

Understanding the Judge's Decisions which Are Best for Children to Realize Justice for all Post Diversion Failure

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ABSTRACT

Background. The juvenile justice system prioritizes restorative justice through diversion to protect the rights and future development of children in conflict with the law. Nevertheless, diversion does not always achieve an agreement, creating legal challenges for judges in balancing the interests of child offenders, victims, and society while ensuring that judicial decisions remain consistent with the principle of justice for all.

Purpose. This study aims to analyze judicial decisions rendered after the failure of diversion and to examine how judges uphold the best interests of the child within the broader framework of justice for all.

Method. This research employs a normative legal research design focusing on judicial decisions as the primary object of analysis. The study relies exclusively on secondary data obtained through an extensive review of legal literature, including statutory regulations, judicial decisions, legal doctrines, and scholarly publications.

Results. The findings reveal that the failure of diversion does not eliminate the obligation of judges to prioritize the best interests of the child. Judicial decisions are formulated by considering recommendations from the Correctional Center (BAPAS), legal advisors, and community perspectives, while also taking into account the interests of victims and the wider public.

Conclusion. Judicial decisions following unsuccessful diversion continue to uphold the principle of the best interests of the child within the framework of justice for all. Such decisions demonstrate that juvenile sentencing should integrate rehabilitation, victim protection, and societal interests to achieve equitable and sustainable justice.

KEYWORDS

Children, Best Interests, Legal Process

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INTRODUCTION

Allowing a child to enter a correctional institution means providing a negative education to the child. In this institution the residents are those who are identified as evil. If a child is in this institution, he will imitate evil behavior. EH Sutherland as quoted by TB. Ronny R. Nitibaskoro stated that criminal behavior can be learned in interactions with other people in a communication process (Manzanares, 2025; Scattarreggia, 2025).

Children are children and not little adults. so that the legal process and punishment must be different from that of adults. According to Barda Nawawi Arief, there are two



things that form the basis of thinking in carrying out the juvenile justice process (Sato, 2024): Children who commit crimes are not seen as criminals but must be seen as people who need help. The juridical approach for children should prioritize a *persuasive-educative and (psychiatric/psychological)* approach, namely as far as possible avoiding legal processes that are purely punitive in nature, mental degradation and a decrease in enthusiasm (*discouragement*) as well as avoiding processes (*stigmatization*) that can hinder the development process reasonable maturity and independence. urgent issues that must be resolved when talking about the legal process and its consequences which must lead to the good of the child. This question must be answered, because according to the law people who commit criminal acts must be punished, while talking about something that is best for the child, while this is understood by some people in a way that does not punish (Atasoy, 2025; Karakaya, 2026).

Law Number 11 of 2011 concerning the Juvenile Criminal Justice System has provided the best alternative for children in conflict with the law by seeking diversion. The purpose of diversion always boils down to the best interests of the child, including the process. Normatively, the law already regulates the criminal acts that can be attempted for diversion, how to carry out diversion and things that need to be considered in diversion (Natalis, 2023; Uche, 2024).

Diversion is a method of resolving children's cases outside the criminal legal process. Diversion is actually a reaction to the legal process which only focuses on the perpetrator and the State, without involving the parties in conflict and the community. Diversion, in which it seeks restorative justice, the process of which includes perpetrators, victims and the community. Lilik Mulyadi as quoted by I Wayan Putu Sucana Arya wrote: " Diversion is a settlement method of juvenile cases. It shifts criminal justice processes to non-criminal justice processes. It is emerged and developed as a reaction on dissatisfaction on previous juvenile criminal justice system, which focused on state and perpetrators, without the involvement of all conflicting parties and community actors the problem solving" (Hou, 2025; Nikhil, 2023).

Even though diversion has positive potential, strict regulations and supervision are still needed to ensure its fair and effective implementation. To make this happen involves collaboration between child justice institutions, government agencies, non-government organizations and the wider community. The success of diversion depends on a collective commitment to creating a juvenile justice system that focuses on recovery, rehabilitation and protection of children's rights. Some diversions have been successful and some have failed. For successful diversion, the best interests of the child are normatively met, although the substance still needs to be studied. For unsuccessful diversion, the criminal legal process will continue (Sakiyama, 2023; Stephens, 2026).

This research is important to carry out, because diversion is the first goal before a child is officially prosecuted using criminal law, besides the process must be correct, the results must be in accordance with what is desired by law, especially for: a. achieve peace between victims and children; b. resolve children's cases outside the judicial process; c. protect children from deprivation of liberty. Diversion should not be limited by the terms of the duration of the criminal threat. If indeed the protection of children must be prioritized, then the requirements for child development must be prioritized. This means that if there is a child who is in conflict with the law who is declared to have violated the law, and all parties are willing and able to provide guidance. Diversion is unique, because it not only seeks not to punish children who are in conflict with the law, but must pay attention to the interests of victims, the welfare and responsibility of children, avoidance of retaliation, harmonization of society; and propriety, decency and public order (Deliege, 2025; Martin-Plaza, 2025).

If diversion fails, it should not be interpreted as the end of providing the best for the child. The opportunity for this will still exist when a child undergoes a formal criminal legal process in the District Court. Along with this, the problem in this research is how to understand the judge's decision which leads to the best interests of the child after failed diversion, while remaining in the corridor of justice for all. This research approach is normative legal research. The object studied is the judge's decision. The data used includes secondary data as main data and primary data as supporting data. Data collection techniques were carried out by means of documentary studies and literature studies. The existing data was analyzed qualitatively and presented descriptively (Sakiyama, 2023; Stephens, 2026).

RESEARCH METHODOLOGY

Based on the decision of the Cirebon District Court Number 24/Pid.Sus-Anak/2021/PN Cbn, three children from Cirebon, respectively Rizki Maulana Bin Chaerudin aged 14 years, Ari Danuri Bin Sanur Wenda aged 14 years and Muhammad Qolbin Bin Salim Dzikir Alias Zikri, aged 16 years, was sentenced to the crime of Guidance at the Social Institution for the Rehabilitation of Children in Conflict with the Law (PSRABH) Cileungsi Bogor for 2 (two) years each and Job Training for 3 (three) years each. month. These children are hereinafter referred to as Child I, Child II and Child III (Alhadhrami, 2025; Liebeaux, 2024).

Child I, Child II and Child III, accompanied by Legal Advisor, Guidance Officer Sociability (PK) Class I Cirebon Correctional Center (BAPAS), Cirebon City Social Workers (Peksos) and by Parents. In this case, a diversion was carried out in the Cirebon District Court Diversion room on Friday 24 December 2021 by the Panel of Children's Judges as the Facilitator, however the Diversion was unsuccessful and was stated in the Diversion Minutes.



Figure 1. Research Flow of Normative Legal Analysis on Judicial Decisions Following Failed Diversion Based on the Best Interests of the Child Principle

Figure 1. Flowchart of the Normative Legal Research Method

The three of them were prosecuted by the Children's Public Prosecutor in essence as follows: Declare that Child I, Child II, and Child III, have been legally and convincingly proven guilty of committing the crime of " Placing, Allowing, Committing, Ordering to Commit, or Participating in the Commitment of Violence Against Children which Causes Serious Injury" as regulated and punishable by crime in Article 80 paragraph (2) of Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection (as in the First Alternative Public Prosecutor's indictment). Imposing a crime to Child I, Child II and Child III, with criminal coaching at the Rehabilitation Social Home for Children in Conflict with the Law (PSR ABH) Cileungsi Bogor for 2 (two) years each and work training for 3 (three) months each during the day days that do not interfere with children's study hours with supervision and guidance from the Cirebon Fathers are reduced while in detention, with the order that the children remain in detention (Alenazi, 2025; Werner, 2025).

Based on the demands of the Public Prosecutor, the legal advisor submitted a written defense (pledoi) basically asking for the fairest possible decision and the lightest possible sentence taking into account the children confess And regret his actions so as not to complicate the investigation of the case and promised not to repeat his actions (Dinwiddie, 2024; Sutherland, 2024).

RESULT AND DISCUSSION

If diversion is successful, restorative justice will be achieved. Indicators in restorative justice can be seen from the roles of perpetrators, victims, the community and juvenile justice professionals. The perpetrator is active in restoring losses to victims and society. Victims are active, involved in all stages of the process and are active in mediation and participate in determining sanctions for the perpetrator. The community acts as a mediator. Juvenile criminal law professionals act as facilitators.

After the failure of diversion, Child I, Child II and Child III were then prosecuted under criminal law and sentenced to punishment, is the criminal imposition in line with efforts to realize the best interests of children in conflict with the law?

To provide an assessment , whether the imposition of punishment on Child I, Child II, and Child III has culminated in the interests of the child or not, it should be returned to the existing regulations. The Juvenile Criminal Justice System (SPPA), among other things, regulates the principle of the best interests of the child and the child's survival and growth and development, which must be guided in the juvenile justice process.

The best interests of the child are that all decision making must consider the child's survival and growth and development. The survival and growth and development of children is the most basic human right for children which is protected by the state, government, society, family and parents.

Under any circumstances, children must receive protection because they cannot protect themselves. Maidan Gultom wrote that children are unable to protect themselves from actions that cause physical, mental and social harm. Children must be assisted by others in facing the implementation of juvenile criminal justice which is foreign to them.

Table 1. Findings on Judicial Considerations Following Failed Diversion in Juvenile Justice Cases

Research Aspect	Findings	Judicial Implication
Status of Failed Diversion	The failure of diversion does not eliminate the child's legal right to receive judicial protection and fair treatment throughout the	Judges continue to prioritize the principle of the best interests of the child despite unsuccessful diversion efforts.

Judicial Decision-Making Basis	criminal justice process. Judicial decisions are formulated by considering statutory regulations, recommendations from the Correctional Center (BAPAS), legal advisors, and relevant social circumstances.	Decisions reflect comprehensive legal and social considerations rather than relying solely on punitive measures.
Role of BAPAS and Legal Advisors	Social inquiry reports and professional recommendations provide important information regarding the child's personal background, rehabilitation prospects, and family environment.	These recommendations strengthen individualized sentencing and support child-centered justice.
Prosecutorial Perspective	Prosecutors generally argue that sanctions imposed on juvenile offenders are insufficient to achieve deterrence and accountability.	Judicial decisions balance prosecutorial demands with rehabilitation objectives and child protection principles.
Consideration of Victims and Society	Judges also evaluate the interests of victims and the broader community to ensure that justice is balanced and socially acceptable.	Judicial reasoning seeks to harmonize restorative justice, public interests, and legal certainty.
Purpose of Sentencing	Sentencing emphasizes education, rehabilitation, social reintegration, and the child's future development rather than retributive punishment.	The primary objective is to facilitate the child's reintegration into society while preventing future offending.
Overall Judicial Outcome	Judicial decisions consistently uphold the principle of the best interests of the child while maintaining fairness for victims and society.	The resulting decisions embody the concept of justice for all through balanced, proportional, and child-oriented legal protection.

Efforts to protect, fulfill and respect and realize children's rights are very important, because children are often the objects of discriminatory and inhumane behavior by certain parties. In line with that, Hana Hanifah, Meilanny Budiarti Santosa and Dessy Hasamah Siti Aisah as quoted by Dufitama Astesa and Cekil Detya Pratiwi wrote: "Protection, fulfillment, and respect for children's rights are really important. It is because children are often the object of inhumane treatment and considered vulnerable to discriminatory actions by various parties" .

The understanding that has developed so far, when talking about "the best interests of children", which is then linked to "children who are in conflict with the law", is always synonymous with not punishing children. This perception should end, because children are children and not adults. Children who are in conflict with the law only know what they want and do not know what is best for themselves. Adults are the ones who know best what is best for children who are in conflict with the law. The justification is that adults have been children, while children have never been adults. In this context, what is meant by adults are those who are authorized by law to contribute to the juvenile criminal justice process .

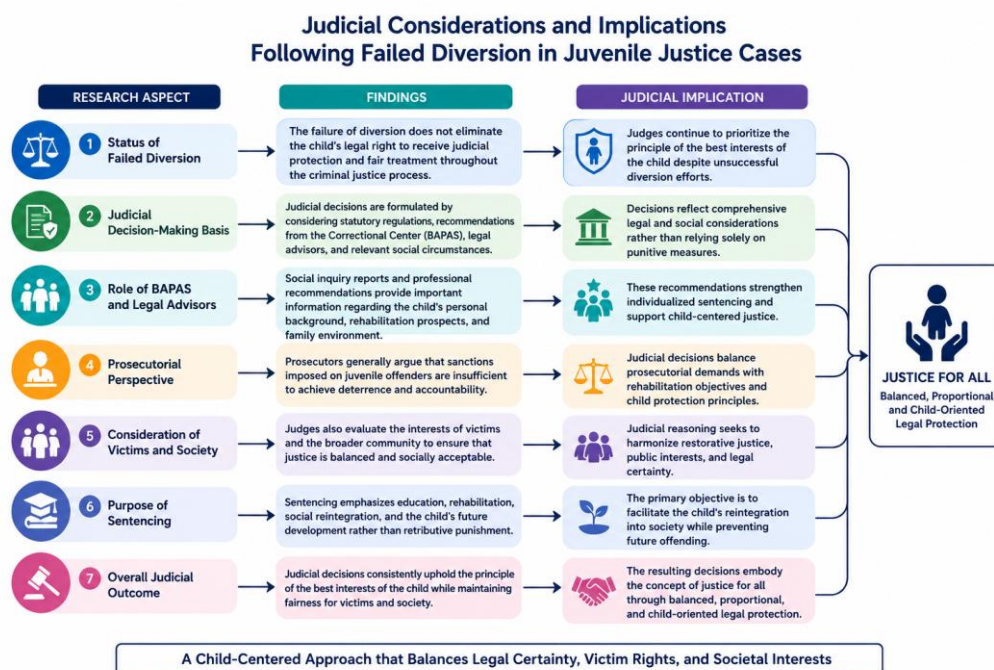


Figure 2. Judicial Considerations and Implications Following Failed Diversion in Juvenile Justice Cases

Understand the phrase "The best interests of the child" which is explained as decision making considering the child's survival and growth and development, which also means that it is the most basic human right for children which is protected by the state, government, community, family and parents, "Children are not punished" should not be interpreted as a form of protection. Punishing children within certain limits can mean providing the best for children, as a form of protection provided by the state, government, society, family and parents.

If the perpetrators of crimes, including children, are not prosecuted legally, then what will happen is chaos, because society will solve it in its own way. Jawade Hafidz Arsyad and Diah Karisma as quoted by Andri Winjaya Laksana and Sisca Dyah Octaviani, wrote: "If the law is not placed as a legal basis to act in a context, then the atmosphere of life in society, it will be chaotic conflict can be accurate even between them (Asare, 2025; Rahman, 2025).

In the perspective of justice for all, punishing children within certain limits means providing justice for the victim and also society. On a small scale, justice is not only addressed to "children in conflict with the law" but also addressed to "children in conflict with the law"

To assess whether a child's punishment is in accordance with SPPA principles or not, does not start when the judge makes a decision. This assessment should start by looking at the actions that have been carried out by Child I, Child II and Child III, which are an inseparable part of the judge's decision. For example, the type of crime/ criminal act that has been committed by the child, the way the child commits the crime/criminal act (modus operandi), the consequences of the crime/criminal act, and the attitude of the parties who are legalized by law to contribute to the juvenile justice process, and the basis of the judge's considerations in the decision (Italiani, 2025; Wilde, 2023).

As is known, Child I, Child II and Child III, have been charged by the Public Prosecutor as guilty of committing the crime of "Putting, Allowing, Committing, Ordering to Commit, or Participating in Violence Against Children which Causes Serious Injury" as regulated and punishable by crime. in Article 80 paragraph (2) of Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning Child Protection (Asare, 2025; Italiani, 2025).

After understanding the actions of Child I, Child II and Child III as mentioned above, the following is part of how they committed the crime (*modus operandi*) as stated in the Public Prosecutor's indictment as follows:

"then a brawl broke out between the two groups throwing stones at each other, Child I, Child II, and Child III, along with Child Riva Santoso, Child Muadi, Child Susanto Alias Ridwan, Child Muhammad Abdul Rojak, Child Jagar Buchori, Children of Mohamad Firgi Suhada (separate file) Candra's son (YET NOT CAUGHT), Rifki's son (YET CAUGHT) threw retaliation by throwing stones and broken glass at the Keren People group. A few moments later, the Keren People group was pushed back and ran away to save themselves, then the Children and the others came forward while carrying sharp weapons, sickles, machetes, motorbike gears and broken glass, chased and hunted down the members of the Cool People group who were in disarray all the way to the railroad track, at that time one of the cool people group was being chased. one of the group of cool people, namely Anak Muhammad Iqbal Ma'mun (victim) fell on the road in a slanted position, then Anak III slashed the victim Anak Muhammad Iqbal Ma'mun using a sharp sickle type weapon made of aluminum towards the back 3 (three) times, then Anak I. Riski Maulana stabbed the victim Anak Muhammad Iqbal Ma'mun using a sharp weapon type of machete towards the right leg 2 (two) times, then followed by Child II who participated in stabbing the victim Anak Muhammad Iqbal Ma'mun using a sharp weapon type ice cube saw towards the back 1 (one) time and towards the right leg 1 (one) time" (Akın, 2025; Macfarlane, 2024).

By understanding the actions carried out with their *modus operandi* by Child I, Child II and Child III, at least it will provide understanding for all, whatever the reason, these actions should not have been carried out. The consequences of these actions not only threaten the safety of other people, but also shake the foundations of peace and also the foundations of social justice. Such a fact, at least it could be consideration in assessing the judge's decision in the form of punishment for children (Lemaire, 2025; Pope, 2025).

The actions of Child I, Child II and Child III caused injuries and marks sign traumatized sharp in certain parts as stated in accordance with the *Visum Et Repertum* at the Gunung Jati Cirebon Regional Hospital in the name of Mohamad Iqbal Ma'mun with Register number 246/VeR, RSUD-GJ/XII/2021 which was signed by doctor Lusiana S. Yulianti, Sp.OT, date 09 December 2021 (Krüger, 2025; Larcher, 2025).

As is known, Child I is 14 (fourteen) years old , Child II is 14 (fourteen) years old and Child III is 16 (sixteen) years old. According to Law no. 11 of 2012, children are those who are not yet 18 (eighteen) years old. By looking at the actions committed by Child I, Child II and Child III with all their *modus operandi* and consequences, will it still be categorized that these actions are normal actions and do not deserve to be punished, just because they were committed by children?

The Law on the Juvenile Criminal Justice System only sets age limits which are then linked to criminal responsibility, recognizing 3 (three) categories, namely children not yet 12 (twelve) years old, not yet 14 (fourteen) years old and not yet 18 years old. (eighteen years. These three categories, which are based on age, are the basis for normative considerations in responsibility for actions committed.

The act of slashing is a crime and not an offence. To impose a crime on a perpetrator, it should not only be based on the age of the perpetrator, but also based on the unlawful nature of the action and the consequences it causes. This understanding does not mean that children who commit crimes must be punished like adults, but that responsibility for children who commit crimes is not only based on age, but also includes the unlawful nature of the act and the consequences it causes (Ferdousi, 2024; Hammouch, 2026).

specific matters whose application is general for children who commit crimes. It should be noted that not all crimes committed by children must be resolved using special general rules. In certain conditions, children who commit crimes need to use a special approach. Every crime committed by a child has different characteristics. It is this difference that should be the basis for consideration in choosing a piano and not just age (Istvánovics, 2025; Steyn, 2025).

As is known, for this act, the Public Prosecutor (JPU) demanded that a criminal be imposed against Child I, Child II and Child III, criminal coaching at the Rehabilitation Social Home for Children in Conflict with the Law (PSR ABH) Cileungsi Bogor for 2 (two) years each and work training for 3 (three) months each during the day days that do not interfere with children's study hours with supervision and guidance from the Cirebon Fathers are reduced while the children are in detention, with the order that the children remain in detention (Pereira, 2026; Pope, 2025).

To understand the actions of Child I, Child II and Child III, and the demands made by the Public Prosecutor, the following is quoted from Article 80 of Law Number 23 of 2002 as amended and supplemented by Law Number 35 of 2014 concerning Child Protection: Any person who commits violence or threatens violence, or abuses a child, shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a fine of a maximum of IDR 72,000,000.00 (seventy-two million rupiah). In the event that the child as intended in paragraph (1) is seriously injured, the perpetrator will be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah). In the event that the child as intended in paragraph (2) dies, the perpetrator will be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of IDR 200,000,000.00 (two hundred million rupiah) (Buka, 2024; Zanchetta, 2025).

The penalty is increased by one third of the provisions as intended in paragraph (1), paragraph (2), and paragraph (3) if the person carrying out the abuse is the parent.

In this case, as stated in the Cirebon District Court decision Number 24/Pid.Sus-Anak/2021/PN Cbn, the perpetrators were children and the victims were children, so the criminal process and sentencing refers to Law Number 11 of 2012 concerning the Criminal Justice System Children (SPPA) (Ferdousi, 2024; Liebeaux, 2024).

Article 71 Law no. 11 of 2012, among other things, regulates: (1) The main punishment for children consists of: a. warning penalty; b. criminal with the following conditions: 1) coaching outside the institution; 2) community service; or 3) supervision. c. work training; d. coaching within the institution; and e. prison.

Referring to the Public Prosecutor's demands regarding child crimes, which are then linked to Article 71 paragraph (1) letters c and letter d of Law no. 11 of 2012, seen from the perspective of the perpetrator, the demands imply the best interests of the child, namely not requiring the maximum penalty (Orr, 2025; Pereira, 2026).

The Community Guidance Officer (BAPAS) agreed with the request of the Public Prosecutor (JPU) for the children to be given a decision in the form of treatment/rehabilitation at the Social Institution for the Rehabilitation of Children in Conflict with the Law (PSRABH) in Cileungsi Bogor with the consideration that because diversion failed, there were concerns if being returned to parents does not have a positive impact and the child's desire and motivation to continue learning.

Apart from BAPAS, the legal advisor seems to only hope that the child will be punished lightly and fairly because the child is sorry and promises not to reduce his actions again. Meanwhile, the parents of the perpetrators just submit themselves to the legal process (Fuller, 2024; Murányi, 2025).

Without intending to rule out other possibilities, in this case it appears that the most dominant is the Public Prosecutor (JPU). The BAPAS and parents appear to be following the prosecutor. Meanwhile, the Legal Advisor in carrying out the defense only fulfills the normative rules and has not demonstrated its existence.

CONCLUSION

Understanding the judge's decision for children who are in conflict with the law which leads to the best interests of the child, while remaining within the corridor of justice for all is a decision that takes into account the survival and growth and development of the child which is the most basic human right for children which is protected by the state, government, society, family and parents.

Decisions that take into account the survival and growth and development of children, which also means guaranteeing children's most basic human rights which are protected by the state, government, society, family and parents, do not interpret "children are not punished" as a form of protection. Punishing children within certain limits can mean giving the best for the child.

A child who is in conflict with the law, only wants not to be punished, but he does not know what is best for himself. Only adults understand the child's best interests. Adults have been children, children have never been adults. In this context, adults can be represented by parties who are legalized by law to contribute to the criminal legal process for children.

In the perspective of justice for all, punishing children who conflict with the law refers to regulations which means providing justice for the victim and also society. On a more specific scale, justice is not only addressed to "children in conflict with the law" but also addressed to "children in conflict with the law"

The judge's decision has taken into account input from the Community Guidance Officer (BAPAS), the demands of the Public Prosecutor (JPU), legal advisors, parents, aggravating reasons, mitigating reasons and refers to the theory regarding the principles and objectives of punishment for children, means that the decision which leads to the best interests of children, while remaining within the corridors of justice for all.

DECLARATION OF AI AND AI ASSISTED TECHNOLOGIES IN THE WRITING PROCESS

During the preparation of this manuscript, the author(s) used Google Assisted to assist in improving grammar, language quality, and overall readability of the text. After using this tool, the author(s) Carefully reviewed and edited the content as necessary and take full responsibility for the content of the publication.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; Investigation.

DECLARATION OF COMPETING INTEREST

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

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