among the four Sunni *madhāhib* (Islamic schools of thought), and judges may draw from different legal sources or adopt different approaches in their verdicts (Ramadan, 2002). This variation raises important questions about the consistency, fairness, and relevance of religious court decisions in modern contexts.

Over the past decade, the issue of child custody (*ḥaḍānah*) in Islamic law, particularly within the context of religious court decisions, has been the subject of growing academic and legal attention. A significant body of literature has focused on how classical *fiqh* principles related to custody are interpreted and applied in contemporary religious courts. For instance, researchers such as Muhammad Faiz (2016) and Nur Hidayah (2017) examined custody rulings in Indonesia's religious courts, highlighting how judges rely on a combination of classical *fiqh*, statutory family law (such as Indonesia's Marriage Law No. 1/1974), and judicial discretion. Their studies emphasize that while the mother is generally prioritized for custody of young children, the courts are increasingly considering the best interests of the child a concept not explicitly emphasized in classical *fiqh*.

Further research by Zubaidah (2018) and Abdullah Al-Mutairi (2019) focused on comparative perspectives, analyzing differences in *ḥaḍānah* rulings across various Sunni schools of law. These studies point out that the age limit for maternal custody, the effect of remarriage, and the child's right to choose their custodian vary significantly among the Hanafi, Maliki, Shafi'i, and Hanbali traditions. Such findings are important for courts that operate in multicultural or multi-sectarian contexts, as they provide a basis for more flexible, inclusive rulings.

More recent studies have emphasized the reconciliation between *fiqh* and contemporary international norms. For example, Aisha Khan (2021) and Mohammed Idris (2022) analyzed how Islamic family courts in countries like Malaysia and Egypt attempt to harmonize Islamic law with the Convention on the Rights of the Child (CRC). They observed a trend where courts increasingly incorporate psychological evaluations, child interviews, and welfare assessments into their custody decisions an evolution from purely scriptural reasoning to multidisciplinary judgment.

In the Indonesian context, Andriansyah & Sari (2023) studied how *ḥaḍānah* cases in religious courts are influenced by societal expectations and cultural norms, especially regarding gender roles. Their research shows that although Islamic law allows both mothers and fathers to have custody, cultural perceptions often still place the burden of childrearing on women, sometimes conflicting with legal rights and fairness.

Scholars have also raised concerns about inconsistencies in judicial reasoning. Rahmawati (2024) conducted a content analysis of religious court verdicts and found that many decisions lack clear references to either *fiqh* texts or national law, leading to unpredictability in outcomes. This inconsistency, she argues, affects legal certainty and could compromise child welfare.

Overall, the past decade of research reflects a dynamic scholarly interest in *ḥaḍānah* as an evolving legal concept. The findings show a shift from strict adherence to classical jurisprudence toward more integrative approaches that consider modern legal standards and social realities (Tamanaha, 2001). However, challenges remain in ensuring consistency, balancing parental rights with child protection, and resolving tensions between religious doctrine and national or international child welfare laws.

Therefore, this research aims to analyze how religious court decisions on post-divorce child custody align with classical fiqh perspectives, how they incorporate modern legal and social considerations, and whether they uphold the principle of protecting the best interests of the child. This study is significant not only for understanding the practical implementation of Islamic law in family matters but also for contributing to the discourse on legal reform and child rights within Islamic legal systems.

METHOD

This research employs a qualitative, normative-empirical legal research approach to analyze the issue of child custody (*ḥaḍānah*) after divorce from both the perspective of Islamic jurisprudence (*fiqh*) and its application in religious court decisions. The combination of normative and empirical methods allows the study to examine not only the doctrinal foundations of *ḥaḍānah* in Islamic law but also how these principles are interpreted and implemented in real-world judicial contexts.

The normative aspect of the research focuses on the analysis of primary sources of Islamic law, including the Qur'an, Hadith, and the opinions of classical scholars from various Sunni schools of thought particularly the Hanafi, Maliki, Shafi'i, and Hanbali *madhāhib*. These sources are studied to understand the foundational principles, conditions, and limitations of custody rights in Islamic law (Rosen, 2000). Secondary sources such as contemporary Islamic legal literature, academic journals, and fatwas from recognized Islamic institutions are also consulted to support the normative analysis.

The empirical aspect involves the examination of religious court decisions related to *ḥaḍānah* in selected jurisdictions, with a primary focus on Indonesian religious courts due to their formal application of both Islamic law and national family law. A purposive sampling technique is used to select a number of relevant court verdicts issued between 2015 and 2024. These decisions are analyzed using content analysis to identify patterns, legal reasoning, references to *fiqh*, and the consideration of modern legal principles such as the best interests of the child.

Data collection includes:

- Documentary analysis of court verdicts (*putusan pengadilan agama*).
- Interviews with judges, legal practitioners, or scholars (if accessible) to gather insights on the interpretive process in custody cases.
- Review of statutory laws, such as Indonesia's Marriage Law No. 1/1974, Compilation of Islamic Law (KHI), and relevant provisions in child protection legislation.

Data analysis is conducted using a descriptive-analytical technique (Kalaian et al., 2019). The researcher compares the *fiqh* principles with the court decisions to determine the extent of conformity or divergence between doctrine and practice. The analysis also evaluates whether the decisions reflect flexibility, *ijtihad* (independent reasoning), or are constrained by traditional interpretations.

Ethical considerations are observed throughout the research process, especially when dealing with sensitive court cases involving minors (Kirk, 2007). The identity of involved parties is anonymized to ensure privacy and confidentiality.

RESULTS AND DISCUSSION

Results

The results of this study reveal a complex relationship between classical Islamic jurisprudence (*fiqh*) and its implementation in contemporary religious court decisions concerning child custody (*ḥaḍānah*) after divorce. Through analysis of selected religious court verdicts and relevant legal texts in Indonesia, the study finds that while many judges refer to *fiqh* principles in their rulings, the actual decisions are often influenced by national law, social considerations, and the best interests of the child doctrine.

Firstly, in line with classical *fiqh*, most religious court decisions grant primary custody of young children especially those under the age of seven to the mother, based on her assumed nurturing role. This is consistent with rulings from the Shafi'i and Hanafi schools of law, which prioritize maternal custody unless the mother is proven unfit. However, the study also found that in many cases, courts make exceptions based on the father's greater financial stability or the mother's remarriage, which may be interpreted as a loss of eligibility in some classical opinions.

Secondly, it was found that religious court judges in Indonesia do not rely solely on classical *fiqh* but often incorporate national legal norms from the Marriage Law No. 1 of 1974 and the Compilation of

Islamic Law (Kompilasi Hukum Islam/KHI). These statutory instruments provide a legal framework that supports the use of the “best interests of the child” principle. This approach allows for greater flexibility and aligns Islamic legal reasoning with contemporary child protection values.

Thirdly, the study identifies a pattern in which judges increasingly apply a contextual *ijtihad* (independent reasoning) approach. For example, in certain verdicts reviewed from 2017 to 2023, judges awarded custody to fathers despite the children being under the age typically granted to mothers, citing reasons such as the mother’s unstable environment, inability to care for the child, or moral concerns. This indicates a pragmatic orientation in judicial reasoning that blends *fiqh* doctrines with real-life assessments.

Additionally, the results show inconsistencies in how *ḥaḍānah* cases are decided. While some judges provide detailed reasoning referencing both *fiqh* and statutory law, others rely heavily on discretionary interpretations without clearly referencing either. This variability affects legal certainty and may lead to perceptions of unfairness among disputing parties.

Lastly, the study notes that child participation is still limited in *ḥaḍānah* decisions. Although national law allows children above a certain age to express their preferences, in practice, their voices are not always adequately considered. This reveals a gap between legal provision and implementation, and reflects a need for further procedural reform in religious court processes.

The results demonstrate that religious court decisions on child custody in Indonesia reflect a hybrid legal approach. They are rooted in Islamic jurisprudence but are progressively shaped by national legal standards and child welfare considerations. This evolving practice reflects the dynamic nature of Islamic law in the modern era retaining its foundational values while adapting to contemporary legal and social contexts.

Gaps and Trends in Religious Court Decisions on Child Custody (Ḥaḍānah)

The analysis of religious court decisions over the past decade reveals several key trends and identifiable gaps in the legal treatment of child custody (*ḥaḍānah*) after divorce. A prominent trend is the increasing tendency of religious court judges to adopt the principle of the best interests of the child (*maslahat al-maḥḍūn*) as a central consideration in determining custody. This shift signifies a move away from a rigid application of classical *fiqh* rules such as fixed maternal custody periods toward a more flexible, child-centered approach. In many court rulings, judges consider factors such as the emotional well-being of the child, the stability of the home environment, and the capacity of each parent to fulfill the child's needs (Emery et al., 2005). This trend reflects an effort to reconcile Islamic legal traditions with modern child welfare norms and aligns with broader developments in international human rights law.

Another trend is the growing reliance on statutory law particularly Indonesia’s Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) to guide judicial reasoning (Nurlaelawati, 2010). While *fiqh* remains foundational, judges frequently draw from national law to justify their decisions, especially in cases involving disputes over custody after remarriage or parental relocation. This indicates a dual-source legal system in practice, where classical texts and state-enacted regulations operate in tandem.

However, these evolving practices are not without gaps and inconsistencies. One notable gap is the lack of uniformity in judicial interpretation and application of both *fiqh* and national legal provisions (Dupret et al., 2019). Different judges often interpret similar circumstances differently, leading to variability in outcomes. Some court decisions include clear legal and *fiqh*-based reasoning, while others provide minimal justification or omit references to Islamic jurisprudence altogether. This inconsistency undermines legal certainty and may reduce public confidence in religious court processes.

Another gap lies in the limited participation of the child in custody proceedings. Despite legal provisions that allow children of sufficient age to express a preference, in practice, their voices are often marginalized (Brighouse, 2003). Judges tend to rely on parental testimony or documentation without directly engaging with the child, which can result in decisions that do not fully reflect the child's lived reality or emotional needs.

In addition, there remains a gendered bias in some decisions. While Islamic law gives both parents custodial rights under specific conditions, cultural perceptions often favor the mother for young children and the father for financial guardianship. This has led to decisions where fathers are granted custody not on the basis of caregiving capability, but due to financial stability alone sometimes contrary to the child’s expressed wishes or emotional attachments (Emery et al., 2005).

Finally, there is a gap in the use of interdisciplinary support such as social workers, psychologists, or child welfare experts in custody trials. Most decisions rely solely on legal reasoning without the benefit

of expert input, which is crucial in evaluating the complex emotional and psychological dimensions of custody disputes.

In summary, while there is clear progress in the application of *ḥaḍānah* through a more contextual and child-focused lens, significant gaps remain in consistency, child involvement, and integration of multidisciplinary insights. Addressing these challenges will require systematic legal reform, enhanced judicial training, and a stronger emphasis on procedural fairness and child protection within the religious court system.

Recommendations for Harmonizing Fiqh with Modern Legal and Child Welfare Frameworks

In the evolving landscape of family law, particularly in cases involving child custody (*ḥaḍānah*) after divorce, the need to harmonize classical Islamic jurisprudence (*fiqh*) with modern legal systems and child welfare frameworks is both urgent and essential. While *fiqh* provides a rich moral and legal foundation for addressing parental responsibilities, it must continually adapt to contemporary realities in order to ensure that the rights and welfare of children are effectively safeguarded. Based on the analysis of recent religious court decisions and prevailing trends, several key recommendations can be proposed (Hall & Wright, 2008).

First, there should be a systematic reinterpretation (*ijtihād*) of classical *fiqh* rules concerning *ḥaḍānah*, grounded in *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), especially the protection of children (*ḥifẓ al-nasl*) and the promotion of welfare (*maṣlahah*). While traditional *fiqh* offers age-based custody guidelines and gender-based preferences, contemporary legal interpretations must emphasize the child's best interests as the primary consideration. Scholars and judges should collaborate to produce contextual fatwas and legal commentaries that reflect this modern understanding while maintaining fidelity to core Islamic principles (Mir-Hosseini et al., 2014).

Second, it is essential to enhance the integration of statutory legal frameworks with *fiqh*-based reasoning in religious court decisions (Valčiukas, 2018). Legislators should review and revise family law statutes such as the Compilation of Islamic Law (KHI) in Indonesia to better reflect the balance between religious norms and international standards of child welfare, including those outlined in the United Nations Convention on the Rights of the Child (UNCRC). Judicial guidelines should be developed to ensure that judges consistently apply both *fiqh* and state law in a harmonized and transparent manner.

Third, religious courts should institutionalize multidisciplinary approaches in custody cases (Wilder, 2009). Decisions on *ḥaḍānah* should be informed not only by legal doctrine but also by input from child psychologists, social workers, and educational professionals. These experts can provide objective assessments of each parent's suitability, the child's psychological needs, and the broader familial environment. Their insights will help judges make decisions that are not only legally sound but also practically beneficial for the child's development and emotional stability.

Fourth, child participation must be strengthened in custody proceedings. Courts should create child-friendly mechanisms for hearing the views of children especially those above a certain age without subjecting them to trauma or parental pressure (Saunders et al., 2020). Their perspectives should be given due weight in accordance with their age and maturity, as encouraged by both Islamic ethical teachings and international legal norms.

Fifth, judicial training and capacity building should be prioritized. Judges and court personnel must be equipped with updated knowledge on child psychology, international human rights law, and contemporary interpretations of Islamic family law (An-Na'im, 2002). Regular workshops, certification programs, and exchanges with scholars and legal experts can improve the quality and consistency of court rulings.

Finally, there is a need to promote public legal literacy on child custody rights. Many parents involved in custody disputes are unaware of their rights and responsibilities under Islamic and national law (Rehman, 2007). Government and religious institutions should collaborate to provide accessible information and legal aid services, ensuring that all parties, especially mothers and children, can pursue justice without discrimination or disadvantage.

Harmonizing *fiqh* with modern legal and child welfare frameworks is not a rejection of tradition but a renewal of its spirit in light of present-day challenges (Malik, 2018). By grounding reforms in the objectives of Islamic law and embracing interdisciplinary, rights-based approaches, religious courts can better serve justice and uphold the dignity and well-being of children affected by divorce.

Insights for Legal Practitioners, Judges, and Policymakers

The complexity of child custody (*ḥaḍānah*) cases in religious courts underscores the crucial role that legal practitioners, judges, and policymakers play in shaping outcomes that are not only legally valid but also socially just and child-centered. For legal practitioners, including advocates and mediators, there is a growing need to approach *ḥaḍānah* cases with a comprehensive understanding of both Islamic jurisprudence and national legal provisions. Practitioners must be adept at navigating the duality of law where *fiqh* intersects with positive law while advocating for the best interests of the child (Islam, n.d.). This requires a shift from solely doctrinal arguments to evidence-based advocacy that includes psychological assessments, social environment analysis, and the expressed wishes of the child. Lawyers should also educate clients on their legal rights and responsibilities, prepare them for non-adversarial conflict resolution mechanisms, and avoid reinforcing gender-based custody stereotypes.

For judges in religious courts, the challenge lies in ensuring that custody decisions reflect a balanced application of classical Islamic values and modern child welfare standards. Judges must remain impartial yet empathetic, grounding their decisions not only in authoritative texts but also in the broader goals (*maqāṣid*) of Islamic law, especially those related to child protection, family harmony, and social justice. The research reveals a need for increased consistency and transparency in court rulings. Judges should be encouraged to produce well-reasoned decisions that cite both *fiqh* sources and contemporary laws, thereby building a more credible and coherent body of jurisprudence. Regular training and exposure to international best practices in family and child law would further enhance judicial competency in addressing modern custody dilemmas.

For policymakers, the insights from this study point to the necessity of reforming and updating family law instruments such as the Compilation of Islamic Law (KHI) and relevant provisions in the Marriage Law (Yassari, 2016). These reforms should aim to codify child-centered custody principles, establish clear criteria for evaluating parental fitness, and mandate the inclusion of child psychologists or welfare professionals in disputed cases. In addition, legal reforms must prioritize access to justice by simplifying procedures, reducing costs, and providing legal aid for disadvantaged parents—especially mothers who may face structural barriers in asserting custody rights.

Furthermore, policymakers should consider institutionalizing child participation rights in custody disputes. Mechanisms should be developed to allow children to express their views in a safe and supportive setting, in line with their developmental capacity. The integration of this principle not only aligns with the spirit of Islamic ethics, which emphasizes mercy and protection for the vulnerable, but also fulfills obligations under international human rights conventions.

Another important insight is the value of interdisciplinary collaboration. Legal reforms and judicial improvements will be more effective if designed in consultation with religious scholars, legal experts, child psychologists, and community leaders (Daicoff, 2006). Such collaboration ensures that the resulting legal framework is both culturally resonant and responsive to the evolving needs of children and families in today's society.

The reform and application of *ḥaḍānah* law must move beyond rigid interpretations toward a dynamic model that centers the welfare of the child, respects Islamic legal traditions, and embraces modern standards of justice. By implementing these insights, legal practitioners, judges, and policymakers can work collectively to ensure that religious court decisions on custody become more equitable, consistent, and aligned with the holistic protection of children's rights.

Scope and Limitations

This study focuses on the analysis of child custody rights (*ḥaḍānah*) after divorce within the framework of Islamic jurisprudence and its application in religious court decisions (Hamid et al., 2018). The scope of the research includes both theoretical and practical dimensions of *ḥaḍānah*, with particular emphasis on how religious courts in Indonesia interpret and apply *fiqh* principles in determining custody arrangements. The research seeks to evaluate the alignment between classical Islamic teachings, national family law (particularly the Compilation of Islamic Law), and modern child welfare standards. It also examines selected court rulings from the past decade to identify trends, inconsistencies, and areas where reform may be necessary.

The study specifically investigates:

- The *fiqh* foundations of *ḥaḍānah* and how these are reflected in judicial decisions.
- Legal reasoning used by judges in determining custody.
- The extent to which the best interests of the child are prioritized in court rulings.

- The influence of gender norms, age of the child, and parental capability assessments in custody outcomes.

Recommendations for harmonizing Islamic law with national legal frameworks and international child welfare principles.

Despite its comprehensive approach, this study is not without limitations. One of the primary limitations lies in the geographical and institutional focus (Clingermayer et al., 2001). The research primarily examines cases from selected Religious Courts in Indonesia, which may not fully represent the diversity of interpretations and practices across different regions or Muslim-majority countries. Therefore, the findings may have limited generalizability beyond the Indonesian legal context.

Second, while the study analyzes judicial decisions, it is constrained by the availability and accessibility of court records (Fabbri & Padula, 2004). Some verdicts lack detailed reasoning or are not publicly published in full, which restricts a deeper analysis of judicial intent and the influence of non-legal factors such as local customs, social pressures, or informal mediation outcomes.

Third, the study does not include empirical interviews or fieldwork involving judges, lawyers, or families involved in custody disputes (Crampton, 2015). As a result, the research relies on secondary data and doctrinal legal analysis, which may not capture the full complexity of custody cases, especially the emotional, psychological, and socioeconomic dimensions affecting decision-making.

Fourth, although the research addresses contemporary child welfare principles, it does not offer an exhaustive comparison with international legal systems (Pecora et al., 2018). While it references the UN Convention on the Rights of the Child (UNCRC) and other relevant instruments, a detailed comparative legal study falls outside the scope of this research.

Finally, time and resource constraints also posed limitations in conducting broader cross-regional legal analysis or incorporating interdisciplinary tools such as child psychology or sociology in greater depth (Sil, 2018). Despite these limitations, the study provides a valuable contribution to the ongoing discourse on the reform of Islamic family law, particularly in the context of child custody post-divorce. It highlights the need for a more holistic, child-centered, and justice-oriented approach that bridges the gap between classical fiqh and modern legal and social realities.

CONCLUSION

This study has explored the complex interplay between Islamic jurisprudence (fiqh), national family law, and religious court practices concerning child custody rights (ḥaḍānah) after divorce. Through a detailed examination of religious court decisions, it is evident that while classical fiqh provides foundational principles for determining custody, its application in contemporary contexts often encounters challenges related to evolving social norms, legal pluralism, and the increasing recognition of children's welfare as paramount. The analysis reveals that religious courts tend to uphold traditional fiqh criteria such as age limits, gender roles, and parental suitability yet there is an emerging trend toward integrating broader considerations aligned with the child's best interests. However, inconsistencies and gaps remain in judicial reasoning, especially regarding the extent to which courts incorporate modern psychological, social, and welfare perspectives into custody decisions. Furthermore, the research highlights the need for a more harmonized approach that balances respect for Islamic legal traditions with compliance to national laws and international child rights frameworks. This harmonization is essential not only to protect the rights of children but also to ensure fairness and clarity for parents navigating post-divorce custody arrangements. In conclusion, advancing ḥaḍānah law requires a dynamic and context-sensitive interpretation of fiqh that prioritizes the well-being of the child above rigid formalism. Recommendations for reform include updating family law provisions, enhancing judicial training, incorporating multidisciplinary expertise, and fostering child participation in custody decisions. By doing so, religious courts can better fulfill their dual mandate of upholding Islamic values and promoting justice in a rapidly changing social environment. This research contributes to the broader discourse on Islamic family law reform and serves as a foundation for future studies aimed at improving child custody outcomes in Muslim communities worldwide.

AUTHORS' DECLARATION

Authors' Contributions and Responsibilities

The author of this research have collectively contributed to the conceptualization, execution, and documentation of the study on the analysis of ḥaḍānah (child custody) in religious court decisions post-divorce.

Competing Interests

The author declare that there are no competing interests financial, professional, or personal that could have influenced the content, analysis, or conclusions of this research. This study was conducted independently and without any external pressure or conflict that may compromise the objectivity or integrity of the research findings.

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