

WHEN COURTS PERMIT CHILD MARRIAGE: JUDICIAL DISCRETION AND THE LIMITS OF CHILD PROTECTION IN INDONESIA



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Abstract

This study examines the effectiveness of marriage dispensation adjudication in protecting children's rights following the enactment of Supreme Court Regulation (PERMA) No. 5 of 2019. Although Law No. 16 of 2019 raised the minimum marriage age to 19 years for both men and women, marriage dispensation applications remain prevalent, raising concerns about the consistency of child protection in judicial practice. This study analyzes how PERMA No. 5 of 2019 is implemented in marriage dispensation decisions and evaluates the extent to which the principle of the best interests of the child is incorporated into judicial reasoning. Using normative legal research with statutory and conceptual approaches, the study analyzes primary, secondary, and tertiary legal materials through qualitative descriptive – analytical methods and legal interpretation. The analysis indicates that PERMA No. 5 of 2019 strengthens judicial scrutiny by requiring greater consideration of children's welfare, but its effectiveness remains constrained by social, economic, educational, and cultural circumstances. Premarital pregnancy, economic hardship, limited educational opportunities, and social norms that normalize early marriage continue to influence judicial considerations and dispensation applications. These conditions create a gap between normative child protection standards and their practical implementation. This study contributes to the discourse on judicial discretion by emphasizing the need for consistent child – centered interpretation, stricter assessment of urgent circumstances, and stronger preventive policies addressing the structural factors underlying child marriage.

Abstrak

Penelitian ini mengkaji efektivitas pemeriksaan permohonan dispensasi kawin dalam melindungi hak-hak anak setelah diberlakukannya Peraturan Mahkamah Agung (PERMA) Nomor 5 Tahun 2019. Meskipun Undang-Undang Nomor 16 Tahun 2019 telah meningkatkan batas minimum usia perkawinan menjadi 19 tahun bagi laki-laki dan perempuan, permohonan dispensasi kawin masih banyak diajukan, sehingga menimbulkan kekhawatiran mengenai konsistensi perlindungan anak dalam praktik peradilan. Penelitian ini menganalisis bagaimana PERMA Nomor 5 Tahun 2019 diterapkan dalam putusan dispensasi kawin serta mengevaluasi sejauh mana prinsip kepentingan terbaik bagi anak diintegrasikan dalam pertimbangan hakim. Dengan menggunakan penelitian hukum normatif melalui pendekatan perundang-undangan dan konseptual, penelitian ini menganalisis bahan hukum primer, sekunder, dan tersier melalui metode deskriptif-analitis secara kualitatif dan interpretasi hukum. Analisis menunjukkan bahwa PERMA Nomor 5 Tahun 2019 memperkuat pengawasan yudisial dengan mewajibkan pertimbangan yang lebih mendalam terhadap kesejahteraan anak, tetapi efektivitasnya masih dibatasi oleh kondisi sosial, ekonomi, pendidikan, dan budaya. Kehamilan di luar perkawinan, kesulitan ekonomi, keterbatasan kesempatan pendidikan, serta norma sosial yang menormalisasi

perkawinan usia anak masih memengaruhi pertimbangan hakim dan pengajuan dispensasi. Kondisi tersebut menciptakan kesenjangan antara standar normatif perlindungan anak dan penerapannya dalam praktik. Penelitian ini berkontribusi pada diskursus mengenai diskresi hakim dengan menekankan pentingnya interpretasi yang konsisten dan berorientasi pada anak, penilaian yang lebih ketat terhadap kondisi mendesak, serta penguatan kebijakan preventif untuk mengatasi faktor struktural yang mendasari perkawinan anak.

INTRODUCTION

Child marriage remains a significant social and legal issue in Indonesia despite various regulatory efforts aimed at preventing the practice (Sujana & Puspawati, 2026). The amendment of the Marriage Law through Law Number 16 of 2019 established the minimum marriage age at 19 years for both men and women, reflecting the state's commitment to strengthening child protection (Nabilah, Putra, Afroo, Nurjanah, & Wahyuni, 2025). This reform seeks to ensure that marriage is entered into only when individuals have attained sufficient physical (Burton, 2022), psychological, and social maturity (Zazarin & Mustamirrah Mahamad Aziz, 2026). The policy is also intended to reduce the risks commonly associated with early marriage (Bellās – Obrero & Lombardi, 2023), including school dropout (Syufa'at, 2022), economic dependency, domestic violence, and reproductive health problems (Vickers, 2023). However, the establishment of a higher minimum marriage age has not entirely eliminated the practice because the legal system continues to provide marriage dispensation as an exception under certain circumstances. Applications for marriage dispensation remain a continuing concern, demonstrating that legal reform alone cannot fully address the complex social, cultural, economic, and familial factors underlying child marriage. This situation raises important questions regarding the effectiveness of legal protection mechanisms designed to safeguard children's rights.

The continuing existence of marriage dispensation has generated substantial academic discussion concerning the relationship between legal exceptions and child protection. Existing literature has examined child marriage from normative, sociological, religious, and judicial perspectives (Yuni, 2021). Several studies emphasize the importance of increasing the minimum marriage age and strengthening legal safeguards to protect children from the consequences of early marriage. Other studies identify premarital pregnancy, economic hardship, parental pressure, social stigma, and cultural expectations as dominant factors encouraging applications for marriage dispensation (Hasan & Yusup, 2021). Research has also discussed the role of Supreme Court Regulation (PERMA) Number 5 of 2019 in providing procedural guidance for judges handling dispensation cases (Ishom, 2023). Nevertheless, much of the existing literature focuses separately on either the causes of child marriage, the normative development of marriage law, or general judicial considerations (Sebyar, 2023). Limited attention has been directed toward examining whether the implementation of PERMA Number 5 of 2019 effectively operates as a substantive mechanism for protecting children's rights within judicial decision – making processes.

Previous studies provide an important foundation for understanding the legal and social dimensions of marriage dispensation, but they also reveal several limitations that require further examination. Normative studies have generally assessed the compatibility of marriage dispensation regulations with child protection principles, while empirical studies have primarily identified the social circumstances motivating families to seek judicial permission for underage marriage. These studies demonstrate

that judges face complex circumstances when balancing statutory requirements, urgent social conditions, family interests, and the welfare of children (Ghosh, 2022). However, previous research has not sufficiently evaluated how judicial discretion is exercised after the introduction of PERMA Number 5 of 2019, particularly in relation to the principle of the best interests of the child (Huda, Saadah, Silva, & Wahyudi, 2023). The present study therefore positions itself at the intersection of legal regulation and child –rights protection by examining marriage dispensation not merely as a legal exception, but as a judicial mechanism whose implementation must be critically assessed according to its capacity to protect children.

This study examines how PERMA Number 5 of 2019 is implemented in marriage dispensation cases from the perspective of child rights protection. The study specifically asks how judges apply child protection principles when considering applications for marriage dispensation and whether judicial decisions adequately reflect the principle of the best interests of the child. It also analyzes the implications of judicial discretion for the fulfillment and protection of children's rights within the Indonesian legal system. This article argues that although PERMA Number 5 of 2019 has strengthened the normative framework governing marriage dispensation by requiring greater attention to children's interests, its implementation remains influenced by social, cultural, economic, and practical considerations. Consequently, the existence of procedural safeguards does not automatically guarantee substantive child protection. Examining judicial practices is therefore necessary to determine the extent to which marriage dispensation functions consistently with its intended protective purpose and whether existing legal mechanisms sufficiently prevent children from experiencing the adverse consequences associated with early marriage.

METHODS

This study employs normative legal research using statutory and conceptual approaches to examine the compatibility of marriage dispensation regulations with child protection principles in Indonesia. The statutory approach systematically examines the applicable legal framework, particularly Law Number 16 of 2019 concerning the Amendment to the Marriage Law, Law Number 35 of 2014 concerning Child Protection, and Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. The conceptual approach examines the concepts of child protection, children's rights, judicial discretion, and the best interests of the child as the principal analytical framework. Legal materials were collected through documentary and library research using official legislation databases, academic books, peer –reviewed journal articles, and relevant legal publications. The materials were selected according to their relevance to marriage dispensation, child marriage, judicial discretion, and child rights protection.

The legal materials consisted of primary, secondary, and tertiary sources. Primary legal materials included legislation and judicial regulations governing marriage dispensation and child protection. Secondary legal materials comprised scholarly books, peer –reviewed journal articles, and previous studies addressing child marriage, judicial discretion, and children's rights, while tertiary materials included legal dictionaries and other reference sources used to clarify relevant terminology and concepts. The materials were analyzed qualitatively using a descriptive –analytical method through four stages: identification, classification, interpretation, and legal reasoning. First, relevant legal materials were identified and organized according to their legal authority and substantive

relevance. Second, provisions concerning marriage dispensation were classified according to their relationship with child protection principles. Third, the provisions were interpreted using systematic and conceptual legal interpretation. Finally, legal reasoning was applied to assess the consistency between judicial discretion and the best interests of the child. Analytical rigor was maintained through source triangulation by comparing legislation, scholarly literature, and established legal principles to ensure consistency and validity.

RESULT AND DISCUSSION

RESULT

Implementation of PERMA Number 5 of 2019 in Marriage Dispensation Cases

Marriage dispensation in Indonesia manifests in several forms within judicial practice. One manifestation is the continued submission of applications by parents seeking judicial permission for children who have not reached the statutory minimum marriage age. Such applications generally arise from circumstances considered urgent by families, including pregnancy, concerns regarding adolescent relationships, parental anxiety, and social pressure. Another manifestation concerns the judicial process, in which judges examine the circumstances surrounding each application rather than relying solely on formal administrative requirements. The assessment may involve the child's age, educational situation, psychological condition, health, family circumstances, and readiness for marriage. The judicial process may also provide an opportunity for the child to express personal views concerning the proposed marriage. These practices demonstrate that marriage dispensation involves multiple dimensions of the child's circumstances and extends beyond a purely administrative procedure for obtaining permission to marry below the statutory age. The process therefore involves consideration of personal, familial, social, and developmental conditions surrounding the child.

Several interconnected factors influence the emergence and continuation of marriage dispensation applications. Social and cultural expectations surrounding marriage remain significant, particularly where early marriage is perceived as an appropriate response to relationships considered socially problematic (Valan & Lord, 2018). Family considerations also influence applications, including parental concerns regarding the child's reputation, relationships, and future social circumstances (Adom, 2024). Economic conditions may contribute to applications when families perceive marriage as a means of addressing financial or social difficulties. Pregnancy or the possibility of pregnancy may constitute another important circumstance because families may consider marriage a way to prevent social stigma and familial embarrassment. Differences in educational opportunities, awareness of reproductive health (Ismawati, 2021), and understanding of the long-term consequences of early marriage may further shape decisions concerning marriage (Kasap, 2024). These factors indicate that marriage dispensation applications generally emerge from the interaction of familial, social, economic, cultural, and individual circumstances rather than from a single cause. The complexity of these factors also creates diverse circumstances that judges must consider during judicial proceedings.

Marriage dispensation has implications for the protection and fulfillment of children's rights at individual, judicial, and institutional levels (Kakal, Elkarib, Kusters, & Kok, 2026). At the individual level, the granting of a dispensation may influence a child's educational trajectory (Mohsi, Romli, Zakaria, & Fudholi, 2025), social relationships, economic independence, health, psychological development (Mbaku, 2020), and future opportunities. Entering marriage at an early age may also introduce marital and family responsibilities before the child has achieved sufficient physical, psychological, social, and

economic preparation. At the judicial level, the complexity of dispensation applications requires judges to consider not only immediate circumstances but also the potential long – term consequences of marriage for the child (Upadhyay & Mehrotra, 2023). At the institutional level, these cases demonstrate the importance of cooperation among courts, families, educational institutions, health services, and child protection institutions. This situation shifts marriage dispensation from a formal mechanism for permitting underage marriage toward a process requiring comprehensive consideration of children's welfare, participation, and future rights. Such an approach strengthens preventive protection and places long – term child welfare at the center of judicial practice.

Factors Causing the High Number of Marriage Dispensation Applications

The persistently high number of marriage dispensation applications in Indonesia indicates that legal reforms, particularly the amendment of the Marriage Law through Law Number 16 of 2019, have not fully succeeded in reducing child marriage practices. Although the law has raised the minimum marriage age to 19 years for both men and women, the continued submission of dispensation applications demonstrates a gap between formal legal norms and social realities. This condition indicates that child marriage is not merely a legal issue but is also strongly influenced by socio – cultural, economic, educational, and familial structures embedded within society. One of the factors frequently associated with marriage dispensation applications is premarital pregnancy. In many circumstances, marriage is perceived by families as a social solution to avoid stigma, preserve family reputation, and address concerns regarding social acceptance. Consequently, the decision to seek marriage dispensation may be driven more by immediate social pressures than by careful consideration of the child's long – term welfare and development.

This condition places families in a difficult position, where marriage dispensation may be perceived as a necessary response to urgent social circumstances rather than as a decision based primarily on the child's future interests. From a child protection perspective (Ullah, Aziz, & Idrees, 2021), such circumstances demonstrate how legal safeguards can be weakened by social expectations that prioritize family reputation, social acceptance, and community perceptions over the best interests of the child. Economic conditions also contribute to the persistence of child marriage practices. Families experiencing financial difficulties may perceive early marriage as a means of reducing household responsibilities or economic burdens (Kakal, Elkarib, Kusters, & Kok, 2025). Such circumstances can influence parental decision – making in ways that conflict with the child's welfare and developmental needs. When marriage becomes an alternative to continuing education, children may lose opportunities for personal development, economic independence (Hayati, Hudafi, Mardiana, & Limbong, 2023), and improved future living conditions. Consequently, economic vulnerability may reinforce existing inequalities and create circumstances in which children have limited capacity to determine their own future.

Educational conditions constitute another important factor influencing marriage dispensation applications. Limited educational attainment may contribute to the normalization of early marriage and reduce awareness of children's rights, reproductive health, and the long – term consequences of entering marriage at a young age (Aziz, Sholihin, & Somah, 2023). Children who discontinue their education may face fewer opportunities for personal and economic development (Sudantra & Laksana, 2019), while early marriage can further reduce the likelihood of returning to formal education (Lombardo, 2017). This creates a reciprocal cycle in which limited educational opportunities increase vulnerability to early marriage (Baraie, Rezaei, Nadrian, & Matlabi,

2024), while early marriage subsequently restricts educational and developmental opportunities. Cultural and customary values also remain influential in sustaining early marriage practices in certain communities. In some social contexts, early marriage is perceived as a means of maintaining family dignity, protecting social reputation, or avoiding community shame. These expectations can generate substantial pressure on children and their families, particularly when community norms are considered more influential than formal legal standards.

The interaction of social, economic, educational, familial, and cultural factors demonstrates that marriage dispensation is a multidimensional phenomenon that cannot be addressed solely through legal regulation. The continued reliance on dispensation mechanisms indicates that raising the statutory minimum marriage age, although important, does not automatically eliminate the underlying conditions that encourage early marriage (Yilmaz, 2021). The implications of these circumstances extend to the implementation of child protection policies, as legal instruments must be accompanied by preventive and social interventions. Families require greater awareness of children's rights and the long-term consequences of early marriage (Muljan, Ilmiati, Rahmawati, Rosita, & Mustafa, 2024), while communities need stronger understanding of the importance of protecting children's development. Educational institutions can contribute by preventing school dropout and strengthening reproductive health and rights education (Pratiwi, 2025). Government institutions also need to develop coordinated measures addressing poverty, education, social pressure, and cultural practices. A comprehensive approach is therefore necessary to ensure that legal protection translates into substantive protection of children's rights and reduces dependence on marriage dispensation as a response to social problems.

DISCUSSION

Marriage dispensation has significant implications for the protection and fulfillment of children's rights, particularly when it results in marriage at an age when children have not yet achieved sufficient physical (Amirapu, Asadullah, & Wahhaj, 2026), psychological, social, and economic maturity (Omidakhsh & Heymann, 2020). The legal mechanism allows marriage below the statutory minimum age under particular circumstances, but its application may create tensions within the broader objective of preventing child marriage (Haddad, 2024). The implications are particularly visible in several areas of children's lives (Asadullah & Wahhaj, 2016), including education (Rohman, Mahsus, Abduh, & Arnone, 2023), health, psychological development, and family stability. Children who enter marriage at a young age may experience interruptions in their education because of increased domestic responsibilities and new roles as spouses or parents (Santoso, Khaidarulloh, & Al Haqiqi, 2026). Early pregnancy may also expose girls to greater reproductive health risks, while limited psychological maturity may affect their ability to adapt to marital responsibilities. Furthermore, economic dependence and inadequate preparation for family life may increase vulnerability to household conflict (Hidayat, Ghofur, & Baroroh, 2023), domestic violence (Ebobrah & Eboibi, 2017), and divorce (Tan, 2018). These circumstances demonstrate that marriage dispensation can produce consequences extending beyond the immediate legal authorization of marriage (Diala, 2024).

The emergence of these consequences is closely associated with the social, economic, cultural, and familial circumstances surrounding applications for marriage dispensation. Families may seek dispensation because they perceive marriage as the most appropriate response to premarital pregnancy, social stigma, concerns about family reputation, economic difficulties, or pressure from the surrounding community. In such circumstances,

the immediate objective of resolving a perceived social problem may receive greater attention than the child's long – term development (Lahilote, Miftah, Yuliatin, & Hidayati, 2022). Economic vulnerability can also encourage families to view marriage as a means of reducing household responsibilities (Nawawi, Sulastri, Edi, & Setiawan, 2022), while limited educational opportunities may reduce awareness of the risks associated with early marriage (Arthur et al., 2018). Cultural expectations concerning family dignity and social acceptance can further reinforce these decisions (Efobi, 2024). Consequently, marriage dispensation emerges from circumstances in which legal rules interact with deeply rooted social realities (McGavock, 2021). This interaction creates a difficult position for judicial decision – making because judges must distinguish between circumstances that genuinely require legal intervention and situations in which social pressure is being presented as an urgent justification for marriage (Barkah, Huzaimah, Rachmiyatun, Andriyani, & Ramdani, 2022).

The effects of these circumstances extend beyond the immediate decision to grant or reject a marriage dispensation application (Cevheroğlu & Tutarel – Kışlak, 2023). Early marriage may restrict children's educational opportunities and reduce their capacity to develop skills necessary for future economic independence (Newbigini, 2022). For girls, early pregnancy can create additional reproductive health vulnerabilities (Ntoimo & Ntoimo, 2021), particularly when physical development is incomplete. Psychological consequences may also arise when children assume marital and parental responsibilities without adequate emotional preparation (Idris, Khusaini, & Al – Mansyuri, 2024). At the family level, limited maturity, economic dependence, and inadequate preparation for household responsibilities may contribute to conflict (Kasjim, 2016), instability, domestic violence, or divorce (Azni et al., 2025). At the societal level, these consequences may reproduce cycles of poverty, educational disadvantage, and social vulnerability across generations (Amberi, 2023). The granting of a marriage dispensation therefore has effects that may extend well beyond the individual child and immediate family (Knauer, 2024). These implications demonstrate the importance of assessing not only the urgency presented at the time of application but also the foreseeable consequences of marriage for the child's long – term welfare (Batyra & Pesando, 2021), development (Wantu, Abdullah, Tamu, & Sari, 2021), and ability to exercise fundamental rights (Mursyid & Yusuf, 2022).

This study differs from previous studies by positioning marriage dispensation within a broader framework of substantive child – rights protection rather than examining it solely as a legal exception or as a response to the causes of child marriage (Cao, Fine, Fang, & Zhou, 2019). Previous studies have generally emphasized the health, educational, social, or economic consequences of early marriage (Magash, Nnawulezi, Adiyatma, & Ajay, 2026), while other research has focused on the factors motivating families to seek marriage dispensation (Wouango & Ostermann, 2024). The present study connects these dimensions with the exercise of judicial discretion and the responsibility of judges to place the child's best interests at the center of decision – making (Susilowati, Suwartiningsih, & Siahaan, 2023). This approach demonstrates that the central issue is not merely whether a legal exception is available (Faiz, Ali, & Taufiq, 2023), but whether its application produces outcomes consistent with the long – term protection of children's rights (Abubakar, Juliana, & Hasan, 2021). The distinction is important because the formal existence of procedural safeguards does not necessarily guarantee substantive protection (Mohan, 2025). The study therefore contributes to the discussion by emphasizing the relationship between judicial discretion, social circumstances, and the long – term consequences of marriage dispensation for children's rights.

The implementation of marriage dispensation requires a more restrictive, child – centered, and evidence – based approach. Conceptually, judicial assessment should place the best interests of the child at the center by examining the child's educational prospects, physical and reproductive health, psychological readiness, social circumstances, economic conditions, and ability to understand the consequences of marriage (Darmawan, Husna, Rahmatillah, & Imran, 2022). Methodologically, courts should strengthen comprehensive assessments by obtaining relevant information from child protection professionals, health practitioners, educational institutions (Supriyadi & Siti Suriyati, 2022), and other competent authorities when necessary. Judges should also distinguish genuine urgent circumstances from situations primarily driven by social stigma (Yasin, Abdul Rahman, Ab. Ghani, & Belal, 2024), family pressure, or economic considerations. From a policy perspective, marriage prevention should not depend exclusively on judicial restrictions but should involve coordinated interventions addressing school dropout, poverty, reproductive health awareness, family counseling, and community attitudes toward early marriage. Strengthening these preventive mechanisms would reduce the circumstances that lead families to seek marriage dispensation and ensure that the legal mechanism functions as an exceptional protective measure rather than an alternative pathway to child marriage.

CONCLUSION

This study concludes that the regulation of marriage dispensation in Indonesia has not fully resolved the tension between judicial discretion and substantive child protection. The existence of a legal mechanism permitting marriage below the statutory minimum age demonstrates that child protection remains subject to exceptional judicial assessment. The central concern is therefore not simply whether judges possess legal authority to grant dispensation, but whether the exercise of that authority consistently reflects the child's long – term welfare. Marriage dispensation should be understood as an exceptional judicial mechanism requiring careful consideration of the child's overall circumstances and future development. The study confirms that formal legal protection alone cannot guarantee substantive protection when judicial discretion operates within complex social circumstances. Accordingly, the effectiveness of the regulatory framework depends on the capacity of judicial decision – making to maintain a clear child – centered orientation while distinguishing genuine exceptional circumstances from situations that may undermine the protective purpose of the minimum marriage age.

Conceptually, this study contributes to the understanding of marriage dispensation by positioning it within the relationship between judicial discretion, child rights, and substantive legal protection. Rather than viewing dispensation solely as a procedural exception to the minimum marriage age, the study conceptualizes it as a form of judicial responsibility involving the assessment of competing interests and potential consequences for the child. This perspective strengthens the application of the best interests of the child as a substantive principle rather than merely a procedural consideration. The study further demonstrates that the effectiveness of child protection cannot be assessed exclusively through the existence of regulations but must also consider the quality and consistency of their judicial application. In this respect, the study contributes to legal scholarship by connecting the concepts of judicial discretion and child protection within the specific context of marriage dispensation. This conceptual perspective may support further examination of exceptional legal mechanisms affecting children's fundamental rights.

This study has several limitations that should be considered when interpreting its conclusions. As a normative legal study, the analysis relies primarily on legislation,

judicial regulations, scholarly literature, and other documented legal materials. It does not include interviews with judges, children, parents, lawyers, or child protection professionals, nor does it systematically compare judicial practices across different courts and regions. Consequently, the study cannot fully capture the experiential, institutional, and regional dimensions that may influence decisions concerning marriage dispensation. Future research should employ empirical or socio–legal approaches to examine how judges interpret urgent circumstances and apply the best interests of the child in actual proceedings. Comparative research involving different courts, regions, or legal systems could also identify variations in judicial reasoning and institutional practice. Such research would provide a broader empirical basis for evaluating the consistency and effectiveness of child protection within marriage dispensation proceedings.

DECLARATIONS

AUTHOR CONTRIBUTION STATEMENT

Yasniwati contributed to conceptualization, methodology, investigation, formal analysis, and writing of the original draft. Devianty Fitri contributed to the literature review, data curation, and writing of the original draft. Melia Rosa contributed to legal analysis, investigation, and writing, review, and editing. Desri Yanri contributed to methodology, validation, and data analysis. Arif Hardianto contributed to supervision, validation, and writing, review, and editing. All authors contributed to the development of the study, critically reviewed the manuscript, and approved the final version for publication.

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DATA AVAILABILITY STATEMENT

The data supporting the findings of this study are available from the corresponding author upon reasonable request. Access to interview data is subject to ethical considerations and participant confidentiality.

DECLARATION OF INTERESTS STATEMENT

The authors declare that they have no known competing financial or personal interests that could have influenced the work reported in this paper.

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