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Administrative Permission and Proportional Formalism in Indonesian Civil-Servant Divorce Adjudication

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Abstract

This article examines how the requirement that an Indonesian civil servant obtain permission from the competent official operates when a divorce dispute moves through different judicial levels. It analyzes one continuous litigation trajectory comprising Parepare Religious Court Decision Number 107/Pdt.G/2023/PA.Pare, Makassar Religious High Court Decision Number 120/Pdt.G/2023/PTA.Mks, and Supreme Court Decision Number 156 K/Ag/2024. Using doctrinal legal research, the study combines statutory, case, and conceptual approaches. The judgments are reconstructed by separating the parties' submissions, factual findings, ratio decidendi, and operative orders, then compared vertically to identify changes in the juridical characterization of administrative permission. The lower courts treated permission as a mandatory civil-service obligation but continued to examine the merits after considering repeated applications, administrative non-response, disciplinary warnings, and evidence of persistent marital breakdown. The Supreme Court instead regarded non-compliance with the prescribed six-month postponement and notification procedure as a formal defect and declared the divorce petition inadmissible. The article argues that the permission requirement thereby acquired a quasi-substantive effect: it became outcome-determinative without itself constituting a statutory ground for divorce. To evaluate this tension, the article develops proportional formalism as an original, rule-sensitive framework

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organized around legality, administrative purpose, marital harm, responsibility for administrative delay, rights impact, and proportionality of judicial response. The framework preserves procedural discipline while requiring reasons for converting administrative non-compliance into a barrier to substantive family-law adjudication.

Keywords: Administrative Permission; Civil-Servant Divorce; Judicial Formalism; Proportional Formalism; Substantive Justice.

Introduction

Divorce involving Indonesian civil servants sits at the intersection of family law, civil procedure, and public-employment discipline. The substantive entitlement to divorce is governed principally by Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, Government Regulation Number 9 of 1975, and, for Muslim litigants, the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI). A separate administrative regime applies to Civil Servants (Pegawai Negeri Sipil, PNS). Article 3(1) of Government Regulation Number 10 of 1983, as amended by Government Regulation Number 45 of 1990, requires a PNS who intends to divorce to obtain permission or a certificate from the competent official. The regulatory obligation is therefore real, but its judicial consequence is not self-evident. A rule directed at civil-service discipline may remain an internal administrative obligation, may regulate the timing of litigation, or may be treated as a condition whose absence prevents adjudication. Each characterization produces a different relationship between state employment discipline and access to family-law remedies.

Terminological precision is important. Indonesian legislation distinguishes the broader State Civil Apparatus (Aparatur Sipil Negara, ASN) from PNS, while the 1983/1990 divorce-permission regime specifically addresses PNS. Although the first-instance record occasionally describes the husband as ASN, the judgments and the governing regulation identify the relevant employment status as PNS. This article therefore uses "civil servant" to mean PNS in the dispute under review and uses "permission from the competent official" or, more briefly, "administrative permission" for the requirement in Article 3(1). It does not assume that every category of ASN employee is governed by an identical divorce-permission regime.

The doctrinal problem becomes visible in a single dispute that travelled vertically through three judicial levels. The husband, a civil servant in the South Sulawesi Provincial Government, sought a divorce before the Parepare Religious Court. The record showed that he had pursued administrative permission since 2020 and again in 2023, but no final response had been issued. The Parepare Religious Court warned him of disciplinary consequences, considered his written willingness to bear those consequences, and proceeded to determine whether

the marriage had irretrievably broken down. The Makassar Religious High Court affirmed that approach and expressly held that, because the permission process had repeatedly been pursued without an answer and the litigant had submitted a risk declaration, examination could continue under Supreme Court Circular Letter (SEMA) Number 5 of 1984. At cassation, however, the Supreme Court held that the lower courts had not implemented the prescribed six-month postponement and notification to the civil servant's superior. It treated that omission as a formal defect, granted cassation, and declared the petition inadmissible. The relevant empirical unit is therefore not three unrelated cases but one litigation trajectory displaying a vertical divergence in judicial reasoning.

Existing Indonesian scholarship helps explain parts of this problem but does not fully resolve it. Research on Religious Court adjudication shows that judicial discretion can materially affect gender equality, post-divorce rights, and access to justice.[1] Studies of divorce procedure further show that procedural devices such as compulsory mediation may serve legitimate institutional purposes while also creating additional burdens when applied without sufficient attention to the circumstances of the parties.[2] Scholarship on civil-servant post-divorce obligations confirms that public-employment status may shape the economic consequences of divorce.[3] Within Islamic family-law scholarship, maqāṣid al-sharīʿah and maṣlaḥah have been used to evaluate divorce mediation, child protection, and judicial responsiveness.[4] Other work emphasizes the importance of judicial interpretation and ex officio authority in protecting family-law rights.[5] Taken together, this literature demonstrates that procedure, administrative status, and judicial reasoning can shape substantive outcomes, but

[1] Ramadhita Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023), https://doi.org/10.1080/23311886.2023.2206347.

[2] Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217–31, https://doi.org/10.1093/ojlr/rwad015.

[3] Mursyid Djawas et al., "The Alimony Obligation of a Civil Servant and Non-Civil Servant Father towards Children Post-Divorce (The Study on Aceh Syar'iyyah Court Decision Study of 2019)," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (September 2023): 91, https://doi.org/10.22373/ujhk.v6i1.9493.

[4] Fikri Fikri et al., "Transformation of Maqāṣid Shari'āh in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 2023): 431, https://doi.org/10.22373/sjhk.v7i1.9141.

[5] Analiansyah Analiansyah et al., "Polygamy and Women's Rights: An Examination of Divorce Litigation in Sharia Court Rulings Pertaining to Revisions in Indonesian Matrimonial Legislation," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (November 2024): 761–86, https://doi.org/10.29240/jhi.v9i2.10833.

it does not specifically explain how a civil-service permission rule changes juridical function as the same dispute ascends the judicial hierarchy.[6]

That gap is analytically significant because formalism should not be treated as a synonym for injustice. Schauer's account of formalism emphasizes the constraining function of rules, including circumstances in which rule-bound decision-making promotes predictability and institutional discipline.[7] Weinrib likewise cautions against reducing legal formalism to mechanical or irrational decision-making.[8] The problem in this dispute is therefore not that the Supreme Court relied on a formal rule. It is whether the legal consequence attached to non-compliance was justified by the purpose and structure of the administrative regime, especially where the litigant had repeatedly sought permission and the administrative authority had not resolved the application. Conversely, a court cannot invoke "substantive justice" as a license to disregard binding procedure. The analytical task is to explain how legality and substantive adjudication should interact rather than to choose one in the abstract.

Proportionality offers a useful but incomplete vocabulary for that task. In constitutional theory, proportionality requires structured examination of legitimate purpose, suitability, necessity, and balance rather than intuitive weighing.[9] Legal pragmatism directs attention to the institutional and practical consequences of legal choices, while progressive-law scholarship in Indonesia insists that legal interpretation remain connected to the human purposes law is meant to serve.[10] Maqāṣid scholarship similarly treats purpose, welfare, and the prevention of concrete harm as central to legal evaluation, although it should not be used as an abstract formula that bypasses positive law mmmm.[11] These traditions overlap but are not interchangeable. Formalism begins with the authority and constraining force of rules; proportionality asks whether the consequence imposed in pursuit of a legitimate objective is justified; pragmatism considers institutional effects; progressive law foregrounds law's social function;

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[6] Ibnu Radwan Siddik Turnip et al., "Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the Maslahah Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 2024): 463–84, https://doi.org/10.29240/jhi.v9i2.10117.

[7] Frederick. Schauer, "Formalism," *Yale Law Journal 97* 4 (1988): 509–48.

[8] Ernest J. Weinrib, "Legal Formalism: On the Immanent Rationality of Law," *The Yale Law Journal* 97, no. 6 (May 1988): 949, https://doi.org/10.2307/796339.

[9] Jackson Vicki C., "Constitutional Law in an Age of Proportionality," *Yale Law Journal 124* 8 (2015): 3094–3196.

[10] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

[11] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (International Institute of Islamic Thought, 2008), https://doi.org/10.2307/j.ctvkc67tg.

and maqāṣid provides a purposive Islamic normative orientation toward welfare and harm.[12]

This article develops "proportional formalism" as an original analytical construct for this class of adjudication. It is not presented as an existing Indonesian doctrine, nor as a wholesale transplantation of constitutional proportionality into family procedure. Its distinctive claim is narrower: where an administrative rule is legally binding but the sanction for non-compliance is not identical to the substantive ground of action, the court should remain rule-sensitive while separately justifying the consequence it attaches to the defect. The framework therefore asks six questions: what is the legal character of the requirement; what administrative purpose does it serve; what marital harm has been judicially established; who is responsible for delay or non-compliance; what rights are affected by the procedural response; and whether the chosen judicial consequence is suitable, necessary, and balanced.

The research question is accordingly: how did the juridical status and procedural effect of administrative permission change across the three levels of this single civil-servant divorce dispute, and how can that divergence be evaluated without collapsing legality into either bureaucratic formalism or unconstrained substantive justice? The article makes three contributions. First, it corrects the unit of analysis by reconstructing one vertical litigation trajectory rather than treating the decisions as independent cases. Second, it identifies the quasi-substantive effect that arose when an administrative requirement became outcome-determinative at cassation despite not being a statutory ground for divorce. Third, it offers proportional formalism as a structured framework for evaluating when enforcement of a procedural-administrative rule may legitimately restrict access to substantive family-law adjudication. The argument is deliberately case-bounded: it does not claim a general tendency across Indonesian Religious Courts or the Supreme Court as a whole.

This study uses doctrinal legal research to reconstruct and compare judicial reasoning within a single litigation trajectory. Three complementary approaches are employed. The statutory approach identifies the legal regimes governing divorce, civil-service permission, Religious Court procedure, and post-divorce rights. The case approach examines the reasoning and orders in Parepare Religious Court Decision Number 107/Pdt.G/2023/PA.Pare, Makassar Religious High Court Decision Number 120/Pdt.G/2023/PTA.Mks, and Supreme Court Decision Number 156 K/Ag/2024. The conceptual approach uses scholarship on legal formalism, proportionality, legal pragmatism, progressive law, access to justice, and maqāṣid al-sharīʿah to evaluate the

[12] Aharon Barak, *Proportionality* (Cambridge University Press, 2012), https://doi.org/10.1017/CBO9781139035293.

relationship between an administrative requirement and substantive adjudication.

The three decisions were selected purposively because they are not separate observations but successive stages of the same dispute. The selection criteria were: identity of the underlying parties and divorce petition; continuity from first instance to appeal and cassation; explicit judicial treatment of the civil-servant permission issue; and availability of sufficiently complete judgments to reconstruct factual findings, legal reasoning, and operative orders. This design permits a vertical comparison of how the same administrative defect was characterized as the dispute moved through the judicial hierarchy. It does not permit statistical or jurisprudential generalization about Indonesian courts, and no such generalization is attempted.

Primary legal materials comprise the three judgments and the instruments directly relied upon in them, including Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019; Government Regulation Number 9 of 1975; Government Regulation Number 10 of 1983, as amended by Government Regulation Number 45 of 1990; the Compilation of Islamic Law; SEMA Number 5 of 1984; relevant Religious Chamber formulations subsequently cited by the Supreme Court; and rules concerning mediation and protection of women's post-divorce rights where those rules formed part of the lower courts' reasoning. Secondary materials were drawn from peer-reviewed literature on Indonesian Islamic family-law adjudication and from internationally recognized scholarship on formalism and proportionality. Sources were retained only when they directly supported the doctrinal problem, theoretical positioning, method, or rights analysis; duplicative and peripheral references were excluded.

The judgments were read through a structured extraction matrix designed to prevent attribution errors. For each judicial level, the analysis separately records: (1) the parties' submissions, including arguments about the legal meaning of permission; (2) factual findings actually accepted by the court; (3) the ratio decidendi, understood as the reasons necessary to support the court's disposition; (4) procedural consequences attached to the permission issue; and (5) the operative order. This distinction is essential because some of the strongest propositions about Articles 5(2) and 12 of the civil-service regulation particularly the argument that administrative authorities themselves were bound by a three-month decision period were advanced by the husband. They are not automatically treated as findings or ratio of the Parepare Religious Court. By contrast, the Makassar Religious High Court expressly found that permission had been pursued repeatedly without a response and expressly concluded that examination could continue under SEMA Number 5 of 1984.

The analysis proceeds in two stages. First, an internal doctrinal reading reconstructs each judgment on its own terms and then compares the decisions

vertically. This identifies points of continuity and divergence: the lower courts acknowledged the administrative obligation yet examined the merits, whereas the Supreme Court made compliance with the postponement and notification procedure outcome-determinative. Second, the reconstructed trajectory is assessed through proportional formalism. The framework is applied ex post as an analytical test; it is not attributed to any of the courts as their stated method. Each stage asks a distinct question about legality, administrative purpose, established marital harm, responsibility for delay, rights impact, and the proportionality of the judicial response. The framework therefore evaluates the justification for the consequence attached to non-compliance rather than questioning the validity of the permission rule itself.

Two limitations follow from this design. The study does not establish how frequently Indonesian courts adopt either approach, because a single dispute cannot support claims about prevalence or institutional tendency. It also does not determine facts outside the judicial record. Administrative non-response, marital breakdown, and procedural chronology are analyzed only insofar as they were documented or judicially found in the decisions. These limitations are methodological safeguards: the contribution is a precise doctrinal account of vertical divergence and a theoretically grounded framework that can later be tested against a broader corpus of civil-servant divorce decisions.

Discussion

Vertical Divergence in Judicial Reasoning

The central finding is a vertical divergence within one dispute, not a uniform tendency toward bureaucratic formalism. At first instance, the respondent argued that the husband's petition was formally defective because, as a PNS, he had not obtained permission from the competent official and therefore the petition should be declared inadmissible. The husband answered that the permission process had been pursued and that the requirement belonged to the administrative sphere of civil-service discipline. The Parepare Religious Court rejected the exception as a non-jurisdictional objection that had to be considered with the merits. Its evidentiary analysis then recorded a 1 September 2020 request, a further application received in April 2023, a clarification request in May 2023, and a declaration that the husband was willing to bear the disciplinary risks of proceeding without a completed permission process. The court did not treat the husband's legal submissions as self-proving. It relied on documentary evidence to find that permission had been pursued but had not been issued.

The first-instance court then turned to the marriage itself. It found that the spouses had lived separately since 2020, that attempts at reconciliation and mediation had failed, that communication and marital obligations had

deteriorated, and that there was no realistic prospect of resuming married life. Those findings were connected to Article 39(2) of the Marriage Law, Article 19(f) of Government Regulation Number 9 of 1975, and Article 116(f) KHI. The permission defect therefore did not replace the statutory inquiry into the ground for divorce. Administratively, the husband remained exposed to civil-service consequences; judicially, the court proceeded to decide whether the marriage satisfied the legal test for dissolution.

The Makassar Religious High Court made this separation even more explicit. It first affirmed that Article 3(1) of Government Regulation Number 10 of 1983, as amended by Government Regulation Number 45 of 1990, requires a PNS seeking divorce to present permission from the competent official. It then found that the husband had pursued permission since 2020, had submitted the request three times, had sought clarification in 2023, had received no answer, and had filed a declaration accepting the risks. On those facts, the appellate panel concluded that the requirements of SEMA Number 5 of 1984 had been satisfied and that "the examination of this case can be continued." It subsequently evaluated witness testimony, prolonged separation, failed reconciliation, and the broken-marriage indicators reflected in SEMA Number 4 of 2014, and affirmed the first-instance judgment.

The Supreme Court approached the same procedural history differently. Citing SEMA Number 5 of 1984, later chamber formulations reflected in SEMA Number 5 of 2014 and SEMA Number 10 of 2020, its decision emphasized that the procedural guidance applicable to a civil servant required the court to postpone the proceedings for six months to provide an opportunity to obtain permission, notify the civil servant's superior of that postponement, and, if permission remained unavailable after the period expired, warn the litigant of the disciplinary consequences. The Court found that the first-instance proceedings had been postponed only from 8 May to 15 June 2023 substantially less than six months and that the postponement had not been notified to the husband's direct superior. It therefore concluded that the Judex Facti had erred in applying the law, upheld the wife's formal exception, annulled the appellate judgment, and declared the husband's divorce petition inadmissible. Because the marriage legally remained intact, the reconventional claims premised on the consequences of divorce were also declared inadmissible.

This sequence matters for doctrinal characterization. The disagreement was not over the existence of Article 3(1); all three levels recognized the administrative requirement. The divergence concerned the consequence of incomplete compliance and, more specifically, the legal significance of the court's own failure to implement the six-month postponement and notification procedure. The lower courts treated the unresolved permission process as compatible with merits adjudication once they had considered the litigant's efforts and risks. The Supreme Court treated procedural implementation as a

condition whose defect prevented a merits determination. The evidence therefore supports a narrow claim of vertical divergence, not a broader claim that Religious Courts generally privilege bureaucratic order over substantive justice.

Table 1. Vertical Reconstruction of the Permission Issue

Judicial level	Characterization of permission	Core finding / ratio	Procedural and operative consequence
Parepare Religious Court	Mandatory civil-service administrative obligation; not treated as a jurisdictional bar.	Permission had been pursued but not issued; the husband accepted disciplinary risk. The court rejected the formal exception and examined proven marital breakdown.	Merits examined; divorce petition granted; reconventional claims partially granted.
Makassar Religious High Court	Mandatory obligation under Article 3(1), but unresolved permission did not automatically preclude adjudication.	Repeated applications since 2020, no response, clarification request, and risk declaration were held sufficient under SEMA No. 5/1984 to continue examination. Broken-marriage grounds were independently established.	First-instance judgment affirmed.
Supreme Court (cassation)	Formal procedural requirement whose implementation conditioned admissibility.	The Judex Facti did not provide the full six-month postponement and did not notify the civil servant's superior as required by SEMA guidance.	Cassation granted; appellate judgment annulled; divorce petition and reconventional claims declared inadmissible.

Administrative Permission and Its Quasi-Substantive Effect

The permission requirement acquired a quasi-substantive effect only at the point where its procedural enforcement determined the ultimate availability of divorce. "Quasi-substantive" does not mean that the Supreme Court formally converted administrative permission into a statutory ground for divorce. The substantive grounds remained those provided by marriage law and KHI. Rather, the term describes functional effect: the absence of procedurally adequate permission processing became dispositive of whether the established marital breakdown could produce a divorce judgment.

That distinction is important because administrative and substantive norms perform different legal functions.[13] The civil-service regulation is directed toward the employment relationship between the state and its employee.[14] Requiring prior permission or a certificate can serve legitimate purposes: informing the administration, enabling internal examination or reconciliation, maintaining personnel discipline, and ensuring that institutional obligations are not bypassed. Family-law rules, by contrast, ask whether a legally recognized ground for dissolution exists. Treating these domains as analytically distinct does not weaken the permission rule. It clarifies why the judicial consequence of breach requires independent justification.

The procedural guidance in SEMA Number 5 of 1984 creates a bridge between those domains. The Supreme Court's cassation reasoning shows that the bridge is not satisfied merely because a civil servant has filed an application with the administration.[15] The court itself has procedural responsibilities: a six-month postponement must be afforded and the postponement notified to the relevant superior. This element complicates any simple narrative that the Supreme Court penalized the husband solely for bureaucratic inaction. Its criticism was also directed at the Judex Facti for failing to observe the full judicial procedure. A careful analysis must therefore separate three potential sources of non-compliance: the litigant's conduct, administrative non-response, and the court's procedural management.

The husband's submissions at first instance invoked Articles 5(2) and 12 of the civil-service regime to argue that administrative officials were themselves subject to time limits for forwarding and deciding permission requests. Those submissions are relevant to responsibility for delay, but they should not be recast as the first-instance court's ratio.[16] What the lower courts actually found was narrower: the permission process had been pursued, no answer had been received, disciplinary risks had been explained, and the dispute could proceed. This distinction between advocacy and adjudication strengthens rather than

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[13] Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments," *Asian Journal of Comparative Law* 17, no. 1 (2022): 51–75, https://doi.org/10.1017/asjcl.2022.7.

[14] Viorizza Suciani Putri, Sonny Dewi Judiasih, and Hazar Kusmayanti, "The Best Interest of the Child in Islamic Family Law: Declarative and Enforceable Custody Protection in Indonesia and Malaysia," *International Journal of Nusantara Islam* 14, no. 1 (February 2, 2026): 273–90, https://doi.org/10.15575/IJNI.V14I1.54393.

[15] Laras Shesa et al., "Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection," *MILRev: Metro Islamic Law Review* 3, no. 2 (December 13, 2024): 236–62, https://doi.org/10.32332/MILREV.V3I2.9950.

[16] Giacomo Oberto, "Strategies to Deal with Backlogs and Delays in the Court System: European Experiences," *Europejski Przegląd Prawa i Stosunków Międzynarodowych*, no. 1/2026/77 (2026): 116–56, https://doi.org/10.52097/eppism.10709.

weakens the article's critique because it grounds the analysis in propositions the judgments actually adopted.

A rule-sensitive critique must also acknowledge the institutional value of the Supreme Court's position. Requiring lower courts to follow a uniform postponement-and-notification procedure can reduce inconsistency and prevent litigants or judges from bypassing a mandatory civil-service process. Schauer's defense of rule constraint is relevant here: formal rules can protect predictability precisely by limiting case-by-case discretion.[17] Yet predictability does not answer the separate question of remedy. When a litigant has repeatedly sought permission and substantive grounds have been fully tried, declaring the petition inadmissible imposes a consequence that goes beyond a reminder of administrative discipline. The decisive normative question is whether that consequence is necessary to secure the rule's purpose, particularly where a less disruptive procedural remedy such as completing the prescribed postponement and notification process could theoretically secure compliance without extinguishing the merits determination already undertaken.

Marital Harm, Economic Rights, and Maqāṣid-Oriented Justice

The substantive dimension of the dispute should be assessed from the factual findings of the lower courts, not from generalized claims about family hardship. The Parepare Religious Court found prolonged separation from 2020, persistent conflict, failed mediation and reconciliation, impaired communication, and a breakdown in the performance of marital obligations. The Makassar Religious High Court re-examined the record and reached the same core conclusion.[18] It noted that witnesses from both sides confirmed the long separation and that attempts to restore the marriage had failed. Applying Article 19(f) of Government Regulation Number 9 of 1975 and Article 116(f) KHI, the appellate court found the broken-marriage indicators satisfied and concluded that there was no realistic prospect of reconciliation.

Those findings matter to a maqāṣid-oriented analysis because maqāṣid cannot be used as a free-standing slogan for judicial sympathy. Auda's systems approach emphasizes purposiveness and multidimensional evaluation rather than reduction of Islamic law to a single textual or formal variable.[19] Indonesian scholarship likewise shows both the potential and the danger of maṣlaḥah reasoning: it can orient adjudication toward concrete welfare, but it can become pseudo-maṣlaḥah when invoked without disciplined evidence and normative

[17] Schauer, "Formalism."

[18] Muhajir Hm et al., "The Role of Religious Affairs Office (KUA) of Makassar City in Preventing Marriage Violation under the Mashlahah Mursalah Principle," 2024, 125–48, https://doi.org/10.37876/adhki.v4i2.106.

[19] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

structure.[20] Here, the relevant harm was not assumed. It was judicially supported by separation, failed reconciliation, and functional breakdown of the marital relationship. A maqāṣid-oriented perspective therefore reinforces the need to consider concrete harm only after the legal and evidentiary predicates have been established.

The dispute also demonstrates that procedure can reshape economic rights. The wife's reconventional claims sought past maintenance, iddah maintenance, and mut'ah. The Parepare Religious Court partially granted those claims, and the Makassar Religious High Court affirmed the main amounts after considering the husband's income and the legal standards for post-divorce protection.[21] The appellate court expressly linked payment before the pronouncement of talak to the protection of women's rights. This is consistent with broader research showing that judicial discretion and institutional practice materially affect whether post-divorce rights are realized in Indonesia.[22]

At cassation, those substantive and economic determinations became legally inoperative because the petition itself was declared inadmissible. The Supreme Court reasoned that the reconventional claims were consequences of divorce and could not stand while the marital bond remained legally intact. That reasoning is internally coherent once inadmissibility is accepted, but it illustrates why a procedural ruling can have substantive consequences for both parties. The rights-impact inquiry is therefore not one-sided. The husband's access to a determination of marital breakdown, the wife's entitlement to procedural protection, and the wife's potential post-divorce economic rights can all be affected by the choice of procedural remedy.

The same point emerges from access-to-justice scholarship. Procedural safeguards are indispensable, but their design and application must be evaluated in context.[23] for example, show how a generally applicable procedural requirement in Religious Court divorce can create distinct burdens when the circumstances of the case undermine the utility of that procedure.[24]

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[20] Azni Azni et al., "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, no. 2 (May 2025): 1399–1420, https://doi.org/10.26811/peuradeun.v13i2.2047.

[21] Fadil Fadil, Zidna Mazidah, and Zaenul Mahmudi, "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (June 2024): 1–20, https://doi.org/10.18860/j-fsh.v16i1.25713.

[22] Iim Halimatusa'diyah and Windy Triana, "Sexism and Women's Access to Justice: Feminist Judging in Indonesian Islamic Judiciary," *Women's Studies International Forum* 103 (March 2024): 102883, https://doi.org/10.1016/j.wsif.2024.102883.

[23] Jones and Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation."

[24] Halimatusa'diyah and Triana, "Sexism and Women's Access to Justice: Feminist Judging in Indonesian Islamic Judiciary."

Demonstrate that judicial approaches can either facilitate or constrain women's access to justice. These studies do not decide the civil-servant permission issue, but they support a broader proposition: the justice impact of procedure should be analyzed through its concrete operation rather than assumed from its formal legitimacy alone.

Proportional Formalism: Theoretical Positioning and Six-Stage Framework

Proportional formalism is proposed to organize that analysis. The concept is original to this article in the limited sense that the six-stage framework is constructed for conflicts in which a binding administrative requirement intersects with substantive family-law adjudication. It is an adaptation, not a reproduction, of proportionality analysis. Classical proportionality tests whether a rights limitation pursues a proper purpose, bears a rational connection to that purpose, is necessary in the absence of a less restrictive alternative, and maintains an acceptable balance between benefit and burden.[25] Proportional formalism retains those justificatory disciplines but adds an antecedent commitment to legality and an evidentiary inquiry into the substantive dispute and responsibility for non-compliance.

The relationship with judicial formalism is therefore complementary rather than antagonistic. Formalism asks the court to take the text, institutional source, and constraining function of a rule seriously. Proportional formalism does the same at stage one; it does not authorize a judge to disregard Article 3(1) because the marriage appears unhappy. Its additional claim is that the legal consequence of non-compliance must be separately justified when the regulation does not itself make permission a substantive ground for divorce. In this sense, the framework is more rule-sensitive than an open-ended appeal to equity and more consequence-sensitive than a purely categorical application of form.

The framework also differs from legal pragmatism and judicial activism. Pragmatism is attentive to workable outcomes and institutional consequences, but proportional formalism does not allow practical preference to displace a binding rule; consequences enter only after legality and purpose are identified.[26] Judicial activism and progressive law may justify a more responsive judicial role where positive law leaves room for interpretation, and Indonesian Religious Court scholarship shows that ex officio authority can protect vulnerable family members.[27] Yet proportional formalism does not presume that the most

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[25] Jackson Vicki C., "Constitutional Law in an Age of Proportionality."

[26] Richard A. Posner, *Law, Pragmatism, and Democracy* (Harvard University Press, 2005), https://doi.org/10.2307/j.ctv2d7x4rs.

[27] Alamsyah et al., "Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority and Peaceful Settlement in Indonesian Religious Courts," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 671–99, https://doi.org/10.29240/jhi.v10i2.12755.

interventionist outcome is preferable. Rahardjo's progressive-law concern with law's human purpose is incorporated through the harm and rights-impact stages, while the final decision remains bounded by positive law and reasoned justification.[28]

Its relationship with maqāṣid al-sharīʿah is similarly structured. Maqāṣid contributes a purposive concern with welfare, dignity, family protection, and prevention of harm, but it does not replace the statutory framework governing Indonesian divorce. The model therefore uses maqāṣid principally at the stages of marital harm, rights impact, and balance. This prevents a methodological shortcut in which maṣlaḥah is invoked to nullify inconvenient procedure. It also prevents the opposite shortcut in which procedural compliance is treated as self-justifying regardless of its effects. The model asks what the rule protects, what harm is established, and whether the judicial response preserves the legitimate administrative purpose without imposing an unnecessary barrier to adjudication.

The six stages are cumulative. First, legality identifies the source, mandatory language, legal addressee, and juridical character of administrative permission. In the present dispute, Article 3(1) unquestionably imposes a duty on the civil servant, while SEMA Number 5 of 1984 supplies procedural guidance for the court. The inquiry must distinguish that administrative duty from the separate statutory grounds for divorce.[29] Second, administrative purpose identifies why the permission system exists. The plausible purposes include civil-service discipline, institutional notice, internal examination, and an opportunity for administrative reconciliation. A court should not infer a more intrusive purpose than the legal materials can support.

Third, marital harm asks whether the substantive family-law ground has been established through admissible evidence. This checkpoint prevents "substantive justice" from becoming a rhetorical override. In this litigation, the lower courts found prolonged separation, continuing conflict, failed reconciliation, and broken-marriage indicators.[30] Fourth, responsibility for administrative delay identifies whether non-compliance resulted from deliberate evasion by the litigant, failure by the administration to act, procedural error by the court, or a combination. The distinction is crucial here because the record contains repeated permission efforts and administrative non-response, while the Supreme Court separately found that the lower court did not provide the full six-month postponement or notify the superior.

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[28] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*.

[29] Oberto, "Strategies to Deal with Backlogs and Delays in the Court System: European Experiences."

[30] Ahmad Yani et al., "Legal Construction of Cumulative Decisions on Marriage Annulment and Divorce Claims at the Jakarta Religious High Court," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 2 (2025): 655–70.

Fifth, rights impact maps the concrete consequences of each available procedural response. The relevant interests include the state's interest in employee discipline, the litigant's access to merits adjudication, the other spouse's interest in procedural regularity, the consequences of prolonging a legally dysfunctional marriage, and the operation of post-divorce economic protections. The inquiry is reciprocal: it should not assume that either spouse is the sole bearer of rights. Sixth, proportionality tests the proposed judicial response. Suitability asks whether the response advances the administrative purpose; necessity asks whether a less restrictive legally available measure could achieve that purpose; and balancing asks whether the additional institutional benefit is proportionate to the burden imposed on access to adjudication and established family-law interests.

Applied to this trajectory, the framework does not require a categorical conclusion that the Supreme Court should have ignored the procedural defect.[31] The Court had a legitimate basis for insisting that lower courts comply with the prescribed postponement and notification mechanism. Proportional formalism instead identifies the missing justificatory question: why was inadmissibility necessary once the defect was identified? The judgment explains why the Judex Facti erred, but it does not compare inadmissibility with a corrective response capable of completing the administrative procedure, such as remand or renewed postponement and notification. Because the merits had already been examined at two levels and because the record documented repeated efforts to obtain permission, the choice of an outcome-determinative sanction warrants explicit necessity and balance reasoning.

This is the framework's broader value. It neither constitutionalizes every procedural dispute nor converts maqāṣid into a judicial trump card.[32] It provides a disciplined sequence for cases in which administrative legality and substantive family-law adjudication intersect. A court first respects the rule; then identifies its purpose; verifies the underlying harm; allocates responsibility for delay; traces the effects on both parties and the state; and finally explains why the selected procedural consequence is no more restrictive than necessary. That sequence can make judicial disagreement more transparent because it shows precisely where courts diverge over the character of the rule, responsibility for non-compliance, available remedies, or the balance between institutional discipline and adjudicative access.

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[31] Wardatun Nabilah et al., "Between Protection and Permissiveness: A Fiqh Siyasah Reexamination of Marriage Dispensation in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (June 29, 2025): 137–51, https://doi.org/10.31958/JURIS.V24I1.11882.

[32] Muhammad al-Thahir bin Muhammad Ibn `Atsur, *Maqashid Al-Syari`ah Al-Islamiyah* (Qatar: Wizarah al-Awqaf wa al-Syu'un al-Islamiyah, 2004).

Table 2. Six-Stage Proportional Formalism Framework

No	Stage	Core judicial question	Analytical function
1	Legality	What rule governs, whom does it bind, and is the requirement administrative, procedural, jurisdictional, or substantive?	Preserves rule constraint and prevents substantive justice from bypassing positive law.
2	Administrative purpose	What legitimate institutional objective is served by the permission requirement?	Links enforcement to discipline, notice, oversight, or reconciliation rather than assumed bureaucratic interests.
3	Marital harm	What legally relevant marital breakdown or harm has actually been established by evidence?	Prevents abstract welfare claims; anchors substantive justice and maqāṣid analysis in judicially established facts.
4	Responsibility for administrative delay	Did non-compliance arise from evasion by the litigant, administrative non-response, judicial procedural error, or a combination?	Distinguishes culpable non-compliance from delay not attributable to the litigant.
5	Rights impact	How will postponement, remand, warning, disciplinary referral, or inadmissibility affect both parties and the state?	Makes the substantive consequences of procedural choices visible and reciprocal.
6	Proportionality	Is the chosen response suitable, necessary, and balanced in relation to the administrative purpose?	Requires justification for an outcome-determinative sanction and consideration of less restrictive lawful alternatives.

Operationalizing Proportional Formalism: A Normative Model for Judicial Remedies in Civil-Servant Divorce Cases

The theoretical significance of proportional formalism depends not merely on its ability to identify tensions between administrative legality and substantive justice but also on its capacity to guide judicial responses when procedural non-compliance occurs.[33] The preceding analysis demonstrates that administrative permission in civil-servant divorce proceedings operates within an institutional framework involving the litigant, the administrative authority, and the judiciary. Each institution bears distinct legal responsibilities, yet their actions may collectively determine whether a divorce petition receives substantive examination. An operational model must distinguish these responsibilities before evaluating the appropriateness of a procedural sanction. This distinction is particularly important when a litigant has attempted to comply with administrative requirements but the proceedings remain affected by administrative inaction or judicial procedural error.

The litigation trajectory examined in this article illustrates the practical significance of this problem. The Parepare Religious Court and Makassar Religious High Court considered repeated permission applications, the absence of an administrative response, the husband's acceptance of disciplinary consequences, and evidence of marital breakdown sufficient to continue substantive examination. The Supreme Court, however, identified the failure to implement the prescribed six-month postponement and notification procedure as a formal defect that justified declaring the petition inadmissible. These decisions reveal two competing institutional priorities: maintaining procedural uniformity and preserving access to adjudication where substantive grounds for divorce have been established.[34] The proposed model does not presume that either priority should automatically prevail. Instead, it requires judicial remedies to be evaluated according to their legal basis, institutional purpose, and foreseeable consequences.

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[33] Laura Tammenlehto, "Copyright Compensation in the Finnish Sanctioning System – A Remedy for Ungained Benefit or an Unjustified Punishment?," *IIC International Review of Intellectual Property and Competition Law* 53, no. 6 (2022): 883–916, https://doi.org/10.1007/s40319-022-01206-6.

[34] Luigi Lonardo, "Challenging EU Sanctions against Russia: The Role of the Court, Judicial Protection, and Common Foreign and Security Policy," *Cambridge Yearbook of European Legal Studies* 25 (2023): 40–63, https://doi.org/10.1017/cel.2023.11.

A central component of this model is the differentiation between procedural obligations and procedural remedies. Article 3(1) of Government Regulation Number 10 of 1983, as amended by Government Regulation Number 45 of 1990, establishes the civil servant's obligation to obtain permission from the competent official. SEMA Number 5 of 1984 provides judicial guidance concerning the treatment of divorce proceedings where the required permission has not been obtained. The existence of these obligations does not, by itself, resolve every question concerning the appropriate judicial response to incomplete compliance. The legal characterization of the defect, the authority of the court to address it, and the consequences of the selected remedy require separate doctrinal examination. Proportional formalism provides an evaluative structure for that examination without displacing the governing legal instruments.[35] The first operational consideration concerns responsibility for procedural non-compliance.[36]

Three situations must be analytically distinguished. The first involves deliberate avoidance of administrative obligations by a civil servant who makes no genuine attempt to obtain permission. The second concerns administrative non-response despite documented applications and reasonable efforts to secure a decision. The third arises when the court itself fails to implement a required procedural mechanism, including postponement or notification. These situations may produce similar formal deficiencies, but they do not involve identical conduct or institutional responsibility. Treating them as interchangeable risks imposing consequences without adequately identifying the source of the procedural failure.[37] A reasoned judicial assessment should establish the relevant chronology, the actions taken by each institution, and the legal significance of those actions.

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[35] PP No. 10 Tahun 1983 jo. PP No. 45 Tahun 1990, SEMA No. 5 Tahun 1984,

[36] Minos Mouzourakis, "Adjudication of Procedural Safeguards for Vulnerable Asylum Seekers in Greece: Case Law and Systemic Non-Compliance," *International Journal of Refugee Law* 35, no. 2 (November 20, 2023): 213–32, https://doi.org/10.1093/IJRL/EEAD024.

[37] Mouzourakis.

The second consideration involves the availability of legally authorized corrective measures. A distinction must be maintained between identifying a potentially less restrictive remedy and establishing that the remedy is legally available to the court at the relevant procedural stage. Postponement, notification, procedural correction, remand, and inadmissibility may be examined as possible responses, but they cannot be treated as freely interchangeable judicial options. Their availability depends on the applicable procedural rules, the powers of the court concerned, and the nature of the identified defect. In particular, the possibility of remand or renewed procedural examination at cassation requires independent legal justification rather than an assumption that proportionality itself confers remedial authority. The model evaluates alternative remedies within existing legal competence and does not create an independent power to disregard mandatory procedural requirements.[38]The third consideration concerns the relationship between procedural correction and substantive family-law interests. Where marital breakdown has been established through admissible evidence, procedural consequences may affect more than the timing of divorce adjudication. In the present litigation, the lower courts examined prolonged separation, unsuccessful reconciliation, and the deterioration of marital obligations. They also addressed the wife's reconventional claims concerning maintenance and mut'ah. Once the divorce petition was declared inadmissible at cassation, those determinations could no longer produce the operative consequences contemplated by the lower courts. The procedural outcome affected the husband's access to a divorce determination and the wife's potential realization of post-divorce economic protections. An appropriate rights-impact assessment must account for both parties without presuming that substantive adjudication necessarily favors one spouse.

[38] Philipp Hacker et al., "Explainable AI under Contract and Tort Law: Legal Incentives and Technical Challenges," *Artificial Intelligence and Law* 28, no. 4 (2020): 415–39, https://doi.org/10.1007/s10506-020-09260-6.

From the perspective of maqasid al-shariah, this inquiry requires attention to the purposes of family regulation and the prevention of legally relevant harm. Protection of family relationships cannot be reduced to preserving marital status regardless of the circumstances established in court. Equally, the existence of marital conflict does not authorize the abandonment of procedural safeguards. A maqasid-oriented evaluation should examine whether the application of procedural rules advances legitimate family protection, prevents identifiable harm, and preserves the rights and responsibilities recognized by Islamic family law. Protection of property is relevant where procedural outcomes affect maintenance and other economic entitlements, while considerations of dignity and family welfare inform the assessment of prolonged legal uncertainty. These concerns operate as normative criteria within the statutory framework rather than as independent grounds for overriding positive law.The proposed operational model incorporates these considerations through a structured sequence of judicial questions. A court must first identify the governing administrative and procedural requirements and determine the legal character of the defect. It must then establish whether non-compliance is attributable to the litigant, the administrative authority, judicial case management, or a combination of these factors. The next inquiry concerns the legally available responses and their capacity to secure the regulatory objective. Finally, the court should assess the effects of each authorized response on procedural regularity, access to substantive adjudication, and the legally protected interests of the parties. The proportionality assessment is meaningful only after these preliminary questions have been resolved.

Table 3. Proposed Judicial Remedies under the Proportional Formalism Model

Procedural Situation	Institutional Responsibility	Proposed Judicial Assessment	Remedial Consideration
Failure to seek administrative permission	Civil servant	Determine whether the obligation was knowingly avoided and identify the applicable procedural requirements	Enforce mandatory procedure and consider only legally authorized responses
Repeated applications without administrative response	Administrative authority and civil servant, according to the documented chronology	Verify applications, administrative correspondence, elapsed time, and applicable obligations	Examine whether the prescribed procedure permits continued examination after the required safeguards
Failure to implement postponement or notification	Court responsible for procedural management	Identify the omitted procedural step and its legal significance	Assess whether correction is legally available at the relevant judicial stage
Established marital breakdown accompanied by incomplete administrative compliance	Potentially multiple institutions	Distinguish substantive divorce grounds from the administrative defect	Evaluate the rights impact of each legally available procedural response
Procedural defect identified at cassation	Judicial institutions within their respective procedural competence	Determine the applicable cassation powers and the legal consequences of the defect	Compare authorized remedies without presuming an unrestricted power to remand or correct proceedings

Source: Authors' conceptual construction based on the three judicial decisions and the proposed proportional formalism framework.

The table translates proportional formalism into a set of legally bounded inquiries rather than a predetermined hierarchy of remedies. Its purpose is not to establish that administrative delay automatically excuses non-compliance or that judicial procedural error necessarily requires continuation of the divorce proceedings. Instead, it identifies the factual and normative considerations that should be addressed when selecting a procedural response. The model also avoids treating inadmissibility as inherently disproportionate. Such a consequence may be justified where the governing legal framework requires it, provided that the relevant legal basis and the relationship between the defect and the judicial disposition are adequately explained.

Applied to Supreme Court Decision Number 156 K/Ag/2024, the model recognizes the Court's legitimate concern with the failure of the Judex Facti to implement the six-month postponement and notification requirements. The identified defect involved judicial management of the proceedings, although the underlying permission process also remained unresolved. The decisive analytical question is whether the applicable procedural framework required inadmissibility or permitted another legally authorized response capable of addressing the omitted steps.[39] The present study does not establish that remand or procedural correction was necessarily available to the Supreme Court in this case. Rather, it identifies the absence of an explicit comparative justification of remedial consequences as the principal issue for further doctrinal scrutiny. This approach preserves the distinction between criticizing the adequacy of judicial reasoning and asserting that the final disposition was legally incorrect.

The broader contribution of this model lies in connecting institutional accountability with the justification of procedural remedies.[40] Conventional discussions of formalism often focus on whether judges should adhere strictly to legal rules or prioritize substantive outcomes. Proportional formalism reframes the inquiry by distinguishing the authority of the rule from the justification of the consequence attached to its breach. It recognizes that administrative regulation, judicial procedure, and substantive family law serve different but interacting purposes. Its applicability beyond the present case remains a proposition for further examination, particularly in legal systems where administrative authorization requirements intersect with access to judicial remedies. Within Indonesian Islamic family-law adjudication, the model offers a structured basis for evaluating procedural decisions while maintaining fidelity to positive law, evidentiary findings, and the normative objectives of maqasid al-shariah.

Conclusion

This study reconstructs one civil-servant divorce dispute across the Parepare Religious Court, the Makassar Religious High Court, and the Supreme

Court. The evidence does not support treating the three judgments as independent cases or inferring a general judicial tendency from them. It shows a vertical divergence over the legal consequence of an acknowledged administrative obligation. The two lower courts recognized that a PNS was required to pursue permission from the competent official, considered the husband's repeated attempts, the absence of an administrative answer, his acceptance of disciplinary risk, and the proven breakdown of the marriage, and continued to the merits. The Supreme Court focused on the lower court's failure to implement the full six-month postponement and notification mechanism and declared the petition inadmissible.

The doctrinal significance of that divergence lies in the quasi-substantive effect of administrative permission. Permission did not become a statutory ground for divorce, yet its procedural enforcement determined whether judicially established marital breakdown could result in dissolution. The case therefore cannot be captured by a simple opposition between "formal law" and "justice." The Supreme Court's insistence on procedural uniformity serves legitimate values of legality and civil-service discipline, while the lower courts' approach reflects the distinct function of substantive divorce grounds. The unresolved issue is the proportionality of the consequence attached to incomplete administrative compliance.

Proportional formalism addresses that issue through six cumulative stages: legality, administrative purpose, marital harm, responsibility for administrative delay, rights impact, and proportionality of judicial response. The framework is an original analytical synthesis rather than an established doctrine. It adapts proportionality's structured justification while retaining formalism's respect for rule constraint and incorporating the evidence-sensitive concerns of access-to-justice, progressive-law, and maqāṣid-oriented scholarship. Its central proposition is modest: a mandatory administrative rule should be enforced, but when its breach is used to block substantive adjudication, the court should explain why that specific consequence is suitable, necessary, and balanced in light of the rule's purpose, the source of non-compliance, and the interests affected. The study further operationalizes proportional formalism through a legally bounded remedial model that distinguishes institutional responsibility, procedural defects, authorized corrective measures, and the rights implications of judicial responses.

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[39] Virginia Passalacqua and Francesco Costamagna, "The Law and Facts of the Preliminary Reference Procedure: A Critical Assessment of the EU Court of Justice's Source of Knowledge," *European Law Open* 2, no. 2 (2023): 322–44, https://doi.org/10.1017/elo.2023.26.

[40] Tom R. Tyler, "Legitimacy-Based Policing," *Criminology and Public Policy* 24, no. 2 (May 1, 2025): 165–87, https://doi.org/10.1111/1745-9133.12695;WGROUP:STRING:PUBLICATION.

Future research should test this framework against a systematically selected body of civil-servant divorce decisions across jurisdictions and time periods. Such research could determine whether the divergence observed here represents an exceptional procedural trajectory or a recurring pattern, and could examine whether different judicial remedies postponement, warning, remand, disciplinary referral, or inadmissibility produce consistent outcomes. The present contribution is intentionally narrower, it provides a case-grounded account of how an administrative requirement can become outcome-determinative and a structured method for evaluating that transformation without sacrificing either legality or substantive judicial responsibility.

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