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## The Agreement to Buy and Sell Mu'athah in Supermarkets Reviewed from the Rules of Fiqhiyah Al-Istihsanu bil 'Urf

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Received January 05, 2024; Revised January 28, 2024; Accepted January 29, 2024

**Abstract:** This study aims to investigate the law of mu'athah buying and selling transactions by referring to the rules of fiqhiyah Al Istihsanu bil 'urf that occur in supermarkets. A qualitative approach with library research methods was used in this study, where data were obtained from books and journals. The data collection method used is descriptive analysis, with content analysis techniques. Research findings show that in business transactions, contracts have a vital role in people's lives, becoming the basis for various human activities. Akad becomes the framework of transactions in the Islamic economy, enabling the implementation of various business and economic activities. The Islamic view of the contract has no particular limitations, as long as it meets the requirements and pillars of the contract. However, with the progress of the times, the contract can be made directly, without using words, writing, or gestures, but rather through the actions of both parties that reflect the agreement, known as bai' mu'athah transactions. These transactions generally occur in supermarkets, using modern methods such as electronic media in the form of barcodes that can only be read by machines. Although this bai' mu'athah transaction does not fully meet the conditions and pillars of the contract, according to Maliki, the most basic is the custom that shows the agreement and willingness of both parties. Some Shafi'i scholars also allow bai' mu'athah transactions.

**Keywords:** akad sell and buy, bai' mu'athah, al-istihsan, al-'urf. sharia.

### INTRODUCTION

Islam requires that everyone who wants to do a job knows the law of Allah in it, including in financial transactions. Everyone who wants to work in the field of bookkeeping and trading is required to learn the laws of buying and selling, what is lawful in buying and selling, and what is forbidden. For the transaction to be carried out by the provisions of Islamic sharia, Umar bin Al-Khattab (may Allah be pleased with him) said: No one is allowed to sell in our market except those who have understood his religion. All Muslims must follow the procedures for financial transactions according to Islamic teachings so that transactions are free from prohibited violations such as usury, fraud, and dholim so that the Islamic community becomes an interdependent society endowed with blessings. love and brotherhood [1]–[3].

In Islamic literature, it has been explained that the establishment of the validity of a sale is supported by 3 main pillars. First, there is a contract actor, in the process of buying and selling the existence of a buyer and seller absolutely must exist, when one

party does not exist, the transaction is invalid. The second is the existence of goods or services as objects of transaction, in the absence of goods/services then there is nothing that can be transacted aka the process of buying and selling cannot be carried out. The third is *ijab-kabul*, which is an official statement made by both parties, both sellers and buyers, that they have consciously pledged to move goods or services from the seller to the buyer. However, in its development, there are buying and selling activities in the community (for example convenience stores) that carry out the buying and selling process without doing *ijab-kabul* orally but only taking goods displayed on the shelves by buyers which are then handed over to the cashier for later payment, or better known in sharia terms as a *mu'atah* sale and purchase contract [4]–[6].

## LITERATURE REVIEW

In Islamic law, *istihsanu bil 'urf* is a rule of *fiqhiyyah* that considers community policies or norms (*urf*) as a determining factor in making legal decisions. The word "Hasana", which means kindness, is the origin of the word "*istihsan*". This method shows that in legal interpretation, the general good and benefit of society tend to take precedence. *Istihsanu bil 'urf* is based on the understanding that following policies that are generally accepted by society can be more beneficial than applying the law literally in some situations. This method is an attempt to ensure justice and social benefit in a developing society. Classical literature such as *Kitab Al-Mustasfa* by Al-Ghazali or *Al-Muwafaqat* by Imam Al-Shatibi can be used as a reference to deepen the understanding of *Istihsanu bil 'Urf*. Meanwhile, contemporary works such as "Principles of Islamic Jurisprudence" by Mohammad Hashim Kamali can also provide a more actual perspective [7], [8].

In Islamic law, a *mu'atah* sale and purchase transaction is a type of business transaction that involves a sale and purchase agreement between two parties without speaking, writing, or communicating directly. *Mu'atah* sale and purchase transactions must still meet the conditions and pillars of the contract, such as the availability of goods, agreement, and freedom of the parties, although this transaction is more non-verbal and depends on concrete actions or actions of both parties as a marker of agreement. The existence and perfection of the contract still depend on the agreement of both parties [9]–[11].

One of the things that distinguishes *mu'atah* buying and selling transactions from conventional transactions is how the contract is carried out. The rule of "*Al-'Aqd Yaq'u Qawl wal 'Amal*", which means contract occurs by word and action, still applies. However, in *mu'atah* transactions, the implementation of the contract places more emphasis on the actions shown by both parties as proof of agreement. *Mu'atah* buying and selling transactions usually occur in public places such as traditional markets or contemporary supermarkets. Transactions like this can be done in supermarkets through electronic media such as barcodes that can be read by cash registers or other automated systems [12]–[14].

Each school of Islamic law can view the buying and selling of *mu'atah* in a different way. Although not fully qualified and qualified by the contract, Maliki Madhhab's view tends to view this transaction as legitimate if it has become customary and shows agreement between the parties involved. *Mu'atah* buying and selling transactions are increasingly common in this day and age due to technological advances and changes in people's lifestyles. Technologies such as barcodes make contract execution easier and more flexible, and both parties reach an agreement.

## METHODOLOGY

The method used in this study is qualitative, with a literature approach, this research is also descriptive-analysis, with a content analysis approach because it is based on Islamic legal literature. The theme discussed is related to the contract of buying and selling mu'athah in terms of the rules of fiqhiyah al-istihsanu bil 'urf [15]–[17].

**Table 1. Research Methods**

No	Types of Research	Model and Description
1	Research Methods	Kualitatif
2	Types of Research	Libraries
3	Nature of Research	Descriptive Analysis
4	Approach	Content Analisis

## RESULT AND DISCUSSION

### Definition of Buying and Selling

Buying and selling is the exchange of property for property for ownership. God allows His servants out of necessity so that a person cannot get what he needs if it is in the hands of others except through buying and selling [18]. Allah 'Azza Wajalla said: "And Allah justifies buying and selling." And when the Prophet (peace be upon him) asked, which advantage is better? He said: "Human work is done with his own hands, and every sale is justified [19].

### Pillars of Buying and Selling

The process of buying and selling requires harmony as an enforcer of the law of buying and selling carried out, including [20]:

- a. There are contract actors, namely buyers, and sellers, provided that the contract actors are reasonable people and can choose and distinguish something (mumayyiz). Therefore, it is not legal to make contracts made by lunatics, drunk people, and children who have not been able to choose and distinguish between good and bad. If the insane statement suffered by the contractor is temporary, meaning that sometimes he recovers and sometimes loses his memory, then the contract he made when he woke up is declared valid and the contract made at the time of memory loss is considered invalid., young children who can distinguish right from wrong, the contract that Jikin makes is declared valid, but is required to get permission from his guardian [9].
- b. There are goods or objects of sale and purchase contracts, goods or objects of sale and purchase are required to have conditions that must be met, including that the goods must be sacred, contain benefits, already belong to the person who makes the transaction, is very possible to be handed over, known characteristics, characters, and specifications, and are in the control of the owner [21].
- c. There are statements of ijab and qobul (offer and acceptance), which are in the form of [22]:

1. Affirmative (each word indicates buying and selling)

The seller will say: I sold this house to you, or I own this car, or take this land, or give me the price of these clothes, and so on. Acceptance is any word that signifies acceptance of a sale, the buyer used to say: I accept, or I buy, or I am satisfied, or

the price limit, and that we can change. No specific words are required for offer and acceptance, however, with each statement after it, people buy and sell [23].

## 2. Al-Muathah, simply giving and receiving each other

If the interaction of buying and selling is adjusted to the customs that occur in the community without saying a word, for example, the buyer will give one riyal to the baker and take four loaves of bread, or the seller of clothes will give the buyer a piece of clothing and he will pay him ten riyals, and so on. The sale and purchase, it is legitimate because there are signs that indicate the agreement of both parties. There are no words in the implementation of the handover of goods because the standard of buying and selling transactions is the meaning and purpose, not lafaz and letters [24].

The provisions of the contract are the elements of mutual pleasure between buyers and sellers of the goods exchanged [25]. Or it could be any gesture that shows pleasure between the two parties over the taking of goods and giving in exchange.

There are several things required in ijab and qabul. The author's references are as follows [26]:

- a. Ijab and qabul are performed not separately for long periods, but for a short time according to custom.
- b. Meaning is compatible between ijab and qabul which directly gives rise to the purchase of pleasure over the price and goods that have been agreed in the sale. If there is a dispute over meaning, the sale and purchase contract is invalid. For example, when the seller says, "I sold you this bike for five million." Then the buyer says, "Well, I received the bike, I paid 4 million." If such is the case then the contract is invalid, because there is no compatibility between ijab and qabul.
- c. The statements ijab and qabul are delivered using past tense verbs. For example, the seller says, "I sold you this bike," and the buyer responds by saying, "I received the bike from you." Or, by using the verb of the present form. for example, the seller says "I'm selling this bike," and the buyer responds by saying "I bought".

Buying and selling is legal if it is done with ijab qabul (with spoken language). It is also declared legal by writing, provided that the seller and buyer are far apart, or one of the two is unable to speak. If the seller and buyer are in one place and there is no obstacle whatsoever to perform ijab and qabul in spoken language, then it is not legal for the sale and purchase transaction to be carried out in writing. Since speech is the clearest proof of contract, nothing can be replaced unless there is a compelling reason that can turn speech into another form. In a contract with writing, it is required that the party receiving the writing gives consent at the place, where the writing is read [27]–[29].

In addition to being valid to be carried out orally and in writing, the sale and purchase contract is also declared valid through the intermediary of the messenger of one of the transacting parties, provided that the party receiving the messenger receives directly after the news is delivered by the intermediary. Thus, whenever there is an agreement in the two forms of transactions above, the sale and purchase transaction is perfect, and there is no need to wait until the sending party knows the answer from the other party.

The sale and purchase agreement for mute people is declared valid with understandable gestures because the mute person's gesture to express something is equivalent to oral speech [30]. A mute person may also contract with writing instead of gestures if he can write. As for some scholars who require certain words in making contracts, they do not find evidence, either in the Qur'an or Sunnah [31].

## Definition of Mu'atahah

Mu'atahah is the practice of buying and selling involving two separate transactions, in which the buyer makes an offer to the seller to buy goods or services at a certain price, and the seller accepts the offer. In the context of supermarkets or supermarkets, this practice can be applied to various products sold in the store [32]. Keep in mind that mu'atahah must not violate Islamic principles of justice and ethics and the seller must take care that the mu'atahah process does not involve elements of fraud or obscurity that can harm either party [33].

The following is an explanation related to buying and selling mu'atahah in supermarkets or supermarkets along with examples:

- a. The process of buying and buying mu'atahah:
  1. The buyer makes an offer: A buyer comes to the supermarket and chooses the product they want to buy. The buyer then gives a price offer to the seller.
  2. The seller accepts or rejects the offer: The seller has the freedom to accept or reject the offer given by the buyer. If the seller accepts the offer, the transaction is considered legitimate [34].
- b. Example of mu'atahah buying and selling in Swalayan [35].
  1. A customer chooses to buy several food products that have a total price of Rp 200,000 at a supermarket.
  2. The customer made an offer to the cashier stating that he was willing to pay only Rp 180,000 for the products.
  3. The cashier, having considered the offer, accepts the offer on the terms of immediate payment.
  4. The transaction is completed with the buyer paying Rp 180,000 and receiving the product he bought.
- c. Advantages of buying and selling mu'atahah in supermarkets [36].
  1. Price Negotiation: Buyers can try to get a better price by making a lower bid, and sellers have the flexibility to adjust prices as per market conditions or store policies.
  2. Good Interaction: The mu'atahah process can create a positive relationship between buyers and sellers because of the negotiation process involving both parties.

## Mu'atahah is Viewed from The Rules of Fiqhiyah Al-Istihsanu Bil 'Urf

Istihsan bil 'Urf is a principle of Islamic law that means kindness or ease by the customs or norms of society. This rule allows or forbids something based on the benefit or custom prevailing in society, as long as it does not contradict other principles of Islamic law [37]. In the context of buying and selling mu'atahah in supermarkets or supermarkets, the principle of istihsan can be applied as follows:

- a. Kaidah istihsan bil 'urf
  1. Public Benefit: It is preferential for mu'atahah if this practice brings general benefits and facilitates the buying and selling process without violating Islamic principles.

- b. Example of mu'atah buying and selling in Swalayan based on istihsan:
1. A buyer often shops at supermarkets and has a habit of haggling prices when transacting.
  2. Self-service cashiers have adapted to this habit and understand that shoppers like to try to get a better price
  3. In the context of istihsan, mu'atah practices can be applied to facilitate shoppers and create a better atmosphere in the store, by the norms of society that have developed.
- c. Advantages of buying and selling mu'atah based on istihsan:
1. Ease of Transaction: Istihsan allows sellers and buyers to interact in an easier way and by the habits that have been accepted in the community.
  2. Common Benefit: If mu'atah provides mutual benefits for both the seller and the buyer, then the principle of istihsan supports its use.

Although istihsan allows conformity to societal norms, this does not mean that other principles of Islamic law can be ignored. Islamic law remains the main cornerstone. [13] In addition, care is needed so that mu'atah does not deviate from the principles of justice and ethics in Islam. In this context, the practice of buying and selling mu'atah in supermarkets or supermarkets can be considered as part of efforts to facilitate the transaction process and create a business environment that is by the norms of the local community, as long as it does not violate the basic principles of Islamic law [38].

### **Definition of Istihsan**

Etymologically, istihsan comes from the word "ha-sa-na" with wazan istaf" ala which means thalab or ask [39]. In this context, istihsan reflects the act of considering something as better following better, or looking for a better option. From the meaning of the language, a picture of a person who is faced with two choices that are both considered good. However, there is an urge to abandon one of them and choose the other because it is considered better to run. Different definitions of istihsan result in different points of view and results of ijihad [40]. Ibn al-Subki, for example, suggests two definitions of istihsan: first, switching from the use of one qiyas to another, stronger qiyas (first qiyas); Second, switch from the use of postulates to customs because of certain benefits. The first definition is generally accepted without debate because it prioritizes stronger qiyas. However, the second definition aroused the rejection of some scholars because customs were considered good if they prevailed in the time of the Prophet (peace be upon him) or later, and there was no rejection from the Prophet or others, as long as there was a supporting proposition either in the form of nash or ijma [41].

### **Types Istihsan**

Istihsan has various variations that can be analyzed from various points of view, both from the aspect of the neglected postulate and the postulate that is used as its replacement, as well as from the basic aspect or foundation that is followed when moving from qiyas.

When viewed from the aspect of the arguments used, some examples of istihsan inclusion are as follows [42]–[45]:

- a. The change of mujtahid from qiyas dzahir to qiyas khafi. In this case, mujtahid no longer uses qiyas dzahir but switches to qiyas khafi because it is considered more powerful. For example, by practising waqf on a piece of land that has roads and drinking water sources in it.
- b. Mujtahid changes from general Nash demands to specific laws. For example, the law of theft according to the general provisions based on the Nash of the Quran (Al-Maidah 5:37) is the cutting off of hands. However, if the theft was committed during a time of famine or famine, then the penalty of chopping off hands does not apply, and what is applied is a special law.
- c. Mujtahid changes from kulli law provisions to exclusion lawsuits. For example, waqf is performed by a person under guardianship because of immaturity or mahjur alaih li al-safahi (one who is accepted because he is not yet an adult). Although under the kulli provision, he is not authorized to perform virtue with his property (tabarru"), using the istihsan approach, this provision can be excluded if the waqf is done against himself.

Viewed from the perspective of the foundation or reason that became the basis for the transition to adopting the istihsan method by the mujtahid, istihsan can be classified into four types [46], [47]:

- a. Istihsan who rests on qiyas khafi. In this case, the mujtahid abandoned the first qiyas because he discovered that there were other, stronger qiyas. Although the qiyas have disadvantages from one side, in terms of maslahah, this qiyas is considered higher. An example that is often put forward by scholars is the law stipulating the cleanliness of the water that has been licked by wild birds such as crows or eagles.
- b. Istihsan whose backrest is Nash. In determining the law, mujtahid does not use qiyas or conventional methods because there is a nash that regulates it [48]. For example, the law of buying and selling greetings (orders or indents) where such transactions are, according to general provisions, considered invalid because goods are not available at the time of the transaction. However, because Nash prohibits the buying and selling of goods that are not in place except for the sale and purchase of greetings, this particular law is used as a basis.
- c. Istihsan whose basis is 'Urf (custom). Mujtahid uses judgment or basis on common customs in a situation. For example, in the use of public baths or swimming pools, people who use public baths are usually charged a flat fee regardless of the amount of water used or the length of time used. This is a common custom that is accepted in society, and in this case, the prevailing common law is difficult to apply because it must comply with existing regulations. Therefore, istihsan is carried out by adjusting to customs or habits accepted by all parties.
- d. Istihsan whose backrest is dharurat. Mujtahid does not use propositions that must be followed in general because there are emergencies that require exceptions. An example of this is the law of stealing which is done due to emergencies to sustain life.

### **The Position of Istihsan As A Source Of Law**

Some scholars from the Hanafi, Maliki, and Hambali madhhabs argue that istihsan can be considered the postulate of sharia or the basis of Islamic law. The foundations of this opinion include:

- a. Using istihsan means looking for the easy and leaving the hard
- b. Firman Allah 'Azza Wajalla dalam QS. Az-Zumar: 55

وَاتَّبِعُوا أَحْسَنَ مَا أُنزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَكُمُ الْعَذَابُ بَعَثَةً وَأَنْتُمْ لَا تَشْعُرُونَ

"And follow best what has been sent down to you from your Lord before sudden doom comes to you, while you are not aware of it".

- c. Something that Muslims look good at, then he is seen as good by Allah Almighty 'Azza Wajalla.

### **Implementation of Istihsan in Sharia Economic Law**

Legal action based on istihsan can be found in contracts or contracts that commonly occur in the community such as Salam, Istishna, and credit buying and selling contracts. In addition, it can also be applied in buying and selling mu'athah with istihsan whose backrest is 'urf.

### **Definition of 'Urf**

The word 'urf comes from the Arabic root 'Arafa, ya'rifu, 'Irfan, or 'urfan, which means 'to know' or 'to know'. Among Muslims, 'urf has related terms such as ma'rifah (introduction), ta'rif (understanding), and ma'ruf (something that is well known). Linguistically, 'urf refers to something that is considered good and acceptable to common sense [49]. In terms, 'urf is defined as "that which is known to men and repeated in their utterances and deeds until it becomes ordinary and common" [50].

According to Helim, Abdul 'urf and adat are essentially the same because 'urf is a custom that is carried out continuously or repeatedly, while adat comes from the Arabic 'aada, ya'uudu, 'audan / 'aadata which means "returning or repeating" [51]. In other words, 'urf and adat refer to repeated actions.

F, Rizal explained that 'urf should not be opposed or removed, but can be used as a basis for designing legal products because the general view is not, in essence, contrary to God's will [52]. Fundamentally, 'urf does not hinder life but is very helpful in regulating social life and managing the lives of every member of society. According to Imam al-Shatibi and Ibn Qayyim al-Jauziyah, 'urf can be accepted as a postulate for establishing Islamic law. However, both note that this applies if there is no evidence explaining the law related to the matter.

From the above understanding, it can be concluded that 'urf refers to traditions or customs that prevail in a region or within a particular society, which have become a common practice and accepted by various levels of society. This tradition can include behaviour and speech, both considered good and bad. However, it is important to note that not all customs or traditions, especially those involving bad acts (gambling, etc.) and contrary to Shari'a, can be used as a basis for legitimizing the law. Therefore, in the use of tradition as a legal basis, some terms and conditions must be met.

### **Example of 'Urf In Transaction in Self-Service**

- a. Rounding up the price amount

Often we find when shopping at supermarkets that there are nominal goods with a price of less than Rp. 100,-, even though fractions less than 100 are no longer valid. Therefore, the cashier always rounds the nominal to a larger one, for example, Rp. 17,275, - to Rp. 17,300, - or to 17,500,-. Although rounding prices like this is not allowed according to fiqh because it is considered fraudulent and gharar and harms buyers, because it has become a habit and is considered normal by the community, this practice continues to be carried out when shopping at supermarkets. In punishing this condition, we need to pay attention to several points. First, if the buyer does not object

to rounding the price, then this transaction is considered legitimate. However, if the buyer does not agree with this rounding, the seller must sell the goods according to the nominal stated [53]. This is also regulated in Article 6 paragraph (4) of the Regulation of the Minister of Trade of the Republic of Indonesia Number 35/M-DAG/PER/7/2013 concerning the Inclusion of Prices of Goods and Tariffs for Services Traded, explaining that price rounding in every transaction that requires price rounding is allowed, but must provide information in advance to the buyer [54].

#### b. QRIS Payment Transaction

Technological advances have encouraged some people to use it to simplify and increase efficiency, one of which is by using the QRIS payment method in supermarkets. Today, many people have adopted the new habit of abandoning the use of physical money or cash, preferring to carry only mobile phones. This is due to the ease and comfort of transactions, including in supermarkets. According to Puspitaningrum, the use of QRIS has several advantages and disadvantages. The advantages of transactions using QRIS include speed, convenience (without the need to find change), and practicality and efficiency. However, the disadvantages of using QRIS involve inadequate internet data availability, poor internet connection, and delays in disbursing funds to sellers [55].

When shopping at the supermarket, all our groceries will be added up by the cashier. After the total purchases are informed, those who do not carry cash will use the barcode feature on the QRIS application to make payment transactions digitally. After successful payment, the buyer only needs to show proof of the transaction that appears on his mobile screen. Sometimes, this transaction does not require verbal interaction, so there is no *ijab qobul* contract. But if we look at this type of transaction, then we conclude that this transaction is a type of *mu'athah* transaction where buying and selling are valid and does not contradict the proposition, moreover, the community is familiar with this transaction model.

## CONCLUSION

This article concludes that contracts in Islamic business transactions have an important role in people's lives and are at the core of many things we do every day. In Islamic economics, *Akad* serves as a transaction frame because it allows various types of businesses to be run. In fact, in the Islamic perspective of the contract, there is no strict limit to the type of agreement that can be made if it conforms to the pillars and conditions of the contract. Four pillars make up the contract: first, the party making the contract (*aqid*), the second the statement to bind themselves or the agreement of the parties (*Sighat al-'Aqd*), the third the object of the contract (*Ma'qud al-Alaih*) and the fourth purpose. Meanwhile, the conditions related to the contract are divided into four categories, namely, first the formation of the contract (*Shurûth al-In'iqâd*), the second validity of the contract (*Shurûth al-Shihhah*), the third the enactment of the legal effect of the contract (*Shurûth al-Qâmûs*), and the fourth condition of binding the contract (*Shurûth al-Luzûm*). However, along with the changing times and the needs of society, agreements can also be made directly without using words, writing, or gestures to express their will. However, this *tranaskasi* is usually called *bai'mu'athah* when both parties act in a manner that shows willingness and agreement between them. Such transactions take place in supermarkets or malls and are known as "contracts" in contemporary business transactions where the electronic barcodes used can only be read by machines. In the most *rajih qaul*, Maliki argues that a transaction of sale and purchase or *bai'mu'athah* is valid if it has become a habit that shows willingness, and if the act shows the perfection of the will and desire of each party. According to Shafi'i scholars, all contracts, including buying and selling, must use the pronunciation *sharih* or *kinayah*, along with *ijab* and *qabul*. Therefore, buying and selling *mu'athah*, no

matter whether the goods are expensive or cheap, is not legal. However, some Shafi'iyah scholars allowed it to return to old customs.

### Acknowledgements

We would like to express our gratitude to the University of Muhammadiyah Surakarta for the financial contribution and support given to our research. We would also like to thank all parties who have provided support and positive input during this research process. The encouragement and feedback received have added significant value to the quality of our research. We also express our appreciation to the educators at the University of Muhammadiyah Surakarta for the valuable guidance and support provided during the implementation of this research. In addition, we express our gratitude for the financial assistance and intellectual contribution provided by the University of Muhammadiyah Surakarta. Their recognition of the relevance of this research and their dedication to creating a supportive research environment is highly appreciated. Therefore, we recognize the close collaboration and valuable contributions of all parties involved in this research. Your support means a lot to us, and we appreciate the collaboration that has shaped this academic journey.

### Author Contribution

All authors contributed equally to the main contributor to this paper, all authors read and approved the final paper, and all authors declared no conflict of interest.

### Conflicts of Interest

All authors declare no conflict of interest.

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