

The legal consequences of errors in the determination of heirs in the perspective of the compilation of Islamic law (A study of decision no. 0417/Pdt.P/2022/PA.Mlg)

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ABSTRACT

This study aims to analyze the errors in the determination of heirs in the Religious Court of Malang Decision Number 0417/Pdt. P/2022/PA.Mlg and examine its legal consequences based on the Compilation of Islamic Law (KHI) in Indonesia. This study employs a normative juridical approach by reviewing the provisions of Article 185 of the KHI, various schools of Islamic jurisprudence (*madzhab*), and Gustav Radbruch's theory of justice as analytical tools. The findings reveal that the judge's determination, which classified Applicants II, III, and IV as *dzawil arham*, constitutes a misjudgment because, normatively, they are entitled to inheritance as substitute heirs. This error leads to legal consequences in the form of the loss of inheritance rights that should have been granted to the descendants of the testator's sister, potentially creating legal uncertainty and further disputes. From the perspective of *fiqh*, although the Syafi'i school rejects the concept of substitute heirs, the Hanafi and Maliki schools recognize the transmission of inheritance rights through both vertical and collateral lines of descent. The KHI accommodates the latter view to realize substantive justice within Islamic inheritance law in Indonesia. This study underscores the necessity of progressive legal reasoning (*rechtsvinding*) that aligns with *maqāṣid al-sharī'ah*, so that judicial decisions are not merely textually grounded but also reflect the values of justice and social welfare.

Keywords: compilation of Islamic law, substitute heirs, *dzawil arham*, legal justice, religious court decisions.

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1. INTRODUCTION

Islamic inheritance law plays a crucial role in resolving family rights after a person's death. In Indonesia, inheritance cases among Muslims are generally settled through Religious Courts, with the Compilation of Islamic Law (KHI) serving as the principal guideline. The KHI was codified to provide legal certainty and uniformity in the application of Islamic inheritance law within the framework of national jurisdiction (Badilag, 2023).

The fundamental principles of the Compilation of Islamic Law (KHI) introduce several normative provisions that attempt to reconcile classical fiqh principles with Indonesia's social realities. One of its significant innovations is the regulation of substitute heirs (plaatsvervulling), as stipulated in Article 185 KHI. This provision establishes a legal basis for the child or descendant of a person who predeceased the testator to inherit in place of their parent, with certain limitations (for example, not exceeding an equivalent share). This regulation represents a distinctive field of *ijtihad* within Indonesia's positive Islamic law (Abdurrahman, 2002).

In judicial practice, problems arise when judges misclassify the legal status of potential heirs—for instance, designating someone who should legally be a substitute heir as a *dzawil arham* (distant kin). This classification error is not merely terminological; its consequences are substantive, as it determines whether a person is entitled to inherit or is instead excluded (*mahjub*) by the presence of *dzawil furudh* or *dzawil 'ashabah*. Empirical legal studies and postgraduate theses from various academic institutions indicate a recurring pattern of deviation in religious court decisions from the provisions of the KHI, resulting in issues of legal certainty and distributive justice (Komala, 2020).

The case examined in this study—Religious Court of Malang Decision No. 0417/Pdt.P/2022/PA.Mlg illustrates this issue. Based on the applicants' statements, Applicants I (female, aged 69) and V (female, aged 57) are the maternal sisters (second daughter) of Applicants II (male, aged 46), III (female, aged 41), and IV (female, aged 36). The deceased was a male (the third child), a brother to Applicants I and V, and an uncle to Applicants II–IV. The mother of Applicants II–IV predeceased the testator, who left behind assets consisting of savings and land. In its ruling, the panel of judges classified Applicants I and V as *dzawil furudh*, while Applicants II, III, and IV were categorized as *dzawil arham*. However, under the KHI, the children of a predeceased mother should be legally recognized as substitute heirs. This raises a fundamental question: Did the judges correctly interpret the KHI, or did a misinterpretation occur that resulted in the wrongful loss of inheritance rights? (Case facts based on the applicants' testimonies).

From the perspective of the KHI, if a person's status as a substitute heir is not recognized and they are instead placed within the category of *dzawil arham*, the distribution of inheritance may change significantly. Substitute heirs lose their entitlement when *dzawil furudh* or *dzawil 'ashabah* are still alive, since *dzawil arham* are only entitled to inherit in the absence of prioritized heirs. Consequently, such a misclassification by the court may lead to substantive harm and undermine the principle of distributive justice underpinning Islamic inheritance law (Sidqi, 2021).

Recent scholarship has also emphasized the need to enhance judicial understanding of Article 185 of the KHI and to clarify procedural and interpretative aspects in the reasoning and formulation of judgments to prevent multi-interpretation that could harm parties. The Religious Courts Agency (Badan Peradilan Agama) and legal scholars have recommended the development of interpretative guidelines and intensified judicial training to ensure the consistent application of the substitute heir concept in line with the KHI's objectives, namely, to realize substantive justice and legal certainty. Empirical studies reveal that without such corrective measures, similar rulings will continue to emerge, causing further disputes and the potential for costly appeals or judicial reviews (Sudarsono, 2009).

Based on this background, this study seeks to analyze the legal consequences of errors in the determination of heirs in Decision No. 0417/Pdt.P/2022/PA.Mlg with normative reference to the KHI. The study focuses on three key areas: (1) a normative analysis of the KHI's provisions concerning substitute heirs and the status of *dzawil arham*; (2) an examination of the decision from the perspectives of *rechtsvinding* (judicial interpretation) and legal principles (justice and certainty); and (3) the practical

implications for the rights of heirs and judicial reform recommendations. The findings are expected to provide both empirical and normative contributions to strengthen the practice of religious courts and offer policy input for developing technical guidelines for determining heirs in accordance with the KHI.

2. METHOD

This study employs a normative juridical approach (*doctrinal legal research*), which examines law as a set of norms contained in legislation, court decisions, and legal scholars' doctrines. This approach is used to analyze the judicial error in determining the status of heirs in the Religious Court of Malang Decision No. 0417/Pdt.P/2022/PA.Mlg by assessing its conformity with the principles of Islamic inheritance law, as codified in the Compilation of Islamic Law (KHI). The normative approach is relevant because the core issue of this study arises from the judicial misapplication of positive Islamic law norms already codified within Indonesia's national legal system (Mamudji, 2019).

The data used in this study consist of secondary legal materials divided into primary, secondary, and tertiary legal sources. The primary legal materials include statutory instruments such as Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, Law No. 7 of 1989 on Religious Courts as amended by Law No. 3 of 2006, and Law No. 50 of 2009, as well as the court decision under review. The secondary legal materials comprise Islamic legal literature, *fiqh al-mawaris* (Islamic inheritance jurisprudence) textbooks, and academic journals discussing the concepts of *dzawil arham*, *dzawil furudh*, and *substitute heirs*, including works by Amir Syarifuddin (Syarifuddin, 2014) and Wahbah az-Zuhaili (Az-Zuhaili, 2011). Tertiary materials consist of legal dictionaries, encyclopedias, and other reference sources that assist in tracing terminologies related to Islamic inheritance law (Marzuki, 2017).

Legal materials were collected through library research, involving the review of various relevant legal sources—both printed and online—including court decisions, journal articles, and contemporary academic opinions on the implementation of the KHI in religious court practice (Ali, 2020). Once collected, the data were analyzed using a descriptive-qualitative analysis method, which entails describing the applicable legal norms, comparing them with judicial practice, and assessing the conformity of such application based on theories of Islamic legal interpretation and the principle of substantive justice (Rahardjo, 2009). This analysis seeks to identify errors in the application of inheritance norms in judgments and to evaluate their legal consequences for the parties involved.

Accordingly, this research method not only assesses the normative validity of a court ruling but also evaluates its practical implications within the Indonesian Islamic inheritance law system. This approach provides a comprehensive understanding of the interplay between the dogmatic aspects of Islamic law and judicial realities within the religious court system.

3. RESULT AND DISCUSSION

3.1 Normative Analysis of the KHI Provisions on Substitute Heirs and *Dzawil Arham*

The concept of the *substitute heir* (*badal al-warīth*) in Indonesia's Islamic inheritance system represents a legal innovation explicitly regulated by Article 185 of the *Compilation of Islamic Law* (KHI). The article stipulates that “an heir who predeceases the deceased may be replaced by his or her child, except those mentioned in Article 173 of the KHI.” This provision affirms the existence of a form of inheritance substitution not explicitly recognized in classical *farā'id* law. In conventional *fiqh*, the basic principle of inheritance is that inheritance rights apply only to those who are alive at the time of the deceased's death, as affirmed in the ḥadīth of the Prophet Muhammad ﷺ: *lā yarīthū al-mayyīta man lam yakun ḥayyan 'inda manṭih*—meaning that one cannot inherit unless one is alive at the time of the deceased's death (Al-Zuhayli, 1989).

Through the notion of the substitute heir, the KHI adopts a more progressive and contextual concept, considering the value of social justice within Indonesian family structure. A substitute heir is a descendant of an heir who predeceased the testator, such as a grandchild whose parent (the child of the deceased) has already died. This provision aligns with the principle of *ta'dil al-farā'id* (the reform of inheritance systems), recognized in contemporary *fiqh*, which seeks to adapt inheritance rules to modern social needs while maintaining the core principles of *shari'ah*

(Karim, 2018).

In classical Islamic inheritance law, the three major Sunni schools hold different views on the possibility of inheritance substitution. The Syafi'i school rejects the notion of substitute heirs, arguing that inheritance rights are *ḥaqq mu'allaq* (conditional rights) that apply only to those alive at the testator's death (Al-Syirbini, 1994). Consequently, a grandchild whose parent died before the testator has no inheritance rights as long as the testator's other children are still living. This view is also shared by the Maliki and Hanafi schools, although both allow granting property to such grandchildren through *wasiat wajibah* (obligatory bequest) rather than inheritance rights ('Abidin, 1992).

Conversely, the Hanbali school adopts a more flexible approach, opening space for *badal al-wārith* through *ijtihād ijtīmā'ī* (social reasoning). This view stems from the principle that the purpose of inheritance distribution is to realize *taḥqīq al-'adl* (justice) and preserve *ḥifẓ al-nasab* (lineage). In Indonesia, this principle underlies the KHI's justification for recognizing substitute heirs as an application of *taṭbīq al-maṣlaḥah al-mursalah*—the application of law based on public benefit that is not in conflict with textual sources (Nasution, 2001).

Meanwhile, the position of *dẓawil arham* (relatives through non-*furudh* and non-'*ashabah* kinship lines) in the KHI warrants a normative examination. *Dẓawil arham* include relatives such as grandchildren through daughters, maternal aunts, maternal uncles, or children of a sister. In classical inheritance law, the Hanafi school recognizes *dẓawil arham* as the last category of heirs, entitled to inherit only when no *dẓawil furudh* or '*ashabah* heirs exist (Al-Kasani, 1986). However, the Syafi'i school rejects inheritance for *dẓawil arham* on the grounds that no *qat'ī* (definitive) textual evidence supports their right and recommends granting them property through bequest (Al-Nawawi, 1997).

Within the KHI framework, the regulation concerning *dẓawil arham* is explicitly found in Article 193, which states that “if there are no heirs of *dẓawil furudh* or '*ashabah*, the inheritance shall be given to *dẓawil arham* according to their degree of kinship.” Thus, the KHI adopts a moderate position between the Hanafi and Syafi'i perspectives—acknowledging *dẓawil arham* as heirs but placing them at the bottom of the inheritance hierarchy.

Normatively, KHI seeks to integrate classical *fiqh* with modern social *ijtihād*, particularly through the concept of substitute heirs. In the classical *farā'id* system, inheritance is distributed based on vertical (*nasab*) lines (direct ascendants and descendants) and horizontal lines (siblings and collateral relatives), with the principle that men receive twice the share of women. However, with the inclusion of the substitute heir concept in the KHI, inheritance rights are not limited to vertical lines (children and grandchildren) but may also extend horizontally, such as to nephews or nieces whose parent (the testator's sibling) predeceased the deceased (Munawir, 2012).

This approach demonstrates that Indonesia's Islamic inheritance law has undergone a process of contextualization consistent with the *maqāṣid al-shari'ah*—to realize family welfare and prevent social inequity among relatives who remain morally bound by kinship ties. In the context of Religious Court of Malang Decision No. 0417/Pdt.P/2022/PA.Mlg, the judges interpreted the status of heirs based on the genealogical structure and a literal reading of the KHI. However, without a deeper examination of the meanings of *dẓawil arham* and substitute heirs, there is a risk of misclassification that may lead to the deprivation of rightful inheritance, contradicting the principle of substantive justice in Islamic law.

Therefore, a normative analysis of the KHI's provisions reveals an epistemological tension between classical *fiqh* and modern Islamic legal construction in Indonesia. On the one hand, the KHI seeks to preserve the authenticity of *farā'id* principles, while on the other, it adapts the law to meet the socio-legal realities of Indonesian Muslim society. Hence, understanding the position of substitute heirs and *dẓawil arham* within the KHI framework must always be situated within the context of *ijtihād*, which prioritizes justice and social welfare.

3.2 Examination of the Decision from the Perspective of Legal Discovery (Rechtsvinding), the Principle of Justice, and Legal Certainty

The decision of the Malang Religious Court No. 0417/Pdt.P/2022/PA.Mlg serves as a concrete example of how a religious court judge engages in *rechtsvinding* (legal discovery) in the context of erroneous heir determinations. In this case, the judge classified Petitioner I and Petitioner V as *dẓawil furudh*, while Petitioner II, III, and IV were designated as *dẓawil arham*. Genealogically, such classification raises a legal issue, as the mother of Petitioners II, III, and IV was the deceased sister of the testator, who predeceased him. Therefore, these three petitioners should have been entitled to inheritance through the mechanism of *substitute*

heirs (*badal al-wārith*) and not merely as *dẓawil arham*, as determined by the court.

From the perspective of legal discovery, judges are not merely *la bouche de la loi* (the mouthpiece of the law) but also active interpreters of legal norms in the pursuit of substantive justice (Soekanto, 1986). In the context of religious courts, judges are obliged to explore and internalise Islamic legal values that live within society, as stipulated in Article 5(1) of Law No. 48 of 2009 on Judicial Power, which mandates judges to explore, follow, and comprehend the legal values and sense of justice prevailing among the people. Hence, an error in determining the status of heirs constitutes both a juridical and methodological error in *rechtsvinding*, inconsistent with the adaptive spirit of Islamic law, which upholds the principle of *maṣlahah mursalah* (public interest).

Radbruch's theory of legal discovery positions judges as key actors in reconciling legal texts and social realities. Gustav Radbruch's triadic theory—justice, expediency, and legal certainty—emphasizes that sound law harmonizes all three (Radbruch 1973). However, when these values conflict, justice must prevail. In this case, the court's decision, based solely on a literal interpretation of the Compilation of Islamic Law (KHI) without considering the genealogical context or the objectives of *sharī'ah* (*maqāṣid al-sharī'ah*), risks producing a substantive injustice.

Substantive justice in Islamic law is not confined to formal equality in wealth distribution but encompasses moral and social equity, granting rights proportionate to familial proximity and responsibility (Rahman, 1994). In this instance, Petitioners II, III, and IV maintained closer emotional and familial bonds with the deceased than did Petitioners I and V. Therefore, from a *maqāṣid al-sharī'ah* perspective, the judge should have acknowledged their entitlement as *substitute heirs* (*badal al-wārith*), rather than as *dẓawil arham*, who only inherit in the absence of *dẓawil furudh* or *'ashabah*.

Errors in heir determination have direct legal consequences, particularly concerning estate distribution. If the court misclassifies individuals as *dẓawil furudh*, *'ashabah*, or *dẓawil arham*, the inheritance division becomes invalid under *sharī'ah* and may provoke subsequent disputes (Ali, 2008). Such judicial misjudgments also undermine *rechtszekerheid* (legal certainty), as decisions inconsistent with KHI norms can set negative precedents within Indonesia's religious court system.

Within Radbruch's framework, legal certainty (*Rechtssicherheit*) should be understood as the consistent application of norms, not mere textual adherence. Judges must ensure that each decision aligns with the moral values of the Islamic law. This aligns with Hans Kelsen's view that law should be regarded as a dynamic and living normative system, not a static dogma (Kelsen, 1960). Accordingly, religious court judges should adopt a progressive interpretation of KHI, guided by the principle of *istiṣlahiyyah* (public interest), ensuring that inheritance determinations reflect not only formal legality but also the essence of justice.

Methodologically, the error in heir determination illustrates a tension between the principles of justice and legal certainty. On one hand, the judge relied on KHI's textual provision that restricts substitute heirs to vertical lineage; on the other, social reality demands a broader interpretative approach, extending substitution to collateral kin, such as the children of a deceased sibling. In contemporary Islamic legal practice, such an approach aligns with the *fiqh* maxim, "*al-ḥukmu yadūru ma'a al-'illah wujūdan wa 'adaman*" (a ruling follows the existence or absence of its cause), affirming that as long as familial ties and moral responsibilities persist, substitution rights remain valid (Al-Zuhayli, 1989).

In this regard, the judge should have exercised *ijtihād qaḍā'ī* (judicial reasoning) by interpreting Article 185 of KHI more broadly, rather than limiting substitute heirs to vertical succession. This approach not only reinforces substantive justice but also promotes the reform of Islamic law in Indonesia, making it more responsive to the social dynamics of Muslim communities. Thus, an erroneous judicial determination of heirs carries not only legal consequences for litigants but also calls for a normative evaluation of religious court practices to ensure alignment between positive Islamic law and the moral objectives of *sharī'ah*.

3.3 Practical Consequences for the Rights of Heirs and Judicial Reform Recommendations

Errors in the determination of heir status, as occurred in the decision of the Malang Religious Court No. 0417/Pdt.P/2022/PA.Mlg not only has theoretical implications but also bears significant practical legal consequences for the civil rights of the parties involved. In this case, the classification of Petitioners II, III, and IV as *dẓawil arham* resulted in their exclusion from definite inheritance shares, as *dẓawil arham* are entitled to inherit only in the absence of *dẓawil furudh* and *'ashabah*. However, under Article 185 of the Compilation

of Islamic Law (KHI), which governs the principle of *substitute heirs* (*badal al-wārith*), they should have inherited the portion that would have been due to their mother, who predeceased the testator.

The legal consequence of such a misclassification is the denial of inheritance rights guaranteed under both Islamic and national law. In the perspective of *fiqh al-mawāriṭh* (Islamic inheritance jurisprudence), an heir's right is based on the principles of *al-'adālah* (justice) and *al-istiḥqāq* (lawful entitlement), which cannot be annulled except on grounds sanctioned by *shari'ah* (Az-Zuhaili, 2011). Consequently, a flawed judicial determination obstructs rightful heirs from receiving their lawful shares, creating injustice and imbalance in the distribution of the estate.

Furthermore, such errors undermine the element of legal certainty in the implementation of religious court rulings. Legal certainty demands that each judicial decision serve as a reliable reference for similar cases in the future. If such erroneous judgments remain uncorrected or unevaluated, they risk becoming deviant jurisprudence, resulting in disparities in the application of inheritance law among different religious courts (Marzuki, 2017). This situation threatens the principle of *equality before the law* within the religious court system, where individuals with comparable kinship relations might receive different legal outcomes due solely to divergent judicial interpretations of *dẓawil arham* and *substitute heirs*.

From the standpoint of substantive justice, this judicial error contradicts the moral objectives of Islamic law. According to the theory of *maqāṣid al-syari'ah*, one of the primary purposes of *shari'ah* is the preservation of wealth (*ḥifẓ al-māl*) by ensuring its transfer to rightful beneficiaries in a fair manner (Auda, 2008). When inheritance rights are wrongfully denied or diverted due to judicial error, *shari'ah* loses its social function as an instrument of justice and welfare. Therefore, rectifying such judicial practices is not merely a procedural necessity but also a moral and ethical obligation in safeguarding intergenerational justice within Muslim families.

From the perspective of religious court governance, such a decision underscores the need for the development of technical judicial guidelines to ensure consistency in interpreting the KHI. While the KHI serves as the principal reference, it is not a *lex stricta* statute but rather a codification of diverse *fiqh* opinions. Thus, it is essential to formulate a Judicial Standard Operating Procedure (SOP) that delineates the interpretive boundaries and discretion of judges in determining substitute heirs, including cases involving horizontal substitution, such as the children of deceased siblings.

Additionally, from a procedural standpoint, judges should strengthen their capacity for *ijtihad qaḍā'i* (judicial reasoning) through continuous judicial training in contemporary Islamic inheritance law. Such training should include comparative studies across *madhāhib* (Islamic legal schools) to deepen judicial understanding of the theological and jurisprudential bases underlying the concepts of *dẓawil arham* and *substitute heirs*. This inter-madhhab approach is crucial to prevent Islamic law from being reduced to rigid textualism, a tendency criticised by Nasr Abu Zayd (Zayd, 1992), who emphasised that *shari'ah* must be understood dynamically and contextually to remain relevant to evolving social realities.

Another judicial recommendation is the implementation of an internal judicial review mechanism for decisions that potentially deviate from KHI principles, particularly in inheritance matters. This can be carried out through technical oversight by the Supreme Court pursuant to Article 79 of Law No. 7 of 1989 on Religious Courts, as amended by Law No. 3 of 2006, which grants the Supreme Court the authority to guide and supervise religious court operations. Such oversight would ensure consistent application of KHI provisions and enhance public trust in the substantive justice of religious courts.

In summary, the erroneous determination of heirs in this case has far-reaching legal consequences: (1) deprivation of legitimate inheritance rights for certain parties; (2) the potential emergence of further inheritance disputes; (3) inconsistency in legal certainty among religious courts; and (4) the erosion of the judiciary's legitimacy in upholding justice. Therefore, corrective measures are necessary through a reaffirmation of KHI's normative interpretation that prioritises substantive justice, alongside the reform of judicial training mechanisms to ensure that *rechtsvinding* in inheritance law truly reflects the values of *maqāṣid al-syari'ah* and the principle of legal certainty.

4. CONCLUSION

Comparing Based on the analysis of the Decision of the Religious Court of Malang Number 0417/Pdt.P/2022/PA.Mlg, it can be concluded that there has been a normative and methodological error in determining the status of the heirs, in which the judge classified Petitioners II, III, and IV as *dzawil arham*, whereas normatively they should have been categorised as substitute heirs in accordance with Article 185 of the Compilation of Islamic Law (KHI). This misjudgement resulted in the loss of inheritance rights that, both legally and according to Islamic law, should have been granted to the children of the deceased's sister, as they substitute for their mother who had predeceased the testator. In classical *fiqh* discourse, there are indeed differences of opinion among the schools of law regarding the entitlement of *dzawil arham* to inheritance; however, the KHI, as a codification of Islamic positive law in Indonesia, adopts a reconciliatory approach that accommodates the principles of substantive justice and the continuity of rights among family generations.

Theoretically, this error indicates that the process of judicial legal discovery (*rechtsvinding*) has not fully reflected the principles of justice, legal certainty, and expediency as formulated in Gustav Radbruch's theory. The judge appears to have been bound by a textual interpretation of particular *fiqh* sources, without engaging in contextual *ijtihad* to align Islamic legal norms with the social realities of the testator's family. As a result, the ruling diverges not only from the normative intent of the KHI but also from the values of *maqāṣid al-syarī'ah*, particularly in the aspects of *ḥifẓ al-māl* (protection of property rights) and *al-'adālah* (justice).

Practically, this error in determining the heirs has led to legal consequences such as the loss of civil rights for rightful parties, the potential for subsequent inheritance disputes, and legal uncertainty within the practice of the religious judiciary. This situation demands corrective measures through the reinforcement of judicial guidelines and the enhancement of judges' capacity to interpret Islamic inheritance law. A more open normative-juridical approach that engages in comparative analysis across schools of Islamic law should be developed, enabling judges to interpret the KHI progressively — not only within the context of vertical lineage but also horizontal kinship — while considering *shar'ī*-legitimate familial relationships.

Therefore, this study underscores the importance of reconstructing the paradigm of heir determination within the religious judiciary, shifting from a rigid text-based approach to a substantive and justice-oriented one that aligns with the ideals of Islamic law and the objectives underlying the establishment of the Compilation of Islamic Law. The implementation of these recommendations is expected not only to improve the quality of judicial decisions within religious courts but also to strengthen the legitimacy of Islamic judiciary as an institution of justice responsive to the moral and social values of the Muslim community.

Ethical Approval

Ethical approval was not required for this study.

Informed Consent Statement

All participants were informed of the purpose of the study, and informed consent was obtained prior to data collection. Participation was voluntary, and all responses were kept confidential and used solely for academic research purposes.

Disclosure statement

No potential conflict of interest was reported by the authors.

Data Availability Statement

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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