

Legal Consequences of State Negligence in Fulfilling Mental Health Services for Persons with Mental Disorders in Indonesia

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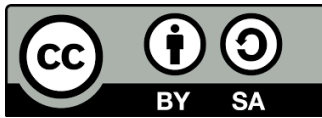
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Abstract

Mental health services in Indonesia continue to face various challenges, including limited access to healthcare facilities, shortages of mental health professionals, and the persistence of physical restraint practices involving Persons with Mental Disorders (Orang dengan Gangguan Jiwa, ODGJ). These conditions raise concerns regarding the state's legal responsibility to fulfill the right to mental health services. This study aimed to analyze the legal consequences of state negligence in providing mental health services for persons with mental disorders in Indonesia. The study employed a normative juridical method using statutory, conceptual, and case-based approaches. Legal materials were analyzed qualitatively with reference to Law Number 1 of 2023 concerning the Criminal Code, Law Number 17 of 2023 concerning Health, and Government Regulation Number 28 of 2024. The findings indicated that the state has a constitutional obligation to ensure the provision of integrated, sustainable, and quality mental health services. However, deficiencies in the mental healthcare system have contributed to the persistence of physical restraint practices, discontinuity of treatment, and inadequate social rehabilitation. Such failures may constitute maladministration and, depending on the circumstances and applicable legal standards, may also result in violations of human rights obligations. Therefore, strengthening mental health services, increasing the availability and capacity of mental health professionals, and implementing rights-based and restorative approaches to addressing unlawful restraint practices are necessary to improve the protection and fulfillment of the rights of persons with mental disorders.



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INTRODUCTION

Mental health is an integral component of health development. In recent years, mental health issues have received increasing global attention due to the growing prevalence of mental disorders, the substantial burden of psychosocial disability, and persistent shortcomings in the protection of vulnerable groups in many countries (World Health Organization, 2022) [*PERLU VERIFIKASI*]. The World Health Organization (WHO) emphasizes that mental health extends beyond the absence of mental disorders and encompasses an individual's ability to cope with the stresses of life, function effectively, and contribute to society. Accordingly, mental health should not be viewed solely as a medical issue but also as a social, legal, and human rights concern (Basrowi et al., 2024; Gilbert et al., 2023; Mahdanian et al., 2023; Organization & Rights), 2023).

In Indonesia, mental health remains a significant challenge within the national healthcare system. Although the right to health is constitutionally guaranteed under Article 28H(1) of the 1945 Constitution of the Republic of Indonesia, the implementation of mental health services remains inadequate (Ministry of Health of the Republic of Indonesia, 2023). Limited mental health facilities, shortages of psychiatrists and clinical psychologists, and

disparities in access between urban and rural areas contribute to inadequate access to appropriate services for many persons with mental disorders (Orang dengan Gangguan Jiwa, ODGJ). These conditions indicate that the fulfillment of the right to mental health in Indonesia continues to face structural and administrative barriers.

Mental health challenges in Indonesia are further complicated by the persistence of pasung practices involving ODGJ in several regions. Pasung generally involves restricting or confining persons with mental disorders, including through chaining, confinement, or isolation by families or communities. Puteh et al. (2011) found that pasung was associated with limited access to mental health services, economic constraints, concerns regarding patient behavior, and social stigma. Although the government introduced the Indonesia Bebas Pasung (Pasung-Free Indonesia) initiative, Human Rights Watch (2016) documented the continued use of shackling and confinement, particularly where access to appropriate mental health services remained limited.

From a human rights perspective, pasung may interfere with human dignity, liberty, bodily integrity, and the right to health. ODGJ, as persons requiring particular legal and social protection, are entitled to appropriate healthcare services and protection of their fundamental rights. International human rights standards recognize state obligations to respect, protect, and fulfill the right to health, including mental health (Gostin & Gable, 2019). Accordingly, a failure by the state to take legally required and reasonable measures to ensure access to adequate mental health services may raise questions concerning the fulfillment of its constitutional and human rights obligations (Gostin & Gable, 2019).

Normatively, Indonesia has established a legal framework governing mental health services. Law Number 17 of 2023 concerning Health provides the legal basis for mental health services, while Government Regulation Number 28 of 2024 further regulates the implementation of health services, including mental healthcare. Nevertheless, the existence of a regulatory framework does not necessarily ensure effective implementation. Sari and Nugroho (2023) identified a continuing gap between legal norms and the implementation of mental health services, particularly regarding access to services, social rehabilitation, and protection of the rights of ODGJ.

Within the concept of the welfare state, the state performs not only regulatory functions but also assumes responsibility for promoting public welfare through the provision of essential public services. Freeman (2020) emphasizes the relationship between human rights and state responsibilities in healthcare provision. Mental healthcare therefore forms part of the broader state responsibility to protect citizens' rights and promote social welfare. Consequently, failures in the provision or administration of legally mandated mental health services may have legal implications, including potential maladministration and infringements of constitutional or human rights, depending on the applicable legal requirements and circumstances.

Mental health in Indonesia has been extensively examined from medical, psychological, nursing, and social perspectives. Tyas et al. (2020), for example, examined family experiences in caring for persons with mental disorders subjected to pasung, while Hidayati and Widodo (2022) addressed state responsibility for mental health services and the protection of relevant rights. However, existing studies have predominantly addressed public health and social dimensions, whereas the specific legal consequences arising from state

failures in the provision of mental health services have received comparatively limited attention.

Previous studies have also discussed pasung and inadequate access to mental health services primarily in relation to social, healthcare, and economic conditions, with less attention to their implications for state legal responsibility. Aji and Yuningsih (2021) linked pasung practices to the protection of human rights in Indonesia. Nevertheless, further legal analysis is required to determine when deficiencies in mental health services may constitute maladministration, infringements of constitutional rights, or failures to fulfill applicable human rights obligations. Accordingly, the research gap lies in the limited integrated legal analysis of the relationship among state obligations, deficiencies in mental health service provision, and the resulting consequences for the protection of the rights of ODGJ in Indonesia.

Based on these issues, this study aimed to analyze the legal consequences of state negligence in fulfilling mental health service obligations toward ODGJ in Indonesia. It also examined the forms and scope of state responsibility from the perspectives of health law, administrative law, constitutional law, and human rights law. In addition, the study analyzed the legal conditions under which deficiencies in mental health service provision could constitute maladministration or infringements of constitutionally protected rights.

This study was expected to contribute theoretically and practically to the development of mental health law in Indonesia. Theoretically, it integrates health law, constitutional law, administrative law, and human rights law within a unified analytical framework for examining state responsibility for mental health services. Practically, the findings may provide a legal basis for strengthening an inclusive, accessible, and human rights-based mental health service system and contribute to the development of mental health law and policy in Indonesia

METHOD

Type of Research

This study employed a normative legal research method to examine the legal framework governing mental health services, state responsibility, and the protection of persons with mental disorders (Orang dengan Gangguan Jiwa, ODGJ) in Indonesia.

The study also applied doctrinal legal analysis by examining relevant legal doctrines, theories, and scholarly perspectives concerning the welfare state, human rights, maladministration in public services, and state obligations regarding the right to mental health. The analysis focused on the relationship between applicable legal norms and the provision of mental health services in Indonesia.

Through normative and doctrinal legal analysis, the study examined the legal consequences of state negligence in fulfilling mental health service obligations toward ODGJ from the perspectives of health law, administrative law, constitutional law, and human rights law.

Research Approach

This research uses several legal approaches to obtain a comprehensive analysis of the legal consequences of state negligence in fulfilling mental health services for ODGJ in Indonesia. The first approach used is the statutory approach. This approach is carried out by examining various laws and regulations related to mental health, public services, and human rights. The regulations analyzed include, among others, the 1945 Constitution of the Republic

of Indonesia, Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024, and various other regulations related to the protection of ODGJ rights. Through this approach, the research analyzes the forms of state responsibility in fulfilling mental health services under the national legal system.

In addition to the statutory approach, this research also uses a conceptual approach. This approach is used to understand various legal concepts and theories related to the welfare state, state responsibility, the protection of human rights, and maladministration of public services. The conceptual approach helps the researcher build a legal framework of thinking to analyze the relationship between state obligations and the protection of the public's right to mental health. With this approach, the research not only examines legal norms textually but also understands the purposes and values contained in those legal provisions.

This research also uses a case approach by analyzing the practice of physical restraint and various cases of limited mental health services occurring in Indonesia. The case approach is used to see how mental health regulations are implemented in practice and what legal impacts arise from the state's failure to provide adequate mental health services for ODGJ.

Sources of Legal Materials

This research uses primary and secondary legal materials as the main sources in the analysis process. The primary legal materials consist of various laws and regulations and official documents related to mental health services and the protection of ODGJ rights. The primary legal materials used include the 1945 Constitution of the Republic of Indonesia, Law No. 17 of 2023 on Health, the Criminal Code, Law No. 39 of 1999 on Human Rights, and various other regulations related to public services and mental health. In addition, this research also uses international documents such as reports and mental health standards from the World Health Organization and international human rights conventions.

Meanwhile, secondary legal materials were obtained from various scientific literature relevant to the research topic. These secondary legal materials include national and international scientific journals, law books, previous research results, academic articles, and proceedings of scientific seminars and conferences discussing mental health, human rights, public services, and state responsibility. All of these legal materials are used to strengthen the legal analysis in this research.

Techniques for Collecting and Analyzing Legal Materials

The technique for collecting legal materials in this research was carried out through a *literature review*, gathering various laws and regulations, scientific journals, books, official government reports, documents of international organizations, and previous research results related to mental health services and the legal protection of ODGJ. The literature study was carried out systematically to obtain relevant data and information on state responsibility in fulfilling mental health services in Indonesia.

The legal materials that have been collected were then analyzed using a qualitative analysis method. This analysis was carried out by understanding the content of legal norms, legal concepts, and social facts related to the research object. Furthermore, this research uses the method of *legal interpretation* to interpret the provisions of laws and regulations related to mental health, human rights, and public services. The interpretation was carried out grammatically, systematically, and teleologically in order to obtain a complete understanding of the state's obligations in mental health services.

In addition, this research uses *systematic legal reasoning* in constructing legal arguments logically and in a structured manner so as to explain the relationship between state negligence, the protection of ODGJ rights, and the resulting legal consequences.

RESULTS AND DISCUSSION

Legal Regulation of Mental Health Services in Indonesia

Mental health services in Indonesia have in principle received recognition in the national legal system as part of the constitutional rights of citizens. Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that everyone has the right to obtain health services and to live in physical and spiritual well-being. This provision shows that the state has a constitutional obligation to guarantee the fulfillment of the public's right to health, including mental health (Asshiddiqie, 2018). In the concept of the welfare state, according to Freeman, the state does not only act as a policymaker but also bears active responsibility for providing fair and equitable public services for all citizens (Freeman, 2020).

Regulation of mental health specifically is currently set out in Law No. 17 of 2023 on Health. That regulation affirms that mental health services are an integral part of the national health system that must be carried out through promotive, preventive, curative, rehabilitative, and reintegrative approaches (Republik Indonesia, 2023). The government is also required to provide mental health service facilities, professional health workers, and a social rehabilitation system for ODGJ. In addition, Government Regulation No. 28 of 2024 emphasizes the importance of integrated mental health services among the central government, regional governments, and public health service facilities (Republik Indonesia, 2024).

Although mental health regulation in Indonesia has developed quite significantly, the implementation of mental health services still faces various obstacles. Data from the Ministry of Health of the Republic of Indonesia show that the distribution of mental health workers remains uneven, especially in remote areas and archipelagic regions (Kementerian Kesehatan RI, 2023). Most psychiatrists remain concentrated in large cities, so people in the regions have difficulty obtaining access to mental health services.

In addition to the limited number of health workers, mental health service facilities in Indonesia also remain relatively limited compared with the continually growing number of people with mental disorders. The World Health Organization states that developing countries, including Indonesia, still face major challenges in financing and providing quality mental health services (World Health Organization, 2022). As a result, many ODGJ do not receive proper and continuous treatment. In some cases, families end up taking non-medical measures such as physical restraint because they cannot reach mental health facilities.

Forms of State Negligence in Mental Health Services

State negligence in mental health services can be seen in several aspects, namely limited mental health facilities, the low number of professional workers, a weak social rehabilitation system, and suboptimal implementation of mental health policy. Sari & Nugroho (2023) state that although the government has regulated the right to mental health services in various regulations, implementation in the field still shows a gap between legal norms and social reality.

One tangible form of state negligence is the continued high prevalence of physical restraint of ODGJ in Indonesia. The practice of physical restraint shows that the state has not been able to provide access to mental health services that is easily reachable by the public. The

study by Puteh et al. (2011) shows that physical restraint is generally carried out by families because of limited treatment costs, minimal knowledge of mental health, and difficulty obtaining psychiatric services. This condition shows that communities often have to bear the burden of mental health services themselves because of the state's weak presence in providing mental health facilities.

In addition, the uneven distribution of psychiatrists is also an indicator of the weakness of national mental health services. Most psychiatrists are concentrated on the island of Java and in large cities, while people in remote areas have very limited access to mental health services (World Health Organization, 2022). As a result, many people with mental disorders do not receive adequate diagnosis and treatment. This shows an injustice in health services that contradicts the principle of equitable public services.

State negligence is also evident in the still weak social rehabilitation of ODGJ after undergoing medical treatment. Many ODGJ who have been declared medically stable have difficulty returning to their social environment because of community stigma and the lack of adequate social reintegration programs (Aji & Yuningsih, 2021). This condition makes ODGJ vulnerable to relapse and repeated social discrimination.

Human Rights Violations against ODGJ

State negligence in mental health services potentially gives rise to human rights violations against ODGJ. From a human rights perspective, every individual has the right to legal protection, health services, and treatment that respects human dignity without discrimination.⁵ Therefore, physical restraint, social discrimination, and limited access to mental health services can be categorized as forms of violation of citizens' basic rights.

A Human Rights Watch report states that many ODGJ in Indonesia experience inhumane treatment, such as being chained, locked up, and isolated for long periods due to limited mental health services.⁴ Such practices not only affect the physical and psychological condition of those affected but also violate the principle of respect for human dignity guaranteed in various international human rights instruments.

In addition, stigma against ODGJ causes many sufferers to lose access to education, employment, and a decent social life. This condition shows that mental health issues relate not only to medical aspects but also to the protection of citizens' social and civil rights. Therefore, the state has a responsibility to ensure that ODGJ receive equal treatment in community life.

Legal Consequences of State Negligence in Mental Health Services

State negligence in fulfilling mental health services can give rise to various legal consequences. From the perspective of state administrative law, the government's failure to provide adequate public services can be categorized as a form of maladministration.⁷ Maladministration occurs when state administrators do not carry out their public service obligations in accordance with the applicable legal provisions.

In addition to maladministration, state negligence also potentially gives rise to violations of citizens' constitutional rights. The right to health is a basic right guaranteed by the constitution, so the state has a legal obligation to fulfill it.¹³ When the state fails to provide adequate mental health services, the state can be regarded as not carrying out its constitutional obligations toward the public.

From the perspective of international human rights, the state's failure to protect ODGJ can also be categorized as a violation of the principle of non-discrimination and respect for

human dignity.⁵ Therefore, strengthening regulation, increasing the mental health budget, distributing mental health workers equitably, and eliminating the practice of physical restraint are important steps to strengthen the legal protection of ODGJ in Indonesia.

State Responsibility from the Perspective of the *Welfare State*

The *welfare state* concept places the state as a party with active responsibility for guaranteeing public welfare through the provision of fair and equitable public services. From this perspective, the state functions not only as a guardian of legal order but also as a provider of social, economic, and health services for all citizens.¹⁴ Mental health services are an important part of that responsibility because health is a basic right guaranteed by the constitution and by human rights.

In Indonesia, the concept of the welfare state is reflected in the Preamble to the 1945 Constitution of the Republic of Indonesia, which affirms the state's purpose of protecting all the people of Indonesia and realizing social justice for all the people of Indonesia. In addition, Article 28H paragraph (1) of the 1945 Constitution also affirms that everyone has the right to obtain health services. That provision shows that the state has a constitutional obligation to provide health services, including mental health, adequately and without discrimination.¹³

In the context of mental health services, state responsibility is not limited to forming regulations but also includes the obligation to provide mental health facilities, professional personnel, social rehabilitation, and a system of legal protection for ODGJ. The state is also obliged to ensure that mental health services can be accessed by all people regardless of economic condition, geographic region, or social background. Therefore, the limited access to mental health services that still occurs in various regions shows that the principles of the welfare state have not yet been optimally implemented in Indonesia.

In addition, the concept of social justice in the welfare state demands the equitable distribution of public services for vulnerable groups. ODGJ are a group vulnerable to social discrimination, limited access to health services, and human rights violations. Under such conditions, the state has a greater obligation to provide special protection to these vulnerable groups. When the state fails to provide adequate mental health services, resulting in physical restraint, discrimination, and the neglect of ODGJ, the state can be regarded as not carrying out its constitutional obligations optimally.

Thus, from the *welfare state* perspective, mental health services are not merely social policy but a legal obligation of the state that is directly related to the protection of citizens' constitutional rights. The state must ensure that the mental health service system runs effectively, justly, and respects human dignity.

Progressive Law and the Protection of ODGJ

The concept of progressive law developed by Satjipto Rahardjo places law as an instrument aimed at serving humans and realizing substantive justice. Progressive law rejects the view that law is understood only formally and textually. According to Satjipto Rahardjo, law must be able to provide solutions to social problems and protect the interests of society, especially vulnerable and marginalized groups (Rahardjo, 2010).

In the context of protecting ODGJ, the progressive law approach is highly relevant because mental health problems cannot be resolved solely through normative and administrative approaches. ODGJ often experience discrimination, social exclusion, and even inhumane treatment such as physical restraint. Therefore, law must be present to protect human

dignity and to ensure that ODGJ obtain health rights, social protection, and access to public services on an equal basis.

The progressive law approach also emphasizes the importance of law oriented toward humanity (*law for humans*). In mental health service practice, this approach requires the state and law enforcement officials to prioritize the protection of rights and the recovery of ODGJ over repressive or punitive approaches. Physical restraint, for example, cannot be viewed merely as a matter of legal violation by families but must also be seen as a result of the failure of the mental health service system and the state's weak presence.

In addition, the *restorative justice* approach is also important to apply in the protection of ODGJ. This approach emphasizes the recovery of the victim's condition and the resolution of problems in a humane manner rather than punishment alone. In the mental health context, a restorative approach can be realized through medical rehabilitation, social reintegration, public education, and family assistance. Thus, the protection of ODGJ must be carried out through a non-punitive approach that prioritizes recovery, the protection of human rights, and social justice.

Comparative Analysis with Other Countries

A comparison of mental health service systems with other countries shows that Indonesia still faces various challenges in protecting ODGJ. In Australia, the mental health service system has developed through community-based mental health services. The Australian government positions mental health services as part of primary health care so that people can more easily obtain access to psychological and psychiatric services (Australian Government Department of Health, 2022). In addition, Australia also has strong regulations on the protection of the rights of patients with mental disorders, including mechanisms for supervising medical actions and protection from discriminatory treatment.

Meanwhile, Japan has developed a mental health service system that integrates hospitals, social rehabilitation, and community support. The Japanese government pays great attention to the social rehabilitation and reintegration of ODGJ into society so that people with mental disorders can continue to live a productive social life (Ministry of Health, Labour and Welfare Japan, 2021). Japan also has a national health insurance system that covers mental health services, so public access to mental treatment is broader.

Compared with these countries, mental health services in Indonesia still face various limitations, such as the small number of psychiatrists, the low mental health budget, and suboptimal social rehabilitation. In addition, physical restraint is still found in several regions, which shows the weak legal protection of ODGJ. Under WHO standards, mental health services should be human rights-based, easily accessible, affordable, and integrated with general health services (World Health Organization, 2022). However, the implementation of these standards in Indonesia still faces structural and administrative obstacles.

Policy differences are also evident in the aspects of oversight and legal protection. Developed countries generally have independent oversight bodies for mental health services and complaint mechanisms for patients. In Indonesia, the mechanisms for the legal protection of ODGJ remain relatively weak, so many cases of discrimination and physical restraint do not obtain adequate legal resolution. Therefore, Indonesia needs to strengthen its mental health service system by adopting best practices from other countries that are more oriented toward human rights and social rehabilitation.

Challenges in Enforcing Mental Health Law

Law enforcement in mental health services in Indonesia still faces various challenges. One of the main challenges is social stigma against ODGJ. Many people still regard ODGJ as dangerous, shameful, or unable to live normally in society (Aji & Yuningsih, 2021). Such stigma causes families to often hide family members who have mental disorders and to be reluctant to seek medical help. As a result, many ODGJ receive treatment and legal protection late.

In addition to social stigma, the limited mental health budget is also an obstacle to developing the mental health service system in Indonesia. To date, the allocation of the mental health budget has remained relatively small compared with the needs for public services. As a result, mental health facilities, professional personnel, and social rehabilitation programs have not developed optimally.

Another challenge is bureaucracy and legal uncertainty in implementing mental health services. Although mental health regulations are already available, their implementation often does not run effectively because of weak coordination among government agencies. In addition, the decentralization system causes the quality of mental health services to differ from region to region, depending on the ability of local governments to provide mental health facilities.

These conditions show that mental health law enforcement in Indonesia still faces complex structural and administrative problems. Therefore, strengthening of regulation, oversight, and inter-agency coordination is needed so that the protection of ODGJ can run more effectively.

Future Legal Reform

Legal reform efforts in mental health services need to be carried out comprehensively to strengthen the protection of ODGJ. The first reform needed is the strengthening of mental health regulation so that it is more oriented toward human rights protection and state responsibility. Such regulation must clearly stipulate the obligations of the central and regional governments to provide equitable and quality mental health services.

In addition, Indonesia needs to build an integrated national mental health system encompassing medical services, social rehabilitation, and community empowerment. The system must be supported by the equitable distribution of mental health workers, improved rehabilitation facilities, and strengthened community-based mental health services.

Legal reform also needs to be directed at developing *rights-based policy*. ODGJ must be regarded as legal subjects who have the same rights as other citizens. Therefore, discrimination and physical restraint must be eliminated through public education and stronger legal oversight.

In addition, a special oversight mechanism for mental health services is needed, such as the establishment of an independent oversight body. This mechanism is important to ensure that mental health services run in accordance with the principles of justice, non-discrimination, and respect for human dignity.

CONCLUSION

This study demonstrated that mental health services in Indonesia continued to face structural, administrative, and legal challenges that affected the protection of the rights of

persons with mental disorders (Orang dengan Gangguan Jiwa, ODGJ). Although Indonesia has established a regulatory framework governing mental health, including Law Number 17 of 2023 concerning Health and relevant national health policies, the implementation of mental health services remained inadequate. Limited mental health facilities, shortages of psychiatrists and other mental health professionals, disparities in access to services between urban and rural areas, and the persistence of pasung practices indicated continuing gaps in the fulfillment of the state's constitutional obligations concerning the right to health, including mental health.

The findings further indicated that failures in fulfilling legally mandated mental health service obligations may have various legal consequences. From the perspective of administrative law, failures in the provision or administration of legally required public health services may constitute maladministration when the applicable legal requirements are satisfied. Moreover, failures to take appropriate measures to protect ODGJ from discrimination, pasung, neglect, and other rights-infringing practices may implicate constitutional and human rights obligations. Such deficiencies are also inconsistent with the welfare state principle, under which the state assumes an active role in promoting social welfare and protecting vulnerable groups.

This study further demonstrated that the protection of ODGJ requires not only medical interventions but also integrated legal, social, and human rights-based approaches. The state bears responsibility for ensuring that mental health services are available, accessible, equitable, and respectful of human dignity and fundamental rights. Accordingly, strengthening the mental health service system, addressing barriers to access, and protecting ODGJ from discriminatory and degrading practices are essential to advancing social justice and safeguarding constitutionally protected rights in Indonesia.

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CONFLICT OF INTEREST

The authors declare that the research was conducted in the absence of any commercial, financial, or personal relationships that could be construed as a potential conflict of interest

AUTHOR CONTRIBUTION

Hasanah and Jerry G. Tambun contributed to the conceptualization, theoretical development, literature synthesis, and analytical interpretation of the study. Both authors participated in drafting, reviewing, and revising the manuscript, approved the final version for publication, and agreed to be accountable for the integrity and accuracy of the work

GENERATIVE ARTIFICIAL INTELLIGENCE USAGE STATEMENT

The authors declare that generative artificial intelligence (AI) tools were used solely to assist in improving the clarity, language, and grammatical structure of the manuscript. Generative AI was not used to generate the conceptual arguments, theoretical analysis, analytical findings, or scholarly conclusions presented in this study. All AI-assisted content

was critically reviewed and verified by the authors, who retain full responsibility for the accuracy, originality, integrity, and final content of the manuscript.

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