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PUNISHED AS RAPE, JUSTIFIED THROUGH MARRIAGE: THE PARADOX OF LEGAL COHERENCE AND TELEOLOGICAL REASONING

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Abstract

This study examines the paradox of judicial reasoning when a marriage dispensation is granted to a child whose prospective husband is facing prosecution for raping her, focusing on legal coherence and the limits of teleological reasoning. It employs normative legal research using conceptual, statutory, and case approaches to analyze Marriage Dispensation Decision Number 287/Pdt.P/2025/MS.Lgs, which authorized the marriage of a 16−year−old girl, and Jinayat Decision Number 24/JN/2025/MS.Lgs, which convicted her prospective husband of child rape eight days later. The findings reveal three fundamental inconsistencies. First, the girl was recognized as a victim entitled to protection in the criminal proceedings but treated as a consenting prospective spouse in the marriage dispensation proceedings. Second, the court invoked harm prevention and pregnancy as justifications for marriage without adequately considering the ongoing criminal proceedings. Third, the absence of explicit regulatory provisions addressing marriage dispensation during related criminal proceedings creates a legal gap that enables contradictory judicial outcomes. This study concludes that teleological reasoning, when detached from binding legal principles and child protection obligations, risks transforming marriage into an instrument for legitimizing the consequences of sexual violence. Academically, it contributes to legal scholarship by applying Bertens' teleological ethics to judicial reasoning and developing a normative framework that establishes the best interests of the child as a non−derogable constraint. It recommends suspending marriage dispensation proceedings during related criminal cases, incorporating relevant criminal findings into judicial assessments, and amending Supreme Court Regulation No. 5 of 2019.

Abstrak

Penelitian ini mengkaji paradoks penalaran hakim ketika dispensasi perkawinan diberikan kepada seorang anak yang calon suaminya sedang menjalani proses penuntutan atas tindak pidana perkosaan terhadap dirinya, dengan berfokus pada koherensi hukum dan batas−batas penalaran teleologis. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual, perundang−undangan, dan kasus untuk menganalisis Penetapan Dispensasi Kawin Nomor 287/Pdt.P/2025/MS.Lgs, yang mengizinkan perkawinan seorang anak perempuan berusia 16 tahun, serta Putusan Jinayat Nomor 24/JN/2025/MS.Lgs, yang menjatuhkan pidana kepada calon suaminya atas tindak pidana perkosaan terhadap anak delapan hari kemudian. Hasil penelitian mengungkapkan tiga inkonsistensi mendasar. Pertama, anak perempuan tersebut diakui sebagai korban yang berhak memperoleh perlindungan dalam proses peradilan pidana, tetapi diperlakukan sebagai calon istri yang memberikan persetujuan dalam proses dispensasi perkawinan. Kedua, hakim menggunakan pertimbangan pencegahan kemudaratan dan kehamilan sebagai alasan pembenaran perkawinan tanpa mempertimbangkan secara memadai proses peradilan pidana yang sedang berlangsung. Ketiga, ketiadaan ketentuan peraturan perundang−undangan yang secara eksplisit mengatur dispensasi perkawinan selama berlangsungnya proses peradilan pidana terkait menciptakan kekosongan hukum yang memungkinkan terjadinya putusan yang saling bertentangan.

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Penelitian ini menyimpulkan bahwa penalaran teleologis yang terlepas dari prinsip hukum yang mengikat dan kewajiban perlindungan anak berisiko mengubah perkawinan menjadi instrumen legitimasi atas konsekuensi kekerasan seksual. Secara akademis, penelitian ini berkontribusi terhadap pengembangan keilmuan hukum melalui penerapan etika teleologis Bertens dalam mengevaluasi penalaran hakim serta pengembangan kerangka normatif yang menempatkan kepentingan terbaik bagi anak sebagai batas hukum yang tidak dapat dikesampingkan. Penelitian ini merekomendasikan penundaan proses dispensasi perkawinan selama berlangsungnya perkara pidana terkait, penggunaan temuan hukum pidana yang relevan dalam pertimbangan hakim, serta perubahan terhadap Peraturan Mahkamah Agung Nomor 5 Tahun 2019.

INTRODUCTION

Indonesia raised the minimum marriage age to 19 in 2019 but lets courts grant dispensation for very urgent reasons, and the route is widely used. Data from the Religious Courts Directorate General, cited by Febriansyah (2025), show that in 2025 some 56 per cent of dispensation applications were filed to avoid sexual relations outside marriage and 34 per cent because the girl was pregnant. Aceh adds a second regime: the Jinayat Law (Qanun Aceh No. 6 of 2014) punishes rape of a child with long imprisonment. The two regimes met in one case. On 7 January 2026 the Mahkamah Syar'iyah Langsa, sitting as a single judge, granted a dispensation to a 16—year—old girl, then about six months pregnant, to marry an 18—year—old man who was held in the Langsa penitentiary and did not attend (Putusan Nomor 287/Pdt.P/2025/MS.Lgs). Eight days later the same court convicted him of rape of a child and sentenced him to 150 months' imprisonment (Putusan Nomor 24/JN/2025/MS.Lgs). The child was a victim in one proceeding and a prospective spouse in the other, which raises a question of legal coherence.

Research on child marriage and sexual offences has approached the problem from several directions. In the United States, Van Roost et al. (2022) found that child marriages met the definition of statutory rape in 14 states and that statutory rape laws in 33 states exempt married couples, so that marriage can remove criminal liability for sex with a child. Legislatures elsewhere, including Jordan and Lebanon in 2017, repealed provisions that let a rapist escape punishment by marrying his victim (Arab News, 2017), and Equality Now (n.d.) reports campaigns that helped overturn such laws in more than twelve countries. Health research documents the harms of child marriage for girls (Nour, 2009), young people describe early forced marriage as a lifetime punishment (Sitefane et al., 2024), and Murray (2012) shows that marriage law can itself operate as punishment. Indonesian studies examine how Islamic family law applies the best interests of the child (Asikin & Sugiono, 2025; Hanapi et al., 2024; Kadarisman et al., 2025), how judges reason on child protection (Wahyudi, 2017) and how marriage regulation works in practice (Warman et al., 2023).

These studies have limits for the situation examined here. The American and Middle Eastern work concerns statutory exemptions or criminal—code defences, in which the law itself lets marriage cancel liability, and it does not address a family court that permits a marriage while a criminal court is separately prosecuting the same man. Indonesian studies of dispensation concentrate on the criteria for granting it, such as readiness, health and urgency, and tend to leave the criminal proceeding outside their scope. Studies of judicial reasoning in Islamic family law describe how the best interests principle is applied but do not ask whether the reasoning is consistent with the criminal

characterisation of the same facts. Scholarship on legal reasoning has analysed teleological arguments in general terms (Sartor, 2010; Siliquini—Cinelli, 2025; Wyner & Zurek, 2023), yet it has not been applied to the meeting of punishment and marriage authorisation. What remains unresolved is how a court can punish and authorise the same relationship, and what should limit it.

The objective of this study is to examine the paradox of legal coherence arising from the interaction between the *jinayat* and marriage dispensation legal regimes in determining the legal position of the same child, analyze how teleological reasoning justifies divergent judicial treatment, and identify normative and procedural mechanisms to reconcile the two regimes. The novelty of this study lies in its critical analysis of the contradiction whereby an act is treated as rape under criminal law, while marriage is authorized as a legal response to its consequences, through the perspectives of teleological ethics and the best interests of the child. This study addresses three research questions: how do *jinayat* and marriage dispensation proceedings construct the legal position of the same child; how does teleological reasoning justify divergent judicial treatment, and why does the best interests of the child principle fail to operate as a substantive constraint on judicial decision—making; and what normative and procedural mechanisms are necessary to ensure coherence between the two legal regimes? The central argument is that teleological reasoning oriented toward particular outcomes or consequences must remain subject to binding legal principles and the non—derogable obligation to protect children from sexual violence. Accordingly, this study proposes strengthening normative and procedural safeguards to ensure that marriage dispensation cannot legitimize the consequences of rape, undermine criminal law enforcement, or compromise the state's obligation to protect children's rights.

METHODS

This study employs a normative legal research design using conceptual, statutory, and case approaches (Muhaimin, 2020; Supratman, 2015). It focuses on the analysis of legal materials rather than empirical investigation of individuals. The research is centered on the Mahkamah Syar'iyah Langsa in Aceh, with two judicial proceedings involving the same child as its primary objects: Marriage Dispensation Decision Number 287/Pdt.P/2025/MS.Lgs and *jinayat* Decision Number 24/JN/2025/MS.Lgs. These cases were selected purposively because both proceedings took place before the same court, involved the same parties, and generated different legal treatments concerning the child's position. Primary legal materials consist of the Aceh Jinayat Law (Qanun Aceh No. 6 of 2014), Law No. 1 of 1974 on Marriage, Law No. 35 of 2014 on Child Protection, Law No. 16 of 2019 amending the Marriage Law, Law No. 12 of 2022 on Sexual Violence Crimes, Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, the Civil Code, the Convention on the Rights of the Child, and the two court documents. Secondary legal materials include books, journal articles, and research reports addressing child marriage, sexual violence, judicial reasoning, legal coherence, teleological ethics, and child protection.

Data were collected through documentary legal research. Marriage Dispensation Decision Number 287/Pdt.P/2025/MS.Lgs and *jinayat* Decision Number 24/JN/2025/MS.Lgs were obtained as scanned copies from the registry of the Mahkamah Syar'iyah Langsa upon request. The identities of the parties were anonymized, and both documents were examined in their entirety. The case numbers, dates, alleged offence, and final sentence were cross—checked against the court's Case Tracking Information System (*Sistem Informasi Penelusuran Perkara* or SIPP). Statutes and regulations were

obtained from their official texts, while scholarly literature was selected based on its relevance to child marriage, sexual violence, teleological reasoning, legal coherence, and the best interests of the child. Each decision was examined in terms of its established facts, applicable legal provisions, judicial considerations, and legal consequences. Particular attention was given to how the same child was positioned differently in the two proceedings. The names and identifying information of the child and other parties were withheld to preserve confidentiality and protect the child's privacy.

The legal materials were analysed qualitatively through doctrinal analysis and legal interpretation in four stages. First, the construction of the child's legal position in each proceeding was identified to determine how the *jinayat* and marriage dispensation regimes treated the same individual. Second, the reasoning underlying the marriage dispensation decision was examined by identifying the harms considered, the objectives pursued, and the legal principles invoked, using Bertens' (1994) distinction between teleological and deontological ethics as the analytical framework. Third, the legal consequences of both decisions were compared against the principle of legal coherence, the best interests of the child, and applicable domestic and international legal standards. Fourth, normative and procedural mechanisms for harmonizing the two legal regimes were formulated based on the identified regulatory gaps and inconsistencies. Analytical credibility was strengthened through cross—checking the facts recorded in both decisions against the court's case tracking system and verifying the applicable statutory provisions against their official texts. This study is limited to a single case involving two related judicial proceedings and documentary materials; therefore, its findings constitute a doctrinal and normative analysis rather than statistical generalizations about judicial behaviour.

RESULT AND DISCUSSION

RESULT

The Same Child as Victim and as Prospective Spouse

The two proceedings produced opposite constructions of the same child. The application for dispensation was registered on 24 November 2025 by the girl's parents and the young man's mother, and the decision was read on 7 January 2026. In that decision the girl, aged 16, is treated as a child who knew of and agreed to the marriage, who was not coerced, who had been in a relationship with the young man for about two years and was engaged to him, and who was about six months pregnant. The *jinayat* judgment concerned the same young man and the same child. It records four episodes of intercourse between 29 June and 27 July 2025, a forensic examination on 29 September 2025 finding a pregnancy of about twelve weeks, and the child's fear and anxiety while the defendant promised to take full responsibility. The defendant said he was willing to marry her, but this does not appear among the mitigating factors. On 15 January 2026 the court found him guilty of *jarimah pemerkosaan terhadap anak* under Article 50 of the Aceh Jinayat Law and sentenced him to 150 months' imprisonment. The *jinayat* court therefore treated the girl as a victim of rape, and the dispensation court treated her as a prospective spouse who had been in a relationship with him for two years, whereas the *jinayat* judgment dates their acquaintance from early 2025.

The record of the dispensation decision shows how this was reached. The application said only that the two had committed acts prohibited by Islamic law and did not mention the criminal case. At the hearing the judge counselled the parents and, in a closed session, the girl on the risks of child marriage, as Perma No. 5 of 2019 requires, and

heard the girl. The young man could not be heard because he was held in the Langsa penitentiary, which the judge noted with reference to Article 13(1) of the Perma. A psychologist's assessment found the girl's cooperation and responsibility lacking, and the judge recorded that she was not yet comprehensively ready or mature psychologically but accepted the shortfall as tolerable. The judge also noted that the young man earned Rp1,500,000 a month and that the parents undertook to support the couple. Two village officials testified to the ages, the refusal of the Office of Religious Affairs and the absence of any bar to marriage. Nothing in the decision refers to the *jinayat* proceeding, to the offence for which he was held or to the girl's status as a victim, and the *jinayat* judgment in turn does not refer to the dispensation application.

The findings of this subtheme answer the first research question and demonstrate the broader implications of fragmented judicial assessments for child protection. Within eight days, the same court system constructed two conflicting legal positions for one child: a victim of coerced intercourse in the *jinayat* proceeding and a consenting prospective spouse in the marriage dispensation decision. Although the dispensation was granted while the criminal prosecution was pending, the decision did not address the alleged offence or its implications for the child's protection. Table 1 presents these contrasting judicial positions. This finding reveals that the separation of criminal accountability from marriage authorisation can transform a child's experience of sexual violence into a matter of marital settlement, potentially weakening the protective function of both legal proceedings. It therefore demonstrates the need to reconsider judicial coordination so that a child's status as a victim remains central throughout related legal processes. The second subtheme examines the judicial reasoning underlying this outcome.

Teleological Reasoning and the Gaps in Domestic Law

The decision justified the dispensation by weighing harms. The judge treated the girl's pregnancy and the couple's repeated meetings, which had become a subject of gossip, as the urgent reason required by Article 7(2) of Law No. 16 of 2019. Applying the maxims that a harm is not removed by another harm and that, of two harms, the lesser is chosen, and invoking *sadd al-żarī'ah* to prevent the forbidden act from recurring, the judge concluded that marriage was the lesser harm and served the child's best interests. The decision adds that a child born outside marriage is related in law only to its mother (Law No. 1 of 1974, Article 43). The best interests of the child therefore appear as the conclusion of the weighing and not as a limit on it.

The domestic provisions that bear on the case do not agree. Articles 76D and 81 of Law No. 35 of 2014 and Article 50 of the Aceh Jinayat Law treat sexual intercourse with a child as an offence, Article 10(2) of the UU TPKS lists child marriage and forced marriage among sexual violence offences, and Article 23 bars, in principle, the settlement of sexual violence cases outside the judicial process. The Jinayat Law itself defines a child as a person under 18 who is not married (Article 1(40)), so a marriage granted to the child would change her status under the very qanun under which the offender was convicted. The decision itself recites Article 10(2) and the parents' duty under Article 26(1)(c) of Law No. 35 of 2014 to prevent child marriage, and then grants the dispensation. Article 7(2) of Law No. 16 of 2019 and Perma No. 5 of 2019, by contrast, allow dispensation on proof of urgent reasons and contain no express exclusion where the prospective spouse is being prosecuted for sexual violence against the child. Pregnancy appears to have been decisive here, although the Supreme Court's news service reports that the Perma does not treat pregnancy alone as sufficient (Febriansyah,

2025). Under Article 1918 of the Civil Code a final criminal conviction can be offered only as evidence in a civil case, so even a completed conviction would not bind the family court.

The findings demonstrate that the marriage dispensation rested on a balancing of harms in which the best interests of the child functioned as the conclusion of judicial reasoning rather than as a substantive constraint on the decision. The court considered the consequences of an underage marriage against the perceived harm of leaving a pregnant girl unmarried, but the reasoning did not establish how the pending sexual violence prosecution should affect the application. Domestic law provides no explicit rule directing judges how to proceed when the prospective spouse is a defendant in a sexual violence case involving the child concerned. This gap has implications beyond the individual decision because it allows marriage authorisation and criminal accountability to proceed without an effective mechanism for reconciling their consequences for the same child. The findings therefore indicate that protecting children requires more than invoking their best interests; it requires procedural and substantive safeguards capable of limiting judicial discretion. Alongside the contradictory legal construction of the child, these findings answer the first two research questions and establish the basis for examining legal harmonisation in the Discussion.

DISCUSSION

The findings answer the three research questions by showing that the two proceedings constructed one child in contrasting legal positions. In the *jinayat* case, she was recognised as a victim of coerced intercourse, and the prospective husband was convicted of child rape. In the dispensation case, however, she was treated as a prospective spouse whose consent could be heard and accepted. The dispensation decision preceded the criminal judgment by eight days and relied on pregnancy, the risk of social stigma, and the prevention of further harm. Although the judge referred to the best interests of the child, the principle operated within a balancing exercise rather than as a substantive limit. The case therefore reveals a gap between the protective purpose of criminal adjudication and the reasoning used to authorise marriage.

This divergence arose from the interaction of two legal processes that assessed the same circumstances through different objectives and evidentiary frames. The dispensation court focused on the immediate consequences of an unmarried pregnancy, particularly stigma and the perceived need to secure the child's social position. Its teleological reasoning treated marriage as the option likely to reduce those harms. By contrast, the *jinayat* process examined the conduct as a criminal offence and addressed the child's protection through punishment. Perma No. 5 of 2019 recognises the best interests of the child, but it does not expressly prohibit dispensation when the prospective spouse is being prosecuted for an offence against that child. This regulatory omission left the judge without a specific procedural barrier or coordination rule linking the proceedings between the two courts.

The divergence has consequences beyond inconsistency between two decisions. It risks making marriage appear to resolve the social consequences of sexual violence while criminal responsibility is pursued separately. In practical terms, the child may be repositioned from victim to spouse without a sufficiently independent assessment of coercion, vulnerability, or the consequences of marriage. The best interests principle then risks becoming a reason cited in support of a preferred outcome rather than a binding standard that limits judicial discretion. Read through Bertens (1994), the decision illustrates the limits of consequence—based reasoning when the harms included in the

balance are selectively identified. A child's protection from being married to the person who raped her should operate as a prior duty, not merely as one consideration weighed against pregnancy—related stigma or social pressure.

The findings confirm and extend previous studies and debates. Van Roost et al. (2022) examine statutory exemptions through which marriage may remove criminal liability for sex with a child, while the repeal of marry—your—rapist provisions in Jordan and Lebanon reflects efforts to preserve accountability (Arab News, 2017). The Aceh case differs because no statute expressly exempts the offender and the *jinayat* court imposed punishment; nevertheless, the dispensation route produced a potentially similar legitimising effect. Hanapi et al. (2024) and Kadarisman et al. (2025) advocate integrating the best interests principle into Islamic and positive law, while this case demonstrates the weakness of invocation without enforceable limits. Febriansyah (2025) identifies pregnancy as a frequent basis for applications. Here, pregnancy became the decisive urgency, illustrating how protective language may coexist with inadequate protection.

Several safeguards are therefore necessary to restore coherence and strengthen child protection. Applicants should disclose whether the prospective spouse is a suspect, defendant, or convict in a case involving the child, and registries should verify that information with the relevant criminal court. A dispensation hearing should be suspended while related criminal proceedings remain pending. Final findings concerning coercion, incapacity, and the perpetrator's identity should inform, and where legally appropriate preclude, the dispensation decision. The child should also be heard separately from parents, supported by an independent companion and a professional assessment. The Supreme Court should consider amending Perma No. 5 of 2019 to establish these safeguards, while lawmakers reconcile the relevant marriage, child—protection, sexual—violence, and Aceh *jinayat* provisions. Further comparative and socio—legal research should assess implementation and inter—court coordination empirically.

CONCLUSION

This study demonstrates a fundamental paradox of legal coherence arising from the simultaneous application of criminal punishment and state—authorized marriage to the same child under the *jinayat* and marriage dispensation legal regimes in Aceh. The findings reveal that the *jinayat* court recognized the girl as a victim of child rape entitled to legal protection, whereas the marriage dispensation court treated her as a consenting prospective spouse, despite the ongoing criminal proceedings against her prospective husband. Notably, the marriage dispensation decision was issued eight days before the criminal conviction and did not address the implications of the ongoing criminal case. The judicial reasoning relied on balancing potential harms, particularly by treating pregnancy as an urgent justification for marriage while invoking the best interests of the child to support its decision. However, this principle was not applied as a substantive legal constraint capable of preventing an outcome that potentially undermined the child's protection. The analysis further identifies a regulatory gap, as domestic legislation contains no explicit provision governing marriage dispensation when the prospective husband is being prosecuted for an offence against the child concerned. These findings demonstrate how the two proceedings constructed divergent legal positions concerning the same child, how outcome—oriented reasoning contributed to inconsistent judicial treatment, and why existing regulatory mechanisms failed to prevent the contradiction. Accordingly, the absence of coordination between criminal proceedings and marriage dispensation undermines legal coherence and creates a significant gap in the state's responsibility to protect children from sexual violence.

The principal theoretical contribution of this study lies in its critical examination of the limits of Bertens' teleological ethics in judicial decision—making involving children's rights. Although teleological ethics evaluates actions according to their consequences, an exclusively outcome—oriented approach may subordinate individual rights to broader social considerations without establishing an adequate boundary of legal protection. In the case examined, considerations of avoiding social stigma and securing the child's social position became justifications for authorizing marriage while the state was simultaneously pursuing criminal accountability for the prospective husband's conduct. This contradiction illustrates how teleological reasoning, when detached from binding legal obligations, may produce judicial outcomes that lack coherence across different legal regimes. It also demonstrates the importance of complementing teleological reasoning with deontological principles, particularly obligations that cannot be overridden by anticipated consequences. Accordingly, the best interests of the child must function as a non—derogable legal constraint rather than merely one consideration among competing interests. Beyond its theoretical contribution, this study proposes four practical safeguards: suspending marriage dispensation proceedings while related criminal proceedings are ongoing, ensuring that relevant criminal findings inform subsequent dispensation decisions, providing an independent and child—sensitive assessment of the child's views, and establishing explicit regulatory restrictions through amendments to Supreme Court Regulation No. 5 of 2019. These mechanisms aim to strengthen judicial consistency, harmonize the two legal regimes, and prevent marriage from becoming an instrument for legitimizing the consequences of sexual violence against children.

This study has several limitations that should be considered when interpreting its findings. First, its analysis focuses on a specific judicial case in Aceh; therefore, the findings cannot automatically represent the practices of all religious courts or broader national patterns of marriage dispensation decisions. Second, the normative juridical approach primarily examines judicial decisions, statutory provisions, and ethical frameworks without incorporating empirical interviews with judges, prosecutors, child protection institutions, or children affected by similar proceedings. Third, the application of teleological and deontological ethics provides a conceptual explanation of judicial reasoning but does not independently establish the institutional factors influencing coordination between criminal and marriage dispensation proceedings. Future research should employ comparative case studies across different religious courts to identify variations in judicial reasoning, legal interpretation, and regulatory implementation. Empirical socio—legal investigations involving judicial institutions and child protection stakeholders would also help assess the feasibility of the proposed procedural safeguards and identify institutional barriers to their implementation. Further theoretical research could explore how Islamic legal principles, particularly *maqasid al—shariah* and the protection of life and lineage, can reinforce the best interests of the child as a binding standard in judicial decision—making. Such investigations would contribute to developing a more coherent, accountable, and child—centered legal framework for harmonizing criminal justice and family law, ensuring that the pursuit of particular social outcomes does not override the state's fundamental obligation to protect children.

DECLARATIONS

AUTHOR CONTRIBUTION STATEMENT

Nurul Husna: Conceptualization, Methodology, Investigation, Formal Analysis, Writing — Original Draft. Muhammad Suhaili Sufyan: Conceptualization, Validation, Writing — Review & Editing. Muhazir: Investigation, Data Curation, Formal Analysis, Writing —

Review & Editing. Md Mahmud Bin Sayeed: Methodology, Supervision, Validation, Writing – Review & Editing.

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DATA AVAILABILITY STATEMENT

The data supporting the findings of this study are available from the author upon reasonable request.

DECLARATION OF INTERESTS STATEMENT

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

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