

Conflict of legal principles in drug crimes by children: Analysis of judges' discretion in cumulative decisions

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ABSTRACT

This research analyzes the conflict of principles in juvenile criminal law, particularly in relation to the imposition of cumulative punishment on juveniles who commit narcotic offences. The paradigm of child protection in the Child Criminal Justice System Law (UU SPPA), which prioritizes restorative justice and the ultimum remedium principle, is confronted by the samenloop principle of the Criminal Code and the classification of drug offences as extraordinary crimes. Through a deductive approach, the discussion identifies inconsistencies in judicial practice. Findings from several case studies show that judges often use discretion to impose cumulative punishments, overriding the mandate of the SPPA Law to prioritize rehabilitation over retribution. This conflict indicates a misalignment between legal ideals and practical implementation, rooted in rigid legal interpretations and normative lacunae. Therefore, this research recommends fundamental solutions, namely, the affirmation of the *lex specialis* principle that places the SPPA Law above the general law, the reinterpretation of extraordinary crime as a call for extraordinary rehabilitation, and the strengthening of binding decision guidelines for judges (SEMA). Judges' discretion must be directed towards a philosophical understanding that true justice for children is an opportunity for recovery, not a punishment that robs them in their future. Thus, the integrity of the juvenile criminal justice system could be upheld.

Keywords: Discretion, Cumulative Decisions, Narcotics, Child Protection.

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1. INTRODUCTION

Indonesia's juvenile criminal justice system is based on the principles of legal protection that prioritize the best interests of children. Legal protection is an effort to organize various interests in society so that there are no collisions between interests and all rights granted by law can be enjoyed. Organization limits a certain interest and giving power to others in a measured manner (Hafidz & Narulita, 2022). This paradigm is explicitly regulated in Law No. 11/2012 of the Juvenile Criminal Justice System (UU SPPA), which fundamentally changes the way children in conflict with the law are viewed. Instead of treating them as adult offenders, this law views children as vulnerable legal subjects that require a special approach (Wardianti et al., 2024). Therefore, the purpose of punishing children is not solely for revenge or retaliation, but to return them to normal social life, emphasizing rehabilitation and reintegration. However, the spirit of protection often faces challenges when children commit more than one criminal offence. In criminal law, this condition is known as *samenloop* or *concursum* which has implications for the imposition of cumulative punishment, where the penalties for each criminal offence are stacked (Keintjem et al., 2021).

In the justice system, cumulative punishment is a form of sanction that allows judges to combine more than one type of punishment, such as imprisonment, fines, or other sanctions, in one decision (Abdelmufti & Delmiati, 2025). The application of this punishment aims to provide a stronger deterrent effect and reflect the severity of the criminal offence committed, which the judge has the freedom to impose in accordance with the law and principles of justice. However, in the context of children as perpetrators of criminal offences, the application of this punishment has a special arrangement regulated in Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA), which emphasizes the principles of protection and rehabilitation that are different from the application of punishment for adults. The application of cumulative punishment for children has become a controversial legal issue. Theoretically and normatively, the imposition of cumulative punishment on children is considered contrary to the principle of *ultimum remedium* (punishment as a last resort) and the spirit of child protection, because it can result in very severe punishment and has the potential to permanently deprive children of their future (Khairunnisa & Rasji, 2024).

This issue becomes more complex and problematic when a criminal offence committed by a child is a drug. In Indonesia, drug offences are categorised as extraordinary crimes that have a destructive impact on the wider community (Puluhulawa, 24 C.E.). Therefore, narcotic criminal law, as stipulated in Law No. 35/2009, tends to apply severe and strict criminal sanctions. This assertion often does not distinguish between adult and juvenile offenders, resulting in tension between the retributive special criminal law of narcotics and the restorative criminal law of juveniles. This conflict places judges in dilemmatic positions. On the one hand, judges have an obligation to uphold child protection in accordance with the SPPA Law. On the other hand, judges must comply with the demands of drug eradication as an extraordinary crime. Judges' discretion becomes crucial in determining whether cumulative punishment remains relevant or must be adapted to the principles of child protection (Khairunnisa & Rasji, 2024). Understanding judges' discretion is key to analyzing how they balance these two conflicting legal interests.

Studies on judges' decisions that impose cumulative criminal sentences on children often occur, a study by Khairunnisa and Rasji (2024) on Central Jakarta District Court Decision No. 9/Pid.Sus Anak/2021/PN Jkt.Pst shows that judges often do not fully apply the Juvenile Justice System Law. Judges impose cumulative punishment in the form of imprisonment and fines, and fines should be replaced with vocational training. This is inconsistent with the goals of child rehabilitation. Similarly, a case study of Yogyakarta District Court Decision No. 11/Pid.Sus-Anak/2020/PN Yk conducted by Pratiwi and Riyanto (2023) showed that judges imposed cumulative punishment by considering the interests of society and aggravating factors (such as the child having been previously convicted), although also considering mitigating factors. Even without aggravating factors, the judge in Stabat District Court Decision No. 10/Pid.Sus Anak/2015/PN.Stb as in Khairunnisa and Rasji (2024) research, the decision of the Panel of Judges imposed cumulative imprisonment and fines. These three findings underline the misalignment

between the principle of child protection, Article 71 paragraph (3) of Law No. 11/2012, and the practice of judges' decisions.

However, there are also many judges who interpret the SPPA Law more broadly by limiting or even avoiding cumulative punishment to provide a lighter sentence that is relevant to the best interests of the child. Research from [Syahrul et al. \(2023\)](#) on the decision of the Tebo District Court number: 5/Pid.Sus/2022/PN Mrt, the results showed that the panel of judges imposed a sanction of 1 (one) year of vocational training based on Article 78 paragraph 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, although the judge gave a cumulative sanction in the form of vocational training sanctions and fines, but there was no prison sanction in the Tebo District Court decision number: 5/Pid.Sus/2022/PN Mrt. This difference in interpretation and application of the law raises questions about its interpretation and application. This difference in the interpretation and application of the law raises questions about the consistency and philosophy of child punishment in Indonesia. Previous research that examines juvenile criminality generally focuses on diversion mechanisms ([Budiaulia & Ahmad, 2024](#)) or a single type of punishment ([Umpele, 2018](#)). Similarly, studies on narcotic offences rarely discuss their implications for juvenile criminal law, especially in the context of cumulative punishment. Therefore, this study aimed to fill this gap. This study not only identifies norm conflicts but also analyzes how these conflicts are mediated by judges' discretion in juvenile criminal decisions, particularly drug offences.

An in-depth analysis of judges' discretion is relevant because it reflects how juvenile criminal law is implemented in judicial practice. Judges' discretion is influenced not only by juridical considerations but also by deep sociological and philosophical considerations. By understanding how judges weigh various factors, such as the age of the child, social impact, and rehabilitation goals, we can evaluate the extent to which the spirit of child protection is truly realized in criminal decisions. Based on this background, this study analyzes how judges' discretion is implemented in the imposition of cumulative punishment on juveniles in drug offences. This approach is expected to reveal the pattern of legal reasoning used by judges and the extent to which these considerations are in line with the principles of child protection so that it can contribute to the development of theory and practice in the juvenile criminal justice system in Indonesia.

2. METHOD

This research uses a normative legal research method with a qualitative approach, which aims to analyze conflicts of legal principles and judge discretion in the juvenile criminal justice system. The research approach used includes a statute approach to examine the Criminal Code, SPPA Law, and Narcotics Law, a conceptual approach to examine legal doctrines such as *lex specialis* and *ultimum remedium*, and a case approach to analyze relevant judges' decisions. The collection of legal materials was conducted through a literature study by identifying primary (laws and judges' decisions) and secondary (scientific journals, books, and dissertations) legal materials. Furthermore, the legal materials were analyzed qualitatively using the deductive method, which includes the identification of norm conflicts, synthesis of legal theory, comparison between norms and practices, and drawing logical and argumentative conclusions.

3. DISCUSSION

3.1 Conflict of Legal Principles in Cumulative Criminalisation of Narcotics by Children

The application of criminal law to children in Indonesia is a complex issue that places judges in dilemmatic positions. This conflict of principle becomes apparent when a child commits multiple criminal offences, which conventionally leads to the imposition of cumulative punishment. However, in the context of the juvenile criminal justice system, this approach has the potential to ignore the essence of protection and rehabilitation. This discussion analyzes the conflict of principles deductively, starting from general legal principles to their implementation at the discretion of judges in narcotics crimes. In general,

Indonesian criminal law through the Criminal Code (KUHP) regulates the mechanism of imposing punishment on a person who commits several criminal offences at once (Keintjem et al., 2021). This condition is known as a *samenloop van Strafbare feiten* or *concursum*. Articles 63 to 71 of the Criminal Code provide three forms of *concursum-eendaadse samenloop*, *meerdaadse samenloop*, and *voortgezette handeling*-with the aim of ensuring that the perpetrator receives sanctions that are proportional to the totality of the criminal acts he has committed (Akune et al., 2023). The imposition of cumulative punishment, where punishments are stacked, is one of the logical consequences of this principle, which is based on the philosophy of retribution (Hikmah & Agustian, 2023).

However, these principles face a very different paradigm in juvenile criminal law. Law No. 11/2012 on the Juvenile Justice System (UU SPPA) lays a strong foundation for prioritizing the best interests of the child and restorative justice (Kelibia, 2023). The philosophy of UU SPPA explicitly avoids retaliation and views punishment as an *ultimum remedium* (Butarbutar, 2024). The main objective is to return children to their social environment, not to punish them on par with adults, which is manifested in various mechanisms such as diversion, coaching punishment, or imprisonment with a lighter duration (Krisnalita, 2019).

The conflict between the two principles is further exacerbated when the criminal offence committed by the child is narcotic. Based on Law No. 35/2009, this crime is categorized as an extraordinary crime that has a massive impact (Puluhulawa, 24 C.E.). Consequently, the imposed punishment is very severe and is designed using a repressive approach. This puts judges in a dilemma: should they apply the *samenloop* principle, prioritize the *ultimum remedium* principle of the SPPA Law, or follow the repressive approach of narcotics criminal law? The judge's discretion becomes the central point in resolving this conflict, where the choice of decision determines the future of the child. Theoretically, the imposition of cumulative punishment on children contradicts the essence of SPPA Law. Cumulative punishment tends to result in long and burdensome sentences (Ritonga & Roisuddin Ritonga, 2024). Long sentences for children, instead of rehabilitating, have the potential to cause stigmatization, trauma, and deprive children of the opportunity to grow and develop normally. The *ultimum remedium* principle becomes irrelevant, because severe punishment is used as the first choice. Furthermore, the argument that drug offences should be treated differently, even for children, needs to be critically examined. Although narcotics is an extraordinary crime, it does not automatically negate the rights of children guaranteed under the SPPA Law. Judges must carefully distinguish between adult and juvenile offenders, ensuring that sanctions imposed are educative and restorative, and not merely disproportionate retaliation.

Despite the existence of clear legal norms, in practice, judges often tend to impose cumulative punishments on children. This phenomenon arises because of several factors, such as a rigid interpretation of Article 65 of the Criminal Code without placing it within the framework of the SPPA Law, public pressure to be firm, and judges' lack of understanding of the urgency of the restorative approach. This attitude shows that the application of juvenile criminal law is still influenced by the retributive philosophy. Therefore, every decision that imposes a cumulative punishment on children should be accompanied by a very strong and in-depth ratio decidendi or legal consideration. Judges must be able to explain why, in certain cases, the *ultimum remedium* principle cannot be applied, and why the interests of law enforcement are considered more important. Without such consideration, the decision can be philosophically flawed.

In resolving this conflict, the principle of the *lex specialis derogat legi generali* becomes relevant. The UU SPPA is a special law that specifically regulates juvenile criminal justice, so it should override the general provisions in the Criminal Code, including articles on cumulative punishment. Thus, every judge's interpretation and discretion should start from the framework of the SPPA Law. The disproportionate application of cumulative punishment has serious social implications, such as the disruption of children's education and increased risk of recidivism. This directly undermines the goal of rehabilitation mandated by the SPPA Law, thus creating a vicious cycle that is difficult to break. Therefore, judges' discretion should not be used to justify the imposition of cumulative punishment but rather to find the most restorative and educative solution. This discretion should be directed towards a progressive understanding,

where judges not only consider the child's behavior, but also their background, age, and potential for rehabilitation.

Although the UU SPPA provides strong guidance, normative gaps in the law are a source of problems. The SPPA Law does not explicitly regulate how judges should behave when children commit to the *concursum delicti*. This normative gap allows judges to interpret and apply cumulative punishment, which in turn triggers inconsistencies in judicial practice. To overcome this problem, actions are required from these two institutions. From a legislative perspective, it is necessary to revise the SPPA Law or other criminal laws to explicitly regulate the limitations or prohibition of cumulative punishment for children. From the judicial perspective, the Supreme Court needs to issue a Supreme Court Circular Letter (SEMA) or jurisprudence decision that serves as a guideline for judges to prioritize the principle of child protection.

The heart of this problem is philosophical conflict. Therefore, the solution lies not only in improving norms but also in strengthening judges' awareness of the philosophy of juvenile sentencing. Judges must be trained to see children not just as perpetrators but as individuals who need guidance and opportunities. Wise discretion will emerge from an understanding that severe punishment is not always fair and that true justice for children is a second chance to improve themselves. In conclusion, the conflict between the principle of cumulative punishment and child protection in drug offences is a pressing legal issue. The judges' discretion plays a central role in resolving this conflict. This analysis shows that discretion that is in line with the spirit of the SPPA Law is discretion that places the *ultimum remedium* principle as the top priority and rejects the application of cumulative punishment that can damage the future of children. Ultimately, the integrity of the juvenile criminal justice system depends on the courage and wisdom of judges to prioritize restorative justice over retribution.

3.2 Judges' discretion in cumulative decisions on drug crimes against children

The application of criminal law to children in Indonesia is a crucial issue that places judges in a dilemmatic position, particularly when dealing with cumulative criminal offences. This problem is even more exacerbated when criminal offences committed by children are extraordinary crimes, such as narcotics. In general, Indonesian criminal law through the Criminal Code (KUHP) regulates the mechanism of imposing cumulative punishment (*samenloop*), which aims to ensure that the perpetrator receives a sanction that is commensurate with his total actions (Salman Sahrir et al., 2024). However, this principle is in direct conflict with the new paradigm in the juvenile criminal justice system regulated by Law No. 11/2012 (UU SPPA), in which child protection, restorative justice, and the *ultimum remedium* principle are prioritized. This tension is exacerbated by Law No. 35/2009 on Narcotics, which classifies this criminal offence as an extraordinary crime and tends to apply severe sanctions. The conflict between these three principles creates significant gaps in legal practice.

Theoretically, the imposition of cumulative punishment against children contradicts the essence of the SPPA Law. Cumulative punishment tends to result in long sentences, which not only contradicts the *ultimum remedium* principle but also has the potential to cause stigmatization and deprive children of their right to grow and develop. Heavy and long sentences for children, instead of rehabilitating them, pose a high risk of recidivism (Ramadhani, 2024). This reality places judges in a difficult choice where they must interpret and apply conflicting legal norms. In practice, there is still a tendency for judges to prioritize general criminal articles related to the *samenloop* and the repressive nature of drug laws, without providing an adequate portion of the principles of child protection.

This raises fundamental questions regarding how judges' discretion should be exercised. A strong and in-depth ratio decidendi is needed to justify every decision that imposes a cumulative punishment on children. Without adequate consideration, such decisions have the potential to violate the rights of children guaranteed by law. The absence of clear guidelines in the SPPA Law regarding the handling of children's *concursum delicti* is often a pretext for judges to apply discretion, which leads to inconsistency in decisions. Furthermore, this attitude can be seen as a failure to implement the principle of *lex specialis derogat legi generali*, in which special laws (UU SPPA) should override general laws (KUHP).

To resolve this conflict, the fundamental solution lies in prioritizing the *lex specialis* principle. Judges should explicitly state in their decisions that the SPPA Law is the main legal umbrella that covers juvenile criminal justice so that the cumulative criminal provisions in the Criminal Code must be removed. In addition, the 'extraordinary crime' label for drug offences must be progressively reinterpreted. Extraordinary crimes committed by children should not lead to extraordinary punishment but rather demand extraordinary efforts for rehabilitation and guidance. The goal is not to punish but to cure the child of the addiction problem and put them back on the right track.

The practical solution to implement these principles is through strengthening the *ultimum remedium* principle. Judges must optimize the use of alternative punishments, and if forced to impose imprisonment, it must have the minimum possible duration. To support this, the Supreme Court needs to issue Sentencing Guidelines that explicitly prohibit or limit the imposition of cumulative punishment against children and provide concrete direction on how to apply restorative punishment. These guidelines will create consistency in decisions that are in line with the spirit of child protection.

In order for a judge to effectively fulfil his or her role in handling juvenile cases, Law No. 11/2012 on the Juvenile Criminal Justice System provides specific requirements (Ariani et al., 2019). This regulation, enshrined in Article 43, clearly mandates that appointed judges must fulfil certain qualifications. These requirements include not only experience as a judge in general but, more crucially, a deep interest, concern, dedication, and understanding of children's issues. These qualifications are fundamentally aimed at ensuring that every discretion taken by judges, especially in dealing with complex issues such as the imposition of cumulative punishment on children, is always based on the principles of protection and the best interests of children, not just the formal enforcement of criminal law.

This requirement is particularly relevant in the context of the conflict of legal principles discussed earlier, namely the clash between the repressive spirit of drug laws and the restorative principles of the SPPA Law. Judges who have attended technical training on juvenile justice and have a specialized understanding of the issue will be better able to navigate this dilemma. They will be better trained to avoid falling into the retributive-oriented reasoning of adult criminal law. Instead, they can use their discretion wisely to seek the most restorative and educative solutions, such as rejecting or limiting cumulative punishment that can damage a child's future and prioritizing guidance-oriented sanctions.

However, Article 43, paragraph (3) of the SPPA Law also contains a potentially problematic loophole. A provision that allows general criminal judges to hear juvenile cases in the absence of a suitably qualified judge can be a critical point in the application of discretion. Judges without specialized experience or technical training in juvenile justice are likely to apply the logic of general criminal law, which has the potential to ignore child protection principles. This can result in disproportionate decisions, such as the imposition of cumulative punishments that are burdensome and ignore the mandate of Article 71 paragraph (3) regarding the replacement of fines with vocational training. Therefore, the requirement for juvenile judges is not just a formality but a guarantee to ensure that judges' discretion truly functions as a tool to protect and rehabilitate children, in accordance with the lofty ideals of the SPPA Law.

In addition to specific requirements for judges who can hear juvenile cases, the juvenile criminal justice system also regulates matters that must be considered by judges when reaching a decision. The elucidation of Article 43, paragraph 3 of Law No. 11/2012 on the Juvenile Criminal Justice System confirms that the appointed judge must at least understand juvenile issues. Afrizal (2021) complements this guideline by stating that in addition to referring to general criminal provisions, a judge is obliged to consider the sociological, criminological, psychological, and psychiatric aspects of children. These considerations become an important foundation for judges to use their discretion wisely, especially in dilemmatic cases such as the imposition of cumulative punishment on children.

Sociological aspects are the first crucial consideration. Judges should not decide children's cases in isolation from their social context (D.M. et al., 2022). They must understand the child's social conditions, including family background, living environment, and economic conditions, which may have triggered the child to commit criminal offence. The verdict must be in line with the child's condition and must not neglect justice in society. By considering this aspect, judges will be more likely to impose sanctions that

are oriented towards recovery and social integration, rather than cumulative punishments that are severe and have the potential to deprive children of the opportunity to return to a normal society.

In addition to the social aspects, judges must also pay attention to the criminological and psychological aspects of children. The criminological approach requires judges to understand that criminal offences committed by children have different characteristics from adult criminal offences in terms of both motivation and modus operation, whereas the psychological aspect relates to the age of the child when committing a criminal offence. This consideration is vital to ensure that the punishment imposed does not interfere with the physical and mental growth of the child. These two aspects provide a basis for judges to see children's actions not merely as a violation of the law but also as a reflection of the immaturity of age and experience. Therefore, a fair decision for children should not be retributive but rather focus on prevention and guidance.

Furthermore, judges should emphasize the importance of the child's psychological aspects. This aspect has a major influence on juvenile criminal offences given the emotional nature of children who are not yet fully under control and their inability to comprehensively distinguish between good and bad. This understanding becomes a philosophical justification for why children's actions cannot be equated to those of adults. When a child commits a cumulative criminal offence, for example, it may be a reflection of emotional instability or lack of guidance, rather than a premeditated evil intent like an adult. Understanding this psychological aspect will encourage judges to avoid imposing severe cumulative punishments and choose sanctions that are more humanistic and restorative.

Taken together, these four aspects serve as essential guidelines for judges to exercise discretion. Judges who are trained and dedicated to children's issues can integrate sociological, criminological, psychological, and psychiatric considerations into their legal reasoning. The application of these considerations will encourage judges to avoid a formalistic approach and instead direct the decision to the most appropriate solution for the best interests of the child. Thus, judges' discretion can function as a vital mechanism to balance the demands of law enforcement with the mandate of child protection so that disproportionate cumulative punishment can be avoided.

The specificity of the juvenile criminal justice system is the Community Research (Litmas) conducted by the Correctional Centre (Bapas). This report is not just a formality but a crucial instrument for judges to exercise their discretion appropriately. The judge should rely on and consider the report from Bapas, which presents the child's psychological condition, family background, and social environment. Through this report, the judge can deeply understand the root of the problem that drives the child to commit a criminal offence, so that the verdict not only focuses on the criminal act but also on the rehabilitation needs of the child.

Thus, the Litmas report from Bapas is an important counterbalance in the conflict of legal principles, especially when judges are faced with imposing cumulative punishments on children. Instead of simply relying on general criminal articles or the heavy penalties of drug laws, judges can use data from Bapas to see that cumulative punishment will not solve the root of the problem. These reports provide a basis for judges to choose more relevant and restorative sanctions, such as coaching or rehabilitation, in line with the spirit of the SPPA Law. Ignoring the Bapas Report is tantamount to denying the specificity of juvenile justice and reverting to a purely retributive approach.

Finally, this solution demands a paradigm shift among law enforcement officials. Continuous training and education for judges, prosecutors, and investigators are needed to strengthen their understanding of the philosophy of child protection. This training should emphasize that true justice for children is not a harsh punishment, but a second chance to improve. Ultimately, the integrity of the juvenile criminal justice system depends on the courage and wisdom of judges to prioritize restorative justice over retribution, so that every decision made truly reflects the noble ideals of child protection.

4. DISCUSSION

Several key conclusions can be drawn from the discussion described above. First, there is a significant conflict of legal principles in the criminalization of juvenile drug offenders. This conflict occurs

between the principle of cumulative punishment (*samenloop*) in the Criminal Code, the threat of severe punishment for extraordinary crimes in narcotics law, and the philosophy of child protection that prioritizes restorative justice and the *ultimum remedium* principle in SPPA Law. The solution to this problem is to strengthen the legal framework and shift the paradigm. It is necessary to affirm that the SPPA Law should be the main guide by reinterpreting the nature of extraordinary crime as a call for extraordinary rehabilitation, not extraordinary punishment. Strengthening the Supreme Court's decision guidelines, legislative amendments, and increasing the philosophical awareness of judges are crucial steps. Ultimately, the integrity of the juvenile criminal justice system depends on the courage and wisdom of judges in prioritizing restorative justice over retribution to ensure a better future for Indonesian children.

Ethical Approval

This study was conducted in accordance with the ethical principles outlined in the Declaration of Helsinki. Ethical approval was obtained from the Ethics Committee of the Faculty of Law, Universitas Selamat Sri, prior to data collection. All procedures involving human participants were designed to respect the dignity, rights, safety, and well-being of the respondents.

Informed Consent Statement

All participants were provided with clear information regarding the purpose, scope, and confidentiality of the study. Participation was entirely voluntary, and respondents were informed that they could withdraw at any stage without penalty. Written informed consent was obtained from all participants before data collection, with full assurance of anonymity and confidentiality.

Author Contributions

Rizky Wibowo: Conceptualization, research framework, theory and method selection, data collection, analysis, interpretation of findings, and drafting of the manuscript (Corresponding Author). Nahar Surur: Substantive and format adjustments of the manuscript, reference list preparation, and ensuring citation accuracy and consistency. Lia Indah Khilmina: Research methodology design, independent research funding, verification of references, and overall quality assurance of the manuscript. All authors have read and approved the final version of the manuscript and agree to be accountable for its contents.

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Data Availability Statement

The data supporting this study are available upon reasonable request from the corresponding author due to privacy considerations.

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