



FROM EVALUATIVE RUBRIC TO PROCEDURAL STANDARD: RECONSTRUCTING MAQĀSIDĪ REASONING IN MARRIAGE DISPENSATION CASES IN INDONESIA'S RELIGIOUS COURTS

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Abstract

Law No. 16 of 2019 raised the minimum marriage age to nineteen for both men and women, yet child marriage has not declined. Petitions for marriage dispensation have instead surged, and nearly all are granted. This article explains why judicial reasoning grounded in sharia argumentation nonetheless leads to approval and proposes a remedy. The study is normative-doctrinal, supported by socio-legal materials, and employs Yūsuf al-Qarāḍāwī's *fiqh al-muwāzanāt* as its principal framework with Jasser Auda's systems approach as a supporting one. Three findings emerge. First, judges establish an urgent reason through a three-stage pattern in which the *maxim dar' al-mafāsid* serves as the substantive resolver, so that premarital pregnancy almost automatically satisfies the urgency requirement. Second, the defeat of the child's interests stems not from judicial negligence but from an asymmetry of time horizons: the harm averted is immediate and certain, whereas the harm generated is deferred and probabilistic, so that a methodologically valid balancing still yields a ruling detrimental to the child. Third, correcting this requires inverting the function of *maqāsid* from a post-decision evaluative rubric into a pre-decision procedural standard. The article constructs such a standard as four graded stages of examination with verifiable indicators, offered as material for refining Supreme Court Regulation No. 5 of 2019 and as a reference for pre-marital counselling in Religious Affairs Offices.

Keywords *Marriage Dispensation, Fiqh Al-Muwāzanāt, Maqāsid Al-Shari'ah, Judicial Reasoning, Child Protection*

INTRODUCTION

Indonesia ranks among the ten countries with the highest incidence of child marriage in the world and stands second in Southeast Asia (Hartarto et al., 2023). That figure is not merely a demographic statistic. It marks out a terrain where Islamic family law, state law, and social norms meet without ever quite reconciling. The state answered this situation with a decisive legislative move: Law No. 16 of 2019 raised the minimum age of marriage to nineteen for men and women alike, ending the gendered age gap that had stood for four and a half decades in Law No. 1 of 1974. Some months later the Supreme Court issued Regulation No. 5 of 2019 on Guidelines for Adjudicating Petitions for Marriage Dispensation, which installed the best interests of the child as the governing principle of examination.

The result ran against the purpose of its making. At the Ambarawa Religious Court, dispensation petitions rose by 337 percent, with the monthly average climbing from 7.44 to 25.07 cases (Nurfieni, 2023). A review of decisions from ten religious courts across West Java between 2019 and 2021 found that 99 percent of petitions were granted, with anxiety over breaches of moral propriety the ground most frequently pleaded (Kania et al., 2025). Within the jurisdiction of the Bandung Religious High Court from 2020 to 2022, the grant rate stood at 90 percent (Aman et al., 2025). The same pattern surfaces in North

Sulawesi (Mursyid et al., 2022), in Sidenreng Rappang (Masyhud et al., 2025), and in Malang Regency (Nurcholis et al., 2025). The Covid-19 pandemic deepened the problem, most visibly in West Nusa Tenggara, where child marriage climbed as schools closed (Rahiem, 2021).

Raising the age threshold, then, did not close the door to child marriage. It moved that door from the religious affairs office to the courtroom. A mechanism designed as a safety valve, dispensation reserved for circumstances that are genuinely urgent, has turned into a formal channel that stands open almost without exception. For the marriage registrar and the religious extension officer working upstream, the shift is anything but abstract: prevention loses its force precisely because the downstream stage supplies a legalisation that is both lawful and authoritative.

Recent scholarship has recorded this state of affairs with some care, though it stops at points that can be identified. A first layer consists of studies on regulatory effectiveness. Nurfieni, Mursyid, and Kania with their colleagues document the surge in cases together with its drivers, from premarital pregnancy and economic pressure to low educational attainment and family anxiety over reputation (Nurfieni, 2023; Mursyid et al., 2022; Kania et al., 2025). The limitation of this cluster is uniform: the analysis halts at sociological diagnosis. It explains well enough why communities file petitions, but not why judges grant them within the very framework of Islamic legal reasoning that judges themselves deploy.

A second layer examines judicial reasoning directly. Kurniawan and colleagues study a single decision of the Muara Bulian Religious Court and find an expansive reading of the phrase compelling reason together with an excessive concentration on *ḥifẓ al-nasl*, the preservation of lineage (Kurniawan et al., 2025). Apriliansyah and colleagues, working at the Takengon Sharia Court, map a three-stage pattern of reasoning and identify the maxim *dar' al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ*, that averting harm takes precedence over securing benefit, as the substantive resolver, naming the practice reactive legal pluralism (Apriliansyah et al., 2026). Rohmawati reads the same material through a *maqāṣid* and *mubādalah* lens and highlights judicial bias in gauging the maturity of girls (Rohmawati, 2025). All three share one limitation. Each rests on a single court or even a single decision, and each positions *maqāṣid* as an instrument for appraising judicial reasoning after the decision has issued. None converts its findings into a standard of reasoning that a judge could use before deciding.

A third layer moves further onto conceptual ground. Nurcholis and colleagues formulate *maqāṣid al-sharī'ah fī ḥifẓ al-awlād* as a fresh derivation of *maqāṣid* theory, drawing on interviews with five judges at the Religious Court of Malang Regency (Nurcholis et al., 2025). Rifqi and colleagues expose the misuse of the right of *ijbār* and the structural discrimination that operates at village level (Rifqi et al., 2025). Saepullah and colleagues offer a socio-legal evaluation of post-reform child marriage policy within a *maqāṣid* frame (Saepullah & Sastra, 2025). This cluster is conceptually strong, yet it too halts as normative construction. Its formulations have not been tested as operational instruments carrying indicators that different judges could apply consistently across cases.

On comparative ground, Engelcke, Krell, and Yassari map the practice of underage marriage across a range of Muslim jurisdictions and show something consequential: the flexibility of Islamic law is in fact preserved when a state adopts a minimum age while retaining the concept of physical and mental maturity (Engelcke et al., 2025). Broad as it is across countries, that study does not descend to the specific machinery of dispensation in Indonesia's religious courts.

One gap emerges from this mapping and remains unfilled. The entire literature treats *maqāṣid al-sharī'ah* as a post-decision evaluative rubric, a device for judging whether judicial reasoning has aligned with the purposes of the sharia. No one has inverted its position into an operational pre-decision standard of reasoning, a set of graded indicators a judge must work through before pronouncing a reason urgent. The consequence of that absence is practical and measurable. Because no such standard exists, the preservation of lineage on a short horizon, which saves the lineage of the child in the womb and shields the family from disgrace, systematically defeats the preservation of life, intellect, and property on a long horizon, whose damage surfaces only years afterwards. It is the missing mechanism for weighing across time that explains why grant rates hold between ninety and ninety-nine percent even where judges have counselled the parties at length on the risks of child marriage.

From that gap the article poses three questions. How do judges of the religious courts reason their way to a finding of compelling reason in dispensation cases after Law No. 16 of 2019, and why does that pattern tend to end in approval? Why does reasoning grounded in the short-horizon preservation of lineage systematically outweigh the other purposes of the sharia, which operate on a long horizon? And how might a pre-decision standard of reasoning built on cross-temporal balancing be constructed so that the principle of the best interests of the child operates substantively rather than as procedural formality?

These three questions are directed at three matching objectives: to map the pattern of judicial reasoning, to explain the mechanism by which short-horizon purposes come to outweigh long-horizon ones, and to construct a pre-decision standard of examination as an operational instrument.

Answering them requires an analytical apparatus, and this article rests on one principal framework and one supporting framework. The principal framework is *fiqh al-muwāzanāt* as formulated by Yūsuf al-Qaradāwī; the supporting framework is Jasser Auda's systems approach. The choice is not a matter of taste. It follows the shape of the problem to be solved.

Fiqh al-muwāzanāt, the jurisprudence of weighing, is the branch of reasoning that governs how a *mujtahid* balances when several benefits or harms converge and not all of them can be secured or avoided at once. Its roots are classical. Al-'Izz ibn 'Abd al-Salām, in *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, already set out detailed rules for weighing benefit against harm, including cases where the two are mixed within a single act (Ibn 'Abd al-Salām, 1999). Al-Shāṭibī then built the stratification of *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt* that became the standard grid for assessing the level of need at stake (al-Shāṭibī, n.d.). Ibn 'Ashūr extended it by distinguishing the general purposes of the sharia from the

particular purposes of each field, the family as an institution among them (Ibn ‘Āshūr, 2006).

Al-Qaraḍāwī takes that inheritance and organises it into a sharper instrument of weighing. He sorts balancing into three kinds: between competing benefits, between competing harms, and between a benefit and a harm that collide (al-Qaraḍāwī, 1996). What matters most for this article is the set of criteria he uses to rank them. Alongside the level of need, whether *ḍarūrī*, *ḥājī*, or *taḥsīnī*, and the breadth of reach, whether a matter touches the public or an individual, al-Qaraḍāwī insists on two further criteria that practice most often overlooks.

The first is certainty. A benefit or harm that is *qaṭ‘ī*, whose existence is established, takes precedence over one that is *ẓannī*, whose existence is no more than surmise or possibility (al-Qaraḍāwī, 1996). The second is time. Al-Qaraḍāwī distinguishes *maṣlaḥah ‘ājilah*, whose benefit arrives at once, from *maṣlaḥah ājilah*, whose benefit is deferred, and applies the same distinction on the side of harm (al-Qaraḍāwī, 1996). He is explicit that immediacy is no ground for precedence. A benefit that is deferred but large and enduring outranks one that is immediate but small and fleeting. The principle runs parallel to *fiqh al-awlawiyyāt*, the jurisprudence of priorities, which requires ordering by weight rather than by sequence of appearance (al-Qaraḍāwī, 2006).

Here lies the explanatory power of this framework. A dispensation case is a matter of weighing *par excellence*. The judge is not choosing between right and wrong but between two harms that are equally real. Yet those two harms are unequal in exactly the two respects that al-Qaraḍāwī singles out: one is immediate and appears certain, the other deferred and merely probable. The *muwāzanāt* framework supplies the technical vocabulary to name that imbalance and, at the same time, the normative ground on which to correct it, since al-Qaraḍāwī himself refuses immediacy as a criterion of victory.

Why does this framework still need support? Because *fiqh al-muwāzanāt* operates at the level of an individual mujtahid's reasoning. It explains how a person ought to weigh, but not how that weighing becomes institutionalised into a procedure that binds, that can be reviewed, and that different judges can repeat in similar cases. Marriage dispensation, however, is institutional through and through: it engages the religious court, the religious affairs office, the education service, health services, and the family, each working by a logic of its own.

Jasser Auda's systems approach fills that space. Auda treats Islamic law not as a self-contained collection of rules but as an open system with six features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness (Auda, 2008). Three of these do direct work here. Multidimensionality forbids the reduction of a problem to a single dimension; in our context it bars a dispensation case from being compressed into a question of rescuing lineage. Purposefulness makes the attainment of purposes the measure of a valid *ijtihād* rather than mere fidelity to procedural form. Wholeness demands a complete reading of every subsystem involved, so that failure is not laid at the door of the judge alone (Auda, 2008).

Auda himself holds that the validity of an *ijtihād* must be measured by the extent to which it realises the *maqāṣid* (Auda, 2008). Taken seriously, that claim carries a consequence rarely drawn out: if the attainment of purposes is the measure of validity, then assessing that attainment cannot wait until the decision has issued. It must form part of the act of deciding. This is where the inversion of the function of *maqāṣid* proposed in this article finds its theoretical footing.

The division of labour between the two frameworks can be stated briefly. Al-Qaraḍāwī supplies the weighing engine: what is weighed, by which criteria, and why immediacy must not be allowed to win. Auda supplies the architecture: how that engine is fitted into judicial procedure so that it runs repeatedly and can be inspected. Without al-Qaraḍāwī, Auda offers form without content. Without Auda, al-Qaraḍāwī offers methodological counsel that depends on the piety of an individual judge's reasoning.

What this article does not do should be stated as plainly. It does not reject al-Shāṭibī's stratification or Ibn 'Āshūr's framework; both remain in use as normative references for establishing which level of need is under threat. What it rejects is the assumption that stratification alone suffices. Stratification is static and knows nothing of time, and so it cannot explain why two benefits standing at the same *ḍarūrī* level may end with one of them thoroughly defeated. The explanation for that defeat lies precisely in the criteria of time and certainty that al-Qaraḍāwī insists upon, and that is why the principal framework is placed there.

The novelty of this article lies in inverting the function of *maqāṣid* from evaluative rubric to procedural instrument. Rather than appraising a decision already issued, the article designs the sequence of examination a judge must pass through before deciding, complete with indicators that can be verified. Its theoretical contribution is the introduction of a cross-temporal dimension into *maqāṣid* balancing in dispensation cases. The existing literature weighs the purposes of the sharia as though all of them operated on the same horizon, when it is precisely the imbalance of horizons that explains the dominance of the preservation of lineage. Its practical contribution is an instrument the Supreme Court could adopt in refining Regulation No. 5 of 2019, and that marriage registrars and extension officers could use as a reference for pre-marital guidance at the level of the religious affairs office.

METHODS

This study employs a normative-doctrinal approach supported by socio-legal materials. This design reflects the research questions, which examine judicial reasoning, construct a normative instrument, and explain the gap between legal norms and judicial practice. Three approaches are employed. The statutory approach examines Law No. 16 of 2019, Law No. 1 of 1974, Law No. 35 of 2014 on Child Protection, the Compilation of Islamic Law, and Supreme Court Regulation No. 5 of 2019, particularly the concept of compelling reason and related adjudicative principles. The conceptual approach analyses *fiqh al-muwāzanāt* and systems theory and translates their principles into assessable indicators. The case approach synthesises published studies of judicial decisions from

several Indonesian religious courts. Primary materials comprise the relevant legislation and key works of Islamic legal theory, including al-‘Izz ibn ‘Abd al-Salām’s *Qawā‘id al-Aḥkām*, al-Shāṭibī’s *al-Muwāfaqāt*, Ibn ‘Āshūr’s *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, al-Qaraḍāwī’s writings on priorities and *maqāṣid*, and Jasser Auda’s systems approach. Secondary materials include indexed studies on marriage dispensation, judicial reasoning, and child-marriage consequences. Socio-legal evidence on long-term consequences is drawn from public health and economic studies using large-scale datasets, particularly the Indonesia Family Life Survey and province-level surveys. The analysis proceeds in three stages. First, judicial reasoning is reconstructed by distinguishing factors that are substantively weighed from those merely mentioned. Second, al-Qaraḍāwī’s criteria of need, scope, certainty, and time are applied to identify reasoning imbalances. Third, the findings are translated into a procedural instrument structured through Auda’s systems approach and tested against recurring case patterns, particularly cases involving premarital pregnancy. The study acknowledges that reliance on published decision studies produces synthesis rather than new empirical findings.

RESULT

The Anatomy of Compelling Reason: A Three-Stage Pattern and an Expanding Interpretation

Law No. 16 of 2019 does not define what counts as a very compelling reason. It states only that a departure from the age threshold may be submitted to the court for dispensation on very compelling grounds, accompanied by sufficient supporting evidence. Supreme Court Regulation No. 5 of 2019 supplements this with adjudicative principles, namely the best interests of the child, the child’s right to life and development, respect for the child’s own views, gender equality, justice, benefit, and legal certainty, yet it too establishes no measure of urgency. That empty space is filled by judges, and the manner of filling it determines everything.

How, in practice, do judges fill it? A cross-reading of decision studies reveals a pattern whose uniformity is striking. Apriliansyah and colleagues, at the Takengon Sharia Court, map judicial reasoning into three graded stages: a formal-procedural stage, a stage verifying social facts, and a stage of substantive justification grounded in Islamic law (Apriliansyah et al., 2026). At the first stage, state law functions as an administrative filter and a source of procedural legitimacy. At the second, the judge examines the real circumstances of the parties. At the third, the *maxim dar’ al-mafāsid muqaddamun ‘alā jalb al-maṣāliḥ* is brought in as the substantive resolver.

The same pattern, differently named, appears elsewhere. At the Muara Bulian Religious Court, Kurniawan and colleagues find an expanding interpretation of the phrase compelling reason based on the fact that premarital sexual relations have already occurred, together with a narrow concentration on the preservation of lineage in place of a full assessment of the child’s best interests (Kurniawan et al., 2025). At the Poso Religious Court, judges set *maqāṣid al-sharī‘ah* alongside legislation arranged by rank and year of enactment (Haris et al., 2024). At the Religious Court of Malang Regency, judges bring the

age of the prospective spouses, economic sufficiency, the availability of family support, and protection of the child in the womb into their considerations (Nurcholis et al., 2025).

What deserves scrutiny in this three-stage pattern is not its presence but its ordering. State law is placed at the front, yet only as a point of entry; it screens the completeness of the file rather than weighing substance. Islamic law is placed at the rear, and it is there that the decision is actually made. The consequence is that every principle in Regulation No. 5 of 2019 operates at the wrong stage. The best interests of the child are invoked at the procedural stage and then never genuinely tested at the substantive stage where the outcome is settled. Munawarah finds exactly this: the application of the Regulation's principles is inconsistent, judicial reasoning is frequently shaped by a *maṣlaḥah*-based approach, particularly in cases of premarital pregnancy, while the Child Protection Law has yet to be used consistently as a ground of consideration (Munawarah, 2026).

The gravest consequence of this ordering appears when premarital pregnancy enters as a fact of the case. Within that reasoning frame, pregnancy is not merely one circumstance among others; it functions as a trigger that activates the maxim of averting harm almost automatically. Once the maxim is active, the outcome is nearly settled. To refuse the petition means allowing a child to be born outside a valid marriage, with all that follows for lineage, birth registration, and the family's social standing. To grant it means preventing all of that. Set out in those terms, refusal appears the religiously harder choice to justify than approval.

The data reinforce this reading. Kania and colleagues find that anxiety over breaches of moral propriety was the ground in 87 percent of cases in West Java, while premarital pregnancy accounted for 8 percent (Kania et al., 2025). The first figure matters more than the second. It shows that the maxim of averting harm is activated not only by a pregnancy that has occurred but also by anxiety about the possibility of a forbidden act. Harm that does not yet exist, in other words, is already treated as a compelling reason. This is the furthest reach of the expansion of urgency, and it is here, as the following subsection will show, that al-Qaraḍāwī's criterion of certainty is violated in reverse.

There is one further layer that is seldom taken into account when this pattern is explained, and it originates in classical *fiqh* itself. The phrase compelling reason floats free not merely because the legislature was careless in defining it, but also because judges find no textual brake within the very corpus that serves as their principal reference.

Classical *fiqh* knows no minimum age of marriage in the sense of a number. What it knows is *bulūgh*, biological maturity marked by particular signs, and *rushd*, maturity in the management of affairs. The imams of the schools differ on both, but the difference turns on signs and approximate ages, not on the setting of a minimum threshold for the validity of the contract. Beyond that, most schools recognise the right of *ijbār* vested in the *wali mujbir* to give an unmarried minor in marriage, subject to varying conditions and restrictions; the Hanafi school allows wider scope for a woman who has reached puberty to contract her own marriage, while the Shafi'i school maintains the guardian's authority more firmly (al-Zuhaylī, 1985). Sharp as they are at the technical level, these differences yield not a single age threshold a judge could use as a brake.

The effects compound. When state law fixes the number nineteen and classical fiqh offers no comparable figure, that number stands alone, unsupported by the tradition that carries the greatest authority in the eyes of judges and communities alike. Engelcke and colleagues capture the phenomenon on a cross-country scale: many Muslim jurisdictions set a minimum age while retaining the concept of physical and mental maturity, so that provisions grounded in Islamic law and modern legal concepts run side by side in tension, and the flexibility of Islamic law is preserved (Engelcke et al., 2025). Indonesia sits squarely within that tension.

It is here that the position of the Compilation of Islamic Law becomes decisive and problematic at once. The Compilation, enforced through Presidential Instruction No. 1 of 1991, occupies an ambiguous place in the hierarchy of Indonesian legislation, and that ambiguity weakens its binding force (Muslih et al., 2025). It also still records a textualist approach to fiqh, leaving it less responsive to demands of justice and equality (Angkupi et al., 2025). When an instrument of ambiguous standing is set against a maxim of fiqh that carries full authority, it is no surprise that the maxim prevails at the third stage of reasoning.

In my view this reading strengthens rather than weakens the proposal advanced here. Because the absence of a textual brake originates within the tradition, the replacement brake must also be sought from within the tradition. Adding references to international conventions will not alter the third stage, for that stage is designed by judges precisely as a space of sharia reasoning. What can alter it is only a rule of weighing drawn from the same corpus and carrying equal authority.

It bears emphasis that this finding is no accusation against the quality of judges. Quite the reverse. Apriliansyah and colleagues record a paradox that is genuinely affecting: the court delivers comprehensive counsel on the risks of child marriage, on interrupted schooling, on mental health, on the potential for domestic violence, and yet that counsel is ultimately defeated by the need to resolve a pressing social crisis (Apriliansyah et al., 2026). The judge knows. The judge says what he knows. And then the judge grants. Lahilote and colleagues call this the judge's dilemma, and the name is apt (Lahilote et al., 2022).

I hold that the failure here is structural rather than personal, and that judgement rests on the balancing framework this article employs. In the language of fiqh al-muwāzanāt, what occurs is not that the judge fails to weigh, but that the judge weighs on a scale with graduations on only one side. The harm averted has a name, a shape, and immediacy. The harm generated has none of the three in the courtroom, though it has all of them in real life some years later. So long as that scale goes unrepaired, multiplying judicial training or tightening administrative requirements will not change outcomes, because neither touches where the problem lies.

The Asymmetry of Time Horizons: Why Maṣlaḥah ‘Ājilah Always Wins

The preceding subsection showed that judges weigh on an unbalanced scale. But why is that imbalance so consistent across different courts, different judges, and different cultural regions? The answer lies not in a faulty application of the maxim but in a structural

feature inherent to this class of case: the two sides being weighed stand on unequal horizons of time.

Consider the matter through al-Qaraḍāwī's criteria. On the side that pushes towards approval, the harm to be averted holds three properties at once. It is *ʿājilah*, arriving soon, within months or even weeks where a pregnancy is already underway. It is *qaṭʿiyyah*, high in certainty, since the birth of a child outside a marital bond is the necessary consequence of refusal. And it is concrete and identifiable: one infant, one certificate, one family, all present in the courtroom in human form that the judge can see.

On the side that pushes towards refusal, the harm to be avoided is the reverse on all three counts. It is *ājilah*, deferred, since school dropout becomes visible only in the following year, pregnancy complications some months later, divorce some years later, and the effects on the child born only a decade on. It appears *ẓanniyyah*, since there is no certainty that this particular family will suffer it. And it is abstract: the person harmed is the same person now standing before the court, but in a version of herself several years hence, one who is not present in the courtroom and cannot speak.

Set against each other in this way, the victory of the first side is all but unavoidable. What must be underlined is that this victory occurs through the application of a maxim that is methodologically sound. A judge who gives precedence to certain harm over surmised harm is applying the criterion of certainty exactly as it is meant to be applied. Here lies the real difficulty: procedurally correct balancing can produce a decision that is wrong in terms of purposes, if one side of the scale has never been measured with an adequate instrument.

It is precisely at this point that empirical evidence changes the situation. The assumption that long-term harm is *ẓannī* can no longer be sustained once data are available. On the educational dimension, Fitria and colleagues, analysing 4,360 respondents in rural Indonesia, find an early-marriage rate averaging 11.9 percent and a very strong association between educational level and the risk of early marriage; adolescent girls with only primary schooling are several times more likely to marry early than those who reach higher education (Fitria et al., 2024). On the health dimension, Simbolon and colleagues, using Indonesia Family Life Survey data, find a stunting prevalence of 42.4 percent among under-fives born to mothers who married in adolescence, against 35 percent among those born to mothers who married at an adequate age; adolescent pregnancy raises stunting risk significantly (Simbolon et al., 2021).

On the dimension least often mentioned, intergenerational effect, Hartarto and colleagues analyse the cognitive ability of 4,542 children aged seven to fourteen and find that the mother's age at marriage has a positive and significant effect on her child's cognitive attainment. Children of mothers who married earlier tend to score lower, and the effect is statistically detectable specifically among girls (Hartarto et al., 2023). This last finding matters because it inverts the logic of rescuing lineage. A marriage granted in order to save one child in the womb turns out to carry measurable consequences for the capacities of that same child as she grows.

Qualitative documentation reinforces the series. Latifiani records that women who marry as children are prone to divorce, experience psychological instability in managing a

household, are cut off from formal education, and are unprepared in terms of reproductive health (Latifiani, 2019). Aman and colleagues compile a similar catalogue from the judicial side: rising numbers of school dropouts, elevated maternal mortality risk, stunting risk, economic strain, and increasing divorce rates (Aman et al., 2025). Meanwhile Wibowo and colleagues, surveying 1,004 respondents in Bone, South Sulawesi, find that roughly a quarter of both parents and adolescents still agree that a girl is ready to marry once she begins menstruating (Wibowo et al., 2020). It is that social norm which, in the language of Kok and colleagues, makes child marriage appear a fitting practice for avoiding premarital relations or pregnancy (Kok et al., 2023).

What do these findings mean for the act of weighing? They mean that long-term harm has changed category. It is no longer a groundless surmise but a measured risk of known magnitude. Within al-Qaraḍāwī's framework, something whose probability is known and whose magnitude is documented is no longer equivalent to *ẓann* in the sense of weak conjecture. It has shifted towards statistical certainty, even though it never reaches certainty in the individual case.

One serious methodological objection may be raised against this reading, and it deserves to be met in the open. Does gauging benefit by statistical data not drag *fiqh* into a utilitarian calculus of advantage, reducing a sharia assessment to a ledger of profit and loss? The objection cannot be brushed aside, for it goes to the validity of the entire design proposed here.

The answer rests on a distinction long settled in *uṣūl al-fiqh*. The benefit that forms the object of weighing is not every advantage a person may feel, but the benefit encompassed within the purposes of the sharia, that is *maṣlaḥah mu'tabarāh*, and not *maṣlaḥah mulghāh*, which the texts reject (al-Ghazālī, 1993). The preservation of life, intellect, lineage, and property are *maṣlaḥah mu'tabarāh* by consensus; they do not become utilitarian merely because their magnitude can now be measured. Statistical data in this framework do not determine what is valuable, a determination that remains the sharia's, but how gravely the value the sharia has established is threatened in a concrete case.

That distinction is in fact nothing new in the practice of the religious courts. When a judge accepts medical evidence to establish a pregnancy, the judge is already using data to gauge a threat to a benefit the sharia has fixed. What this article proposes is simply that the other side of the scale be treated in the same way. Refusing measurement on the side of deferred harm while accepting it on the side of immediate harm is not the more sharia-minded position; it is the inconsistent one, and it is that inconsistency which quietly hands victory to one side.

It should be added that al-Qaraḍāwī himself makes knowledge of reality a precondition of correct weighing. To weigh without recognising the magnitudes being weighed is not caution but incomplete balancing (al-Qaraḍāwī, 1996). The use of empirical evidence here is therefore no departure from *uṣūlī* method but the fulfilment of one of its conditions.

I regard this as the site of the most consequential error in current practice, and the judgement rests directly on al-Qaraḍāwī's own criteria. He insists that immediacy is no ground for precedence, and that a benefit that is deferred but large and enduring outranks one that is immediate but small and fleeting (al-Qaraḍāwī, 1996). Applied honestly to dispensation cases, that principle yields a conclusion contrary to practice: the harm consisting in damage to the life, intellect, and property of a girl across her lifetime, together with its consequences for the next generation, weighs more heavily than the harm of a social stigma lasting some months, however much more pressing that stigma feels on the day of the hearing.

What makes practice deviate from this principle is not a rejection of it but the absence of any means to carry it out. Immediacy wins not because judges consider it superior, but because immediacy alone arrives in the courtroom in a form that can be weighed. The problem, in the end, migrates from the domain of conviction to the domain of instruments, and it is an instrument that the following subsection sets out to design.

Constructing a Pre-Decision Standard of Reasoning: Graded Indicators for Cross-Temporal Balancing

If the problem lies in the instrument, what would an adequate instrument look like? The question demands a shift in how maqāṣid operates. Until now maqāṣid has been brought in after a decision issues, to assess whether judicial reasoning aligned with the purposes of the sharia. Auda himself supplies the ground for inverting that position when he holds that the validity of an ijtihad is measured by the extent to which it realises the maqāṣid (Auda, 2008). If the attainment of purposes is the measure of validity, then measuring it cannot wait for the decision to be finished. It must form part of the act of deciding.

What follows is a four-stage standard of examination to be completed before a judge may pronounce a reason compelling. The design converts al-Qaraḍāwī's criteria into procedural steps, with Auda's feature of purposefulness ordering the sequence and his feature of openness guaranteeing that the indicators can be updated as new data become available (Auda, 2008).

The first stage is verification of the certainty of the harm to be averted. Here the judge must draw a firm line between harm that has already occurred and harm that is merely feared. A pregnancy established by medical evidence belongs to the first category; a parent's anxiety about the possibility of a forbidden act belongs to the second. This separation is no formality. It closes the loosest channel in current practice, the acceptance of anxiety as a compelling reason, when 87 percent of cases in West Java rest on precisely such a ground (Kania et al., 2025). The normative consequence is firm: anxiety, however sincere, does not meet the threshold of urgency, since al-Qaraḍāwī's criterion gives precedence to harm that is qatʿī over harm that is ḡannī, and anxiety falls on the side that is not preferred.

The second stage is measurement of the deferred harm. This is the stage that has been missing, and its absence is what leaves the scale graduated on one side only. Here the judge

must examine and record four indicators, all of them verifiable from documents or from third-party statements rather than from the petitioner's own assertions. The first concerns education: the level the child is currently attending, a statement from the school on the possibility of continuing after marriage, and a concrete plan if she is to continue. The second concerns reproductive health: the girl's biological age, a statement from health personnel on the level of pregnancy risk at that age, and the availability of support services. The third concerns economic independence: the source of income of the prospective spouses, not the income of the parents who support them. The fourth concerns safety: any history of violence in either family and the outcome of a psychological assessment of the child's readiness, which has been mandated but is rarely carried out in practice (Himsyah et al., 2026).

The third stage is explicit balancing with equalisation of horizons. Once both sides have been measured, the judge must set them out side by side in the reasoning of the decision, together with the weight assigned to each and the grounds for that assignment. What is decisive at this stage is the reversal of the burden of argument. Because al-Qaraḍāwī insists that immediacy is no ground for precedence (al-Qaraḍāwī, 1996), approval may no longer rest on the sufficiency of the claim that the harm averted is more immediate. A judge who grants must explain why that immediate harm is also the greater one, not merely the nearer one. A judge who refuses, conversely, need only show that the deferred harm weighs more heavily on the second-stage indicators. This reversal changes the situation fundamentally, since until now it is refusal that has borne the heavier burden of justification.

The fourth stage is the examination of alternatives, or the test of necessity. The judge must examine whether marriage is truly the only route to preventing the harm verified at the first stage. This question is rarely asked, though the answer is often negative. The clarity of a child's lineage, for instance, does not depend entirely on a marriage solemnised before birth; routes of registration and judicial determination remain available afterwards. Social protection for a young mother can be pursued through family support and state services. Where another route exists that prevents the harm at lower cost, marriage at a child's age loses its character of necessity, and with it the ground of its urgency.

Table 1. The four-stage pre-decision standard of examination

Stage		Question to be answered	Al-Qaraḍāwī criterion at work		Consequence if unmet
Verification of certainty	of	Has the harm already occurred, or is it only feared?	Qaṭ'ī takes precedence over ḡannī		The petition fails the threshold of urgency
Measurement of deferred harm	of	How large are the educational, health, economic, and safety risks?	Magnitude and durability of harm	and of	The scale is unbalanced; the weighing is void

Stage	Question to be answered	Al-Qaraḍāwī criterion at work	Consequence if unmet
Explicit balancing	Why is the prevailing side greater, and not merely nearer?	Immediacy is no ground for priority	The reasoning is defective in argument
Test of necessity	Is there another route with lesser cost?	Ḍarūrah is gauged by the absence of alternatives	The character of urgency falls away

So that the standard does not remain a design on paper, it needs testing against the cases that arise most often. Imagine a petition brought on behalf of a sixteen-year-old girl by her parents, who fear that her relationship with her prospective husband will progress to a forbidden act, while the girl is still in senior secondary school and the prospective husband works casually. At the first stage the petition already fails: what is presented is anxiety, not harm that has occurred. In current practice it is cases of precisely this kind that dominate the grant rate.

Alter a single variable, a pregnancy verified medically, and the case now passes the first stage. At the second stage, however, three of the four indicators register high risk: the girl is still in school and the school offers no assurance that her studies will continue, sixteen falls within an elevated range of reproductive risk, and the prospective husband has no steady income. At the third stage, a judge minded to grant must explain why a social stigma lasting some months outweighs those three lifelong risks, an explanation not easily composed. At the fourth stage, the judge must examine whether clarity of status for the child to be born can genuinely be achieved only through a marriage solemnised now.

The illustration shows that the standard works not by prohibiting but by compelling reasons to be given. Any change in outcome, where it occurs, is born of the obligation to write down considerations that until now could be left unwritten.

It should be stressed that this standard does not close the door to dispensation. It restores dispensation to its original purpose as a narrow exception. A case involving a verified pregnancy, prospective spouses approaching nineteen, adequate economic independence, and no available alternative will still pass all four stages. What will not pass is the class of case that has hitherto been granted most often, namely the case resting on anxiety alone.

I am aware of the objections that may arise, and they warrant answers rather than avoidance. The first concerns workload: an examination in four stages with that many indicators will slow the disposal of cases. The answer is that speed is not a freestanding principle in Regulation No. 5 of 2019, and the principle of the best interests of the child inscribed there loses its meaning if its examination must yield to considerations of time. The second concerns the availability of data: not every region has health services or psychologists from whom statements can be obtained. The answer is that the absence of data on a given indicator must be recorded as an absence, not treated as an absence of risk;

and it is here that Auda's feature of openness does its work, since the standard is designed to be updated as institutional capacity strengthens. The third concerns authority: does this not constrain judicial independence? The answer is that what is constrained is not the freedom to assess but the freedom not to assess. The judge remains free to determine weight; what is no longer permitted is to leave one side of the scale empty and unmeasured.

The principal contribution of this article, at this point, is not the discovery of a new purpose of the sharia but the relocation of where those purposes do their work, from an appraisal sheet opened after the decision to a checklist completed before it.

Implications for Refining Supreme Court Regulation No. 5 of 2019 and Pre-Marital Guidance at the Religious Affairs Office

The standard designed in the preceding subsection will not work if it is left as an academic proposal. It demands two channels of institutionalisation running in parallel, and here Auda's feature of wholeness finds its use. Auda requires a complete reading of every subsystem involved, so that failure is not laid at a single node (Auda, 2008). Read in that way, marriage dispensation is not a court problem. It is a system problem engaging the religious affairs office as administrative gatekeeper, schools as the institution keeping children in education, health services as assessors of reproductive risk, and the family as the actual locus of decision.

The first channel concerns the refinement of Regulation No. 5 of 2019. The Regulation already establishes the right principles, but it stops at naming them without converting them into a binding sequence of examination. The result, as Munawarah found, is that the application of those principles varies from case to case and judge to judge (Munawarah, 2026). The refinement proposed here is technical in form yet substantial in effect: incorporating the four stages of examination as procedural obligations, requiring that the result of each stage be recorded in the reasoning of the decision, and providing that a decision omitting any measurement of deferred harm is defective in its reasoning. It is the last provision that supplies compulsion; without it, the second stage will meet the same fate as the principle of the best interests of the child, named but never operated.

The proposal has a foothold in the reform of Islamic family law already under way in Indonesia. The Supreme Court is no stranger to the role of reformer; it has played it through jurisprudence and circular letters, including by adopting the methods of *takhayyur* and *talfiq* on the obligations of a husband following divorce and on the grant of obligatory bequest to non-Muslim heirs (Hidayat, 2025). If the Supreme Court can select across schools of law in the service of justice, then converting al-Qaraḍāwī's criteria of weighing into adjudicative guidelines lies plainly within its competence. The issue is not legitimacy but the willingness to bind itself to a stricter procedure.

Cross-jurisdictional comparison strengthens this direction and issues a warning at the same time. Engelcke, Krell, and Yassari show that many Muslim states set a minimum age while retaining the concept of physical and mental maturity, so that the flexibility of Islamic law is preserved and early marriage remains legally valid (Engelcke et al., 2025). The finding explains why raising the age threshold alone has never sufficed: so long as the door of exception is left without a measure, it will widen under social pressure. On the other hand,

studies of divorce law reform across several jurisdictions show that the reforms that endure are those rooted in internal Islamic argumentation rather than those resting on external frameworks (Zafri et al., 2026). The lesson bears directly on the proposal made here. The four-stage standard designed above rests entirely on criteria of weighing already established within the uṣūl tradition, and it is for that reason that it stands a chance of acceptance among judges who place sharia authority above appeals to international human rights instruments.

The second channel concerns the upstream stage, and here the religious affairs office holds a role that has been undervalued. If the standard of examination is tightened in court without reinforcement upstream, all that occurs is a displacement of the problem: petitions refused may end in unregistered marriages, which strip women and children of legal protection altogether. Tightening downstream can therefore be justified only if it comes with strengthening upstream.

That strengthening can proceed through three connected steps. First, the material used in pre-marital guidance for prospective spouses needs to carry the second-stage indicators explicitly, so that risks to education, reproductive health, and economic independence are not introduced for the first time in a courtroom but understood by the family long before a petition is drafted. Second, religious extension officers need to be equipped to translate the criteria of weighing into religious language their communities recognise, since families who petition generally act on the religious conviction that arranging a marriage is the way to close off harm. Third, religious affairs offices need clear referral pathways to health services and schools, so that the evidence the court requires at the second stage is available without burdening families with a convoluted process.

The second of these steps calls for particular attention, and the reason is sociological. Wibowo and colleagues find that around a quarter of both parents and adolescents in areas with high rates of child marriage still hold that a girl is ready to marry once she menstruates, and some even regard an unmarried daughter over the age of eighteen as a burden on the family (Wibowo et al., 2020). Views of this kind will not shift through the dissemination of regulations. They can be moved only by argument working from within the religious framework the community itself holds, by showing that giving a child in marriage generates a harm greater and longer than the one it seeks to prevent. Here al-Qaraḍāwī's criteria function not only as an instrument for judges but as material for religious outreach.

One caveat about the limits of this institutional approach should be added. Rifqi and colleagues show that at village level the right of *ijbār* is misused and structural discrimination operates, so that the best interests of the child are set aside even before a case reaches court (Rifqi et al., 2025). Some decisions to give a child in marriage, in other words, are settled in the family before the court receives anything but the result. The standard of examination designed here does not reach that space. It works at the judicial node and, through the channel of pre-marital guidance, at the node of religious administration; it does not touch the relations of power inside the family. Acknowledging this limit matters, so that the proposal is not read as a single cure.

Read as a whole, the two channels show that the reform of contemporary Islamic family law cannot be placed on one institution alone; it demands simultaneous change at the node that decides and the node that prevents.

CONCLUSION

This article set out from a paradox that has been widely noted but not fully explained: raising the minimum age of marriage through Law No. 16 of 2019 was followed by a surge of dispensation petitions almost all of which were granted. Three questions were posed to dismantle it, and all three have been answered.

To the first, the finding is that judges establish a compelling reason through a three-stage pattern uniform across regions: state law is placed at the front as an administrative filter, social facts are verified in the middle, and the maxim *dar' al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ* is brought in at the final stage as the substantive resolver. It is this ordering that determines the outcome, since every principle in Regulation No. 5 of 2019 operates at the procedural stage and is never genuinely tested at the stage where the decision is actually made. The absence of an age threshold in classical *fiqh* deepens the situation, because the number nineteen stands without normative support from the tradition that carries most authority in the eyes of judges.

To the second, the finding is that the defeat of the child's interests is not the product of negligence but of an asymmetry of time horizons. The harm averted is immediate, certain, and visibly present in the courtroom; the harm generated is deferred, apparently no more than probable, and falls on a person not yet present in the form she will take some years later. A judge who prefers the former is applying the criterion of certainty exactly as it should be applied. The difficulty is that empirical evidence shows the deferred harm to have changed category: a higher prevalence of stunting among under-fives born to mothers who married in adolescence, a strong association between educational level and the risk of early marriage, and an effect of the mother's age at marriage on her child's cognitive ability all indicate measured risk rather than weak surmise. The balancing long taken to be valid therefore rests on a mistaken assessment of one side of the scale.

To the third, a pre-decision standard of examination has been constructed in four graded stages: verification of the certainty of the harm averted, measurement of deferred harm through indicators of education, reproductive health, economic independence, and safety, explicit balancing with a reversed burden of argument, and a test of necessity examining the absence of alternatives. The standard converts al-Qaraḍāwī's criteria into procedural steps and uses Auda's systems features as its organising frame.

The contribution of this article is therefore not the discovery of a new purpose of the sharia but the relocation of where those purposes do their work. Maqāṣid ceases to function as an appraisal sheet opened after a decision issues and begins to work as a checklist that must be completed before a decision is drafted. Theoretically, the article introduces a cross-temporal dimension into maqāṣid balancing in dispensation cases, a dimension that has escaped notice because the literature weighs all purposes of the sharia as though they ran on the same horizon. Practically, it offers an instrument the Supreme

Court could adopt in refining Regulation No. 5 of 2019, and material for pre-marital guidance delivered by registrars and extension officers at the religious affairs office.

The limits of the article should be stated honestly. The mapping of reasoning patterns is built from a synthesis of published studies of decisions rather than from direct examination of case files, so its strength lies in geographical range and its weakness in textual depth. The standard designed here has also yet to be tested empirically against live cases. Moreover, as the findings on the misuse of *ijbār* at village level show, some decisions to give a child in marriage are settled in the family before a case reaches court, and this standard does not reach that space.

From those three limits arises the most pressing direction for further research, namely testing the four-stage standard against a body of decisions from several religious courts with differing social characteristics, in order to establish what proportion of cases would change outcome and at which stage the change would occur. A test of that kind would determine whether the instrument genuinely restores dispensation to its original purpose as a narrow exception, or instead requires further adjustment before it is fit to be proposed as a norm.

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