

## The urgency of legal considerations in judges decisions on the implementation of Coerced Money (Dwangsom)

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### ABSTRACT

This study aims to determine whether the application of forced money (dwangsom) in a judge's decision is a coercive legal instrument to ensure voluntary implementation of a civil decision by the losing party. However, in practice, the absence of standard operating procedures and consistent legal considerations from judges in imposing or rejecting dwangsom create legal uncertainty. This study examines the urgency of rational, fair, and proportional legal considerations in every judge's decision related to the application of dwangsom. Normative legal research with a statutory, doctrinal, and case study approach was used. The results of the study indicate that the absence of explicit legislation regulations causes the judge to rely heavily on subjective interpretations, thereby reducing the effectiveness and coercive power of the decision. Therefore, a deep legal understanding and mature legal considerations are needed from judges when imposing dwangsom as a form of legal protection for parties with good intentions. This study also recommends judicial guidelines or regulatory updates to strengthen certainty and fairness in the application of dwangsom in civil courts.

**Keywords:** Dwangsom, coerced money, judicial decision, legal certainty.

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RESEARCH & PUBLISHING



## 1. INTRODUCTION

In the Big Indonesian Dictionary (KBBI), consideration is an opinion of the good or bad of something for the purpose of making a decision. In Article 1, point 8 of Law Number 8 of 1981 concerning Criminal Procedure, a judge is defined as a state judicial official authorized by law to adjudicate. Law Number 48 of 2009 concerning Judicial Power defines a judge as a judge in the Supreme Court and judges in lower courts, including general courts, religious courts, military courts, state administrative courts, and judges in special courts within those courts. A judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision, which embodies justice (*ex aequo et bono*) and legal certainty. It also has benefits for concerned parties ([Pattipaw & Santiago, 2019](#)). Therefore, the judge's consideration must be carefully, properly, and meticulously addressed. If the judge's considerations are not thorough, good, or precise, then the judge's decision that originates from the judge's considerations will be annulled by the High Court/Supreme Court ([Sudirman et al., 2023](#)). Judges in examining a case also require evidence, the results of which will be used as considerations when deciding the case. Evidence is the most crucial stage in a trial. Evidence aims to establish certainty that a presented event/fact actually occurred to obtain a correct and just verdict. A judge cannot render a decision until it is clear to him that the event/fact actually occurred; that is, its truth has been proven, thus establishing a legal relationship between parties ([Lilik, 2014](#)).

A judge's decision must consider several legal, philosophical, and sociological aspects so that justice achieved, realized, and accounted for in the judge's decision is oriented toward legal, moral, and social justice ([Tumpa et al., 200](#)). Judges in examining a case also require evidence, the results of which will be used as considerations when deciding the case. Evidence is the most crucial stage in a trial. Evidence aims to establish certainty that a presented event/fact actually occurred to reach a correct and just verdict. A judge cannot render a verdict until it is clear to him that the event/fact occurred that is, its truth has been proven, thus establishing a legal relationship between parties. A judge's decision must consider several legal, philosophical, and sociological aspects so that the justice achieved, realized, and accounted for in the judge's decision is oriented toward legal, moral, and social justice ([Heriyanto, 2021](#)).

When rendering a verdict, a judge must provide appropriate and correct legal considerations, as this serves as the basis for sentencing a person on trial. This is recorded in written form, known as the judge's verdict, and is read in court. The judge's verdict is the crowning glory and pinnacle of a criminal case, so when rendering a criminal sentence, the judge must consider all aspects. In a judge's deliberations, three aspects are considered: juridical, philosophical, and sociological. In essence, the implementation of a judge's duties and authority is carried out within the framework of upholding truth and justice by adhering to law, statutes, and societal values. Judges are entrusted with the mandate to ensure that the laws and regulations are applied correctly and fairly. If the application of laws and regulations results in injustice, judges are obliged to side with moral justice (moralistic) and set aside law or statutory regulations (legal justice). Good law conforms to the living law of society (living law), which, of course, reflects prevailing values in society (social justice). The justice referred to here is not procedural (formal) justice but rather substantive (material) justice that aligns with the judge's conscience.

If a judge's deliberations are not thorough, sound, or precise, the judge's decision in the District Court will be overturned by a judge in the High Court or the Supreme Court. In a judge's considerations to make a fair decision, the judge needs to process the data obtained carefully, so that in considering it, a decision will be produced that is responsible, fair, wise, and objective. The data received by the judge and subjected to the examination process by the judge require evidence, the results of which will be used as the judge's consideration before deciding a case. Evidence is the most crucial stage in a trial. Evidence during the trial aims to establish certainty that an event or fact established by the judge occurred, thus achieving a correct and just verdict. The judge cannot render a verdict until it is fully proven that the event or fact in the case occurred that is, its truthfulness. Although we adhere to a civil law system based its legal system on statutes, judges in Indonesia can nevertheless make legal discoveries (*rechtvindings*) through their decisions. However, there are rules that must be adhered to; namely, judges must not violate the content and philosophy of statutory regulations.

One thing that judges must realize when considering, making, and issuing a verdict is that the decision does not merely resolve disputes between parties. The judge's deliberations began when the examination was closed. The judge then deliberates on reaching a decision in accordance with the objectives of the law. Two indicators must be considered by the judge: how the judge, using reason and conscience, can uncover facts based on the evidence presented in court and to seek, discover, and apply the appropriate law in accordance with the sense of justice of the individual (the perpetrator), society (the victim), and the state (the law).

One interesting consideration for academic discourse is the judge's consideration in imposing compulsion (*dwangsom*) on a criminal perpetrator, although initially it was only known as a punishment for defendants determined in a judge's decision based on a plaintiff's request. Essentially, the application of *dwangsom* is part of the legal discovery process carried out by the judge because of a legal vacuum that no longer legally regulates it in procedural law. In fact, if we look at the benefits, it can make the punishment that has been decided by the judge effective, especially in criminal cases in fulfilling restitution rights as an effort to rehabilitate justice for victims, corruption cases as an effort to return state financial losses, coercive efforts against corporations to restore environmental conditions due to corporate crimes so that victims do not suffer crimes or state losses to fulfill rehabilitative justice.

Although many requests for *dwangsom* were initially submitted, particularly in cases involving property disputes (*zakenrecht*), which still exist, judges are still rarely granted. This is undoubtedly due, in part, to the limited understanding of some judges regarding the existence and urgency of the *dwangsom* institution itself and its application, and to the conflicting doctrines of legal scholars, who still support and oppose *dwangsom* in court procedural law. Meanwhile, in other discourses, several urgent matters require the development of new legal structures to be implemented in both criminal and civil cases. It is necessary to develop and prepare legal formulations and structures within criminal law in an effort to fulfill rehabilitative justice through the application of *dwangsom* to restitution payments to victims of crime (Basir, 2018).

Punishment in this manner and form is one way to psychologically pressure someone to neglect the punishments imposed on them. *Dwangsom* is more likely to intervene psychologically to help individuals recognize their mistakes and as a legal remedy to raise awareness among defendants who refuse to serve their sentences. As quoted by Lilik Mulyadi, Qudelaar explained that a monetary penalty (*dwangsom*) is the sum of money stipulated in a judge's decision that must be paid by the convict to the opposing party/victim if they fail to comply with the principal sentence (Lilik, 2014). *Dwangsom* is merely an accessory to the principal sentence; however, for judges, adjudicating and deciding on such a demand remains a matter of integrity and professionalism. Judges are still not authorized to impose *dwangsom* arbitrarily based on limited legal considerations (*summir*) (Mulyadi, 2009).

This research aims to critically examine the legal foundation, judicial discretion, and practical implementation of *dwangsom* within the Indonesian civil justice system. Specifically, it seeks to analyze the urgency of rational, proportional, and well-reasoned legal considerations in judges' decisions when applying *dwangsom*, particularly in the absence of explicit procedural guidelines. The study also aims to identify normative gaps in the regulation of *dwangsom* and propose conceptual and doctrinal justifications for its consistent and fair application. Through a normative juridical approach supported by doctrinal analysis and case law review, this research endeavors to contribute to both legal scholarship and judicial reform by advocating for the development of regulatory frameworks or judicial guidelines that enhance legal certainty, professional integrity, and access to justice.

## 2. METHODOLOGY

This research is a normative legal study focusing on positive legal norms, legal principles, and legal doctrines relevant to the issue under study (Asikin, 2016). In this context, the approach is based on written legal norms that regulate and develop the concept of legal considerations in judges' application of forced money (*dwangsom*). This research uses several approaches, including the Statute Approach, by examining relevant laws and regulations, especially Law Number 48 of 2009 concerning Judicial Power, HIR/RBg,

and the Civil Code as the basis for implementing civil law in Indonesia. The Conceptual Approach aims to analyze the concept of dwangsom and the judge's legal considerations through literature studies and the thoughts of legal experts (Purwati, 2020). The Case Approach examines judges' decisions regarding the application of dwangsom to understand the patterns of legal considerations used in practice (Ali, 2021). Legal material was collected through library research, accessing various legal sources from libraries, online journals, court decision databases, and other scientific sources. At this stage, researchers collect primary and secondary legal materials relevant to the research focus (Jonaedi Efendi et al., 2018). The analysis of legal materials was conducted qualitatively and descriptively by examining, interpreting, and linking the collected legal materials to answer the research problem (Yusnita, 2018). A qualitative approach was used to evaluate the content of the judge's legal reasoning in-depth, identify trends or patterns in the application of dwangsom, and provide rational and systematic legal arguments.

In addition to the aforementioned approaches, this research also applies a juridical-analytical framework that seeks to bridge normative doctrinal interpretations with practical judicial behavior. This integration is essential to uncover not only the theoretical foundations of dwangsom but also the inconsistencies and normative gaps that arise in its courtroom application. By focusing on the intersection between positive law and judicial discretion, this study captures the dynamics between formal legal texts and their interpretation within the judiciary. The selected case decisions were analyzed using structured content analysis, focusing on the ratio decidendi, use of statutory references, and the depth of reasoning related to coercive instruments. Furthermore, this study pays particular attention to the principles of legal certainty, proportionality, and justice in judges' considerations, assessing whether the application of dwangsom aligns with broader jurisprudential values or remains ad hoc in nature. The comparative reflection on Dutch civil law, from which the concept of dwangsom originated, provides an additional analytical layer to assess the localization and transformation of this legal instrument within the Indonesian context. The triangulation of legal norms, jurisprudence, and conceptual doctrines reinforces the validity and reliability of the research findings, ensuring that the conclusions contribute to both academic debate and practical legal reform.

### **3. RESULT & DISCUSSION**

#### **3.1. Judge's Authority in Determining Compulsory Penalty (Dwangsom)**

The Dwangsom is a legal term originating from the Dutch legal system, literally meaning "forced money." In the context of civil law, dwangsom is the sum of money that the losing party is required to pay if it fails to voluntarily comply with the judge's decision within a specified timeframe. The primary function of dwangsom is not as punishment or compensation but rather as a coercive instrument (*pressiemiddel*) to ensure that the party in question fulfills its legal obligations as stipulated in the decision (Darmawan, 2019). Although Indonesian civil procedure law does not explicitly regulate dwangsom, the concept has evolved through judicial practice, primarily as a form of legal breakthrough (*rechtsvinding*) by judges, to ensure the effectiveness and enforceability of decisions that cannot be enforced executorially. Dwangsom is typically used in cases involving punishment to perform or not perform an action, such as an obligation to submit documents, cease unlawful acts, or comply with an agreement.

A dwangsom granted by a judge in their decision has the meaning of an accessory; that is, a punishment imposed if the principal penalty is not carried out. This does not mean that an additional penalty is imposed without the principal penalty being fulfilled. There is no dwangsom without a principal penalty; however, a principal penalty may be imposed without a dwangsom, depending on the plaintiff's request. In principle, dwangsom is not absolute; the principal penalty does not have to be accompanied by dwangsom. The judge's authority to impose dwangsom is not limited to first-instance judges. Article 611a Paragraph 2 stipulates that "dwangsom may also be obtained for the first time in a lawsuit or appeal." According to Tumpa, in addition to considering whether dwangsom can be granted and the amount of compulsion to be imposed, a wise judge should also consider whether the amount of dwangsom imposed

will be effective. The question is whether the penalty for *dwangsom* will cause psychological pressure on the convict, so that he or she will voluntarily comply with the principal sentence.

Regarding the judge's authority, it should also be noted that the judge has the authority to impose a *dwangsom* to prevent a potential future violation of the plaintiff's rights. Even if the plaintiff has a legal basis for those rights and no violation has occurred, if there is reason to believe there is a serious threat to those rights, the judge may impose a *dwangsom* (Hoge Raad, March 4, 1938, NJ 1938, 948 PS). However, coercive money can only be enforced if the prohibition is violated (Sutantio & Oeripkartawinata, 2009).

According to several legal experts, including Mertokusumo, although procedural law no longer regulates the institution of *dwangsom*, because *dwangsom* is essential for the plaintiff to compel the defendant to implement the decision, demand should be granted as long as it is requested by the plaintiff/victim. This is in line with what was stated by Sutanto and Oeripkartawinata that although Article 393 paragraph (1) HIR in conjunction with Article 721 R.Bg prohibits all forms of procedural law other than HIR and R.Bg, if it is truly felt necessary, other regulations can be used, such as Rv.

### **3.2. Legal Considerations of Judges in Applying Compulsory Fines (Dwangsom)**

Judges must consider many factors when issuing a verdict, from both legal and non-legal perspectives. In practice, legal considerations form the context of a judge's decision as they serve as evidence of the elements of a crime, determining whether the defendant is guilty of the act charged by the Public Prosecutor (Sudirman et al., 2023). The penalty of imprisonment is merely an accessory to the principal penalty; however, for judges, adjudicating and deciding on such a sentence remains a matter of integrity and professionalism. Judges are not permitted to impose a penalty arbitrarily based on limited legal considerations. Rejecting or granting a penalty must be based on adequate consideration, not only of the legal aspects but also of a logical, realistic, and factual basis, to ensure that the desired legal interests are achieved, and the penalty is truly effective in resolving the case (Khofifah, 2024).

Compulsory Money (*dwangsom*) is regulated by Rv. This provision has been proven necessary in Indonesian judicial practice because of its benefits, given that other existing sources of procedural law (formal law) are insufficient to address the ever-growing, evolving, and complex legal issues in practice and is therefore considered non-contradictory (Rohaedi et al., 2023). In principle, the application of *dwangsom* should be case-specific, meaning that it is only applied to specific cases and comprehensively incorporates the judge's legal considerations, ensuring its usefulness and reflecting the values of justice. Decisions on and determination of compulsion (*dwangsom*) outside Islamic economic cases should be based on the judge's considerations and the panel of judges' decisions based on the facts revealed during the trial. The history of the emergence of compulsion (*dwangsom*) also does not detail the limits and stipulations of the amount of compulsion (*dwangsom*) granted by the judge.

The application of *dwangsom* also has significant implications for social sciences, particularly in understanding how legal instruments influence behavioral compliance and reinforce social order. From a sociological and psychological perspective, *dwangsom* functions as a coercive mechanism that bridges the gap between normative legal expectations and actual individual or institutional behavior. This reflects how judicial authority exerts soft power to align societal conduct with the law through economic deterrents. Moreover, the inconsistent application of *dwangsom* across similar cases reveals broader systemic issues of inequality before the law, which may erode public trust in the judiciary and in legal institutions. This variability calls for more standardized and transparent judicial guidelines to ensure not only legal certainty, but also procedural justice, as perceived by society. In essence, *dwangsom* serves as a microcosm of the state's capacity to enforce civil obligations without resorting to physical enforcement, illustrating how legal norms are internalized or resisted by actors within the socio-legal system.

## **4. CONCLUSION**

The application of compulsion (*dwangsom*) in judges' decisions is an important instrument for ensuring compliance with court decisions, particularly in civil cases. However, the irregularity in the use and weak legal basis of judges in imposing *dwangsom* raise serious issues in terms of legal certainty and

justice. This study concludes that it is urgent for judges to apply strong, logical, and proportional legal considerations to every decision containing *dwangsom*. The absence of clear regulations leaves judges with the discretion that has the potential to create disparities between decisions. Therefore, clear judicial guidelines and regulatory updates that explicitly regulate the conditions, limitations, and mechanisms for applying *dwangsom* are needed. This is crucial so that judges' decisions are not only legally binding, but also reflect a sense of justice and legal certainty for the parties to the dispute.

However, in practice, the absence of detailed statutory provisions regulating *dwangsom* in many legal systems, including Indonesia, leads to wide discretion among judges. This discretion can result in inconsistencies between court decisions and weaken the principle of equality before law. It is therefore essential that judges base their application of *dwangsom* on well-reasoned legal analysis, including references to jurisprudence, doctrinal interpretations, and the objectives of civil justice.

Proper legal consideration should assess whether the imposition of *dwangsom* serves a legitimate interest, whether it is the least coercive yet effective measure available, and whether the amount is reasonable and not punitive. Additionally, judges must consider the enforceability and supervision of such orders, ensuring that *dwangsom* achieves its intended deterrent effect without being excessive or burdensome beyond fairness. Thus, the legal considerations in applying *dwangsom* are not merely technical but reflect deeper principles of justice, legal protection, and the judiciary's role in upholding the rule of law. Strengthening the consistency and transparency of judicial reasoning in this area is crucial for the credibility of the court and protection of citizens' rights.

Beyond legal doctrinal concerns, this research has broader implications for social science. The inconsistent and discretionary application of *dwangsom* highlights how legal instruments not only reflect normative frameworks, but also shape behavioral compliance and perceptions of justice within society. As a coercive yet nonviolent mechanism, *dwangsom* serves as a tool of social control that pressures individuals and institutions to adhere to legal obligations. Thus, the credibility and perceived legitimacy of judicial decisions are deeply intertwined with the societal expectations of fairness, consistency, and accessibility. Enhancing transparency and equity in the application of *dwangsom* contributes not only to a more robust legal system, but also strengthens public trust in state institutions and broader social contracts.

### **Ethical approval**

This research did not require ethical approval.

### **Informed consent statement**

This research did not require informed consent.

### **Authors' contributions**

Aldi Subhan Lubis conceptualized the research topic, developed the research design, and led the writing of the manuscript. He was also responsible for coordinating the analysis of legal sources and ensuring the theoretical coherence of the study. Revi Fauzi Putra Mina contributed to the data collection process, particularly in the identification and interpretation of relevant case law and statutory materials. He also assisted in drafting the methodology section and reviewing legal arguments. Andi Hakim Lubis provided critical revisions to the manuscript, focusing on doctrinal accuracy and jurisprudential consistency. He also contributed to the refinement of the discussion and conclusion, ensuring the study's academic rigor and practical relevance. All authors read and approved the final version of the manuscript.

### **Disclosure statement**

No potential conflict of interest was reported by the author(s).

### **Data availability statement**

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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Aldi Subhan Lubis is a lecturer and legal researcher at the Law Study Program, Faculty of Law, Universitas Medan Area, Indonesia. His academic interests focus on judicial behavior, procedural law, and civil enforcement mechanisms, particularly the development of coercive instruments like *dwangsom* in Indonesian legal practice.

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