



***Dwangsom* (Coerced Money) in Cases of Child Execution Due to Divorce: A Study of the Supreme Court Decision Number: 1026 K/Ag/2023**

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Abstract

The implementation of execution (*hadhanah*) in Indonesia still faces unclear norms, especially because children cannot be treated as objects of execution like objects as stated in Article 1033 Rv (*Reglemen op de Rechtsvordering*), one of which is namely in the Decision Supreme Court Number: 1026 K/Ag/2023. Formulation problems in research This namely: First, how urgency implementation *dwangsom* (money force) in constraint implementation execution decision right foster care child (*hadhanah*) in Decision Supreme Court Number: 1026 K/Ag/2023 and second, how the judge's authority in set *dwangsom* (money force) in the case right foster care child (*hadlanah*) according to law positive in Indonesia. Goal study This For urgency implementation *dwangsom* (money force) in constraint implementation execution decision right foster care child (*hadhanah*) in Decision Supreme Court Number: 1026 K/Ag/2023 and the authority of judges in set *dwangsom* (money force) in the case right foster care child (*hadlanah*) according to law positive in Indonesia. Method research used is study juridical normative. Research results show that the application of *dwangsom* in the Supreme Court Decision Number: 1026 K/Ag/2023 is valid and important to be implemented as an effort to guarantee the implementation of child custody (*hadhanah*) execution. This application is in line with Article 606 a and 606 Rv (*Reglement op de burgerlijke rechtvordering*), Article 259 paragraph (1) RBg Results of the National Working Meeting (RAKERNAS) of the Supreme Court of the Republic of Indonesia in Manado in 2012. In addition, based on the Supreme Court Decision Number: 556/K/SIP/1971 dated January 8, 1972, and the Supreme Court Number: 291/Pdt.G/2018/PA.Klk, the Judge is allowed to decide beyond the petitum as long as it is for the sake of justice, so that it does not violate the principle of *ultra petita*. This application is also in line with the Islamic fiqh principle of Dar'ul Mafasid Muqoddamun 'Al-Jarbil Masalih.

Keywords: *Dwangsom*, Execution Right Foster Care Child, Justice, *Ex Officio* Judge.

INTRODUCTION

Marriage is agreement between a a man and a woman the woman inside No can guaranteed without existence dispute.¹ Settlement frequent disputes considered as road go out is with method divorce.² Divorce naturally cause consequence law for

¹ Dicky Eko Prasetyo Disantara, Fradhana Putra, Briggs Samuel, and Mawunyo Nutakor, "The Problematics of the Legal Standing of Deoxyribonucleic Acid (DNA) Test Results Concerning Civil Relationships of Illegitimate Children : A Legal Pluralism Perspective," *Mizani* 11, no. 02 (2024): 435-448.

² S Nisa, "Pengasuhan Anak Pada Keluarga Tki Perspektif Hukum Islam (Studi Kasus Di Desa Songgom Lor Kecamatan Songgom Kabupaten Brebes)" (2023).

children, one of them that is related with right foster care child. Article 105 Instructions President Number 1 of 1991 concerning Compilation Islamic law (hereinafter referred to as Islamic law) called with KHI) states that:

“a) Maintenance children who have not *Mumayiz* or Not yet 12 years old is right mother; b) Maintenance children who have *Mumayiz* handed over to child For choose between father or his mother as holder right maintenance; c) Costs maintenance borne by his father.”

Child custody disputes (*Hadhanah*) are problems that require comprehensive and diverse solutions. Legal problems related to child custody (*Hadhanah*) are generally inseparable from the different wishes of the two parents, so that children are often treated like objects that can be divided and fought over.³ Consequence from decision related right foster care child (*Hadhanah*), no seldom happen execution with object children caused. No There is good faith. Good from the losing party. For do performance in accordance with content decision.⁴ Case right foster care children (*Hadhanah*) who have powerful law stick to the principle can implemented in a way force based on the Decision of the Supreme Court of the Republic of Indonesia, especially by the Supreme Court Justice in Team E, which in the month of July 1999 established that “*mastery child in implementation execution is effort force that can executed.*” This No in accordance with facts on the ground related implementation right foster care children who often face constraint normative.⁵

Based on Articles 195-224 HIR (*Herziene Indonesisch Reglement*), Article 1033 *Rv* (*Reglement van de Rechtsvoordering*), Article 200 paragraph (11) HIR (*Herziene Indonesisch Reglement*), and Article 218 paragraph (2) interpret a real case as the implementation of a condemnatory decision, namely the verdict contains a statement of “Punishment” or “order” for the defendant to do: hand over; vacate; carry out; stop” whereas child No objects, but rather man.⁶ Apparatus Religious Courts as representation from *siyayash sharia* namely ruler (*ulil*) *amri*) who believes own role important in uphold justice as commanded by Allah in Surah An-Nisa verse 135, which means: “O you who believe, be you are a real person enforcer justice, to become witness because of God even though to yourself Alone or Mother father and clan your relatives”.

The verse above is manifestation from effort realize justice that is oriented towards the welfare rules *jurisprudence* namely *Dar'ul Mufasid The Beginning of Jalbil*

³ Arne Huzaimah, “Reformulasi Hukum Acara Peradilan Agama Dalam Pelaksanaan Eksekusi Putusan *Hadhanah*,” *Jurnal Nurani* 18, no. 2 (2018): 227-244.

⁴ Tryana Pipit Mulyah, Dyah Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, “*Journal GEEJ* 7, no. 2 (2020).

⁵ Arne Huzaimah, “Reformulasi Hukum Acara Peradilan Agama Dalam Pelaksanaan Eksekusi Putusan *Hadhanah*.”

⁶ Om Swastiastu, “Pedoman Eksekusi” (2019).

Mashallah (avoiding) harm more prioritized than reach welfare).⁷ The rule the It is relevant as a normative basis for judges to issue decisions that are not burdensome but instead address difficulties within society. One example of this principle can be seen in the application of *dwangsom* (forced money) in child custody (*Hadhanah*) cases in Religious Courts. That matter supported with reason that fall *dwangsom* can give pressure psychic to the losing party so that voluntary deliver child to entitled party in accordance amar decision . Example the decision that became references that the Judge according to his position can in a way initiative drop punishment *dwangsom* (money forced) even though No requested in petitum lawsuit is Decision No: 0291/Pdt.G/2018/ PA.Klk and Decision No: 43/Pdt.G/2021/PTA.Bjm . Judges have the authority to decide cases with the obligation of the losing party to pay a sum of money. This provision aims to achieve legal certainty and prevent decision right foster care child nature *illusion* or empty.⁸

Based on the above problem , the decision with amar *dwangsom* expected can become solution in prevent constraint execution right foster care child in the Decision Supreme Court Number : 1026 K/Ag/2023 so that can in line with the Meeting Results The Supreme Court's National Working Meeting held in Jakarta, 31 October 2012, which emphasized that “ Basically , the decision case *hadhanah* can executed , however in implementation must notice interests and conditions psychological child ”.

RESEARCH METHODS

Journal This use three study previously For review more carry on about *dwangsom* (Money force) in the case execution child consequence divorce in the Supreme Court decision Number : 1026 K/Ag/2023 is " Analysis Implementation *Dwangsom* at the Serang Religious Court ”, “ *Dwangsom* Case *Hadhanah* In Perspective Civil Procedure Law (Analysis) Decision Pasuruan Religious Court Number: 0376/Pdt.G /2015/ PA.Pas ”⁹, and “ Urgency Implementation of the *Dwangsom* Institution on the case *Hadhanah* in the Religious Courts in Perspective *Maqashid Al-Syariah* ”.¹⁰ Author will study more in related urgency implementation *dwangsom* and the authority of the judge in set *dwangsom* on the matter right foster care child in the Decision Supreme Court Decree Number : 1026 K/Ag/2023. The purpose is For understand urgency implementation *dwangsom* and the authority of the judge in set

⁷ Firdaus, *Al-Qawaid Al-Fiqhiyyah; Membahas Kaidah-Kaidah Pokok Dan Populer Fiqh*, *Al-Qawaid Al-Fiqhiyyah; Membahas Kaidah-Kaidah Pokok Dan Populer Fiqh*, 2015.

⁸ Arne Huzaimah and Syaiful Aziz, “Urgensi Penerapan Lembaga *Dwangsom* (Uang Paksa) Pada Perkara *Hadhanah* Di Pengadilan Agama Dalam Perspektif *Maqashid Al-Syari’ah*,” *Al-’Adalah* 15, no. 1 (2018): 125.

⁹ Jl William et al., “Penghalang Pernikahan (Rabaib / Anak Bawaan Istri) Islam Negeri Sumatera Utara , Indonesia” 2 (2025).

¹⁰ Ibid.

dwangsom on the matter right foster care child in the Decision Supreme Court Number : 1026 K/Ag/2023.

Journal This use method study juridical normative with use ingredients bibliography . The approach used in study There are 3 kinds . First , the approach legislation used *Rv* (*Regulation op de Rechtsvordering*), *HIR* (*Herzien Inlandsch Reglement*), *Rbg* (*Rechtreglemnt voor de Buitengewesten*), Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), Law No. 1 of 1974 concerning Marriage, Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989, Jurisprudence and SEMA RI. No. 7 of 2012 concerning the Formulation of Laws Resulting from the Plenary Meeting of the Supreme Court Chamber Which Becomes a Guideline for the Implementation of Duties for the Court . Second , the approach the concept used is draft right foster care children (*hadhanah*) , *dwangsom* , and the rules of fiqh *Dar'ul Mafasid Muqaddanum'ala Jalbil Mashalih*. Approach study the third one used is approach case about implementation *dwangsom* (money) force) in case execution child consequence divorce , with studies case in the verdict Supreme Court Number : 1026 K/Ag/2023 with use reference to the Decision Kaloka Religious Court Number : 291/ Pdt.G /2018/ PA.Klk and Decision Religious Court Number: 43/ Pdt.G /2021/ PTA.Bjm .

Material the law used in study This is material primary and secondary laws . Materials primary law consists of from HIR, *Rv* , Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage, Law no. 3 of 2006 Concerning Change on Law no. 7 of 1989 concerning Religious Courts, (*Convention on the Rights of the Child*) which has ratified by Indonesia through Presidential Decree No. 36 of 1990, Instruction President Republic Republic of Indonesia No. 1 of 1991 concerning Dissemination Compilation Islamic Law , Decision Supreme Court of the Republic of Indonesia Number : 906 K/SIP/1973 dated June 25 , 1974, Decision Supreme Court of the Republic of Indonesia Number : 244 K/ Pdt /2008 dated December 29 , Decision Supreme Court Decision Number : 1026K/Ag/2023, Decision Kaloka Religious Court Number: 291/ Pdt.G /2018/ PA.Klk , Decision Banjarmasin Religious Court Number: 43/ Pdt.G /2021/ PTA.Bjm , and SEMA RI. No. 7 of 2012 Regulates About Formulation Law on Meeting Results Plenary Room The Supreme Court That Becomes Guidelines Implementation Task For Court . Material law secondary consists of from books , articles scientific , thesis , dictionary law , website about urgency *dwangsom* in execution right foster care children (*Hadhanah*).

Collection techniques material law use technique studies libraries and materials the law that has been collected later will analyzed use technique analysis

prescriptive.¹¹ Done with method reading and studying various literature , such as books , journals , articles , research previous , and internet for understand urgency *dwangsom* (Money force) in the case execution child consequence divorce on the decision Supreme Court Number : 1026 K/Ag/2023

ANALYSIS AND DISCUSSION

1. The Urgency of Implementing *Dwangsom* (Coercive Money) in Obstacles to the Implementation of Child Custody Decisions (*Hadhanah*) in Supreme Court Decision Number: 1026 K/Ag/2023

Divorce cause consequence law for children , especially related with right foster care children (*hadhanah*). The *Islamic* view stipulates that child care is based on several things, such as age, gender of the child, as well as the condition and character of the parents, such as religion, and place.¹² However, in practice, the issue of child custody (*hadhanah*) is a *complex issue* and often raises serious problems in its resolution in Religious Courts. One example is Supreme Court Decision Number 1026 K/Ag/2023, which is a civil dispute between the Applicant and the Respondent. This case is classified as a *contentious lawsuit. cumulative* , which combines two cases, namely divorce and child custody (*Hadhanah*).

The principle of the best interests of *the child* is a fundamental principle in every child custody case (*hadhanah*), both in national law and in international law, as regulated in the *Convention on the Rights of the Child* which contains a mandate in the form of a commitment to protect and fulfill children's rights.¹³ In general, this convention guarantees children's basic rights such as the right to survival, the right to protection, the right to growth and development, and the right to participate. The urgency of applying *dwangsom* (forced money) in child custody cases (*hadhanah*) lies in its function as an indirect means of execution that encourages the losing party to implement the contents of the decision voluntarily and on time. In practice, the Supreme Court Decision Number; 1026 K / Ag / 2023 which does not apply *dwangsom* (forced money) is a gap that needs to be criticized legally with the Jurisprudence of the Kolaka Religious Court Decision Number: 291 / Pdt.G / 2018 / PA.Klk which is a reference with similar cases with the focus of the research.

¹¹ Maalikatussofa Masnun, Muh. Ali, Prasetyo, Dicky Eko, "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, no. 3 (2025): 372-384.

¹² Nelly Layaliyal Fitri, "Eksekusi Hak Asuh Anak Di Dua WilayahYuridiksi Prespektif Undang-UndangPerlindungan Anak No 35 Tahun 2014(Studi Putusan Nomor 1813/Pdt.G/PA.Kab.Kediri)," *SAKINA: Journal of Family Studies* 3, no. 1 (2019).

¹³ Indah Sri Utari et al., "Legal Protection for Child Sexual Violence Victims: Victimology Perspectives, Challenges, and Policy Solutions in Asia," *Jurnal Suara Hukum* 8, no. 1 (March 4, 2026): 40-77, <https://journal.unesa.ac.id/index.php/suarahukum/article/view/48307>.

Decision Surabaya Religious Court Number: 1026 K/Ag/2023 is deep verdict practice implementation his words happen The reluctance of the losing party (Mother) to hand over the care of her child to the winning party (Father) . Therefore, the Applicant for Cassation submitted a Decision to the Surabaya Religious Court with Number: 5723/Pdt.Eks/2023/PA.Sby to carry out the execution of the child whose presence is with his mother. The implementation of the execution is actually the realization of the contents of the decision which must be carried out voluntarily by the parties in the case to fulfill the achievements in the contents of the decision.

Execution is action in a way forced action Court with help state apparatus for use operate decision The court that has powerful law still.¹⁴ The 2012 National Working Meeting of the Supreme Court of the Republic of Indonesia in Manado formulated that :

"In principle, *hadhanah* cases can be executed, but implementation must take into account the child's interests and psychological well-being to avoid any difficulties. The judge can order the defendant to pay *dwangsom*".¹⁵

The National Working Meeting was interpreted to mean that the child custody court's decision could be enforced by the state through an execution mechanism. with consider the child's comfort, safety and emotional condition . Execution of child custody rights (*Hadhanah*) is often a crucial stage experienced failure in fulfillment amar decision court , especially in the Supreme Court Decision Number: 1026 K/Ag/2023. The failure caused by a number of factors , including:

a) Resistance from the losing party in the decision.

The losing party (mother) refused to hand over the child voluntarily, and even made various efforts to avoid execution by hiding the child and inciting the child to refuse to go to the party (father).

b) Legal Ambiguity in the Real Execution Provisions Contained in the RV (*Reglement van de Rechtsvordering*)

Execution actions involving officials can cause trauma and deep emotional conflict in children, the implementation of child custody execution (*hadhanah*) is still a serious matter to be debated because the law in Indonesia has not specifically accommodated regulations regarding the

¹⁴ Salahuddin Gaffar et al., "The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia," *Heliyon* 7, no. 4 (2021): e06690, <https://doi.org/10.1016/j.heliyon.2021.e06690>.

¹⁵ Huzaimah and Aziz, "Urgensi Penerapan Lembaga Dwangsom (Uang Paksa) Pada Perkara Hadhânah Di Pengadilan Agama Dalam Perspektif Maqâshid Al-Syari'ah."

technicalities of child execution, because children as objects of execution cannot be equated with real objects of execution that can be carried out by the Religious Court.¹⁶

Real Execution is regulated in Article 1033 Rv (*Reglement op de Burgerlijke Rechtsvordering*), Article 200 HIR (*Herzien Indonesisch Reglement*). This execution is an action taken to fulfill a Court decision that requires someone to do something (or not do something) that is concrete, and not in the form of payment of a sum of money.¹⁷ However, in practice there is a lack of legal norms when this provision is used as the basis for implementing the execution of child custody rights (*Hadhanah*). The interpretation used by Religious Court Judges in equating child execution (*Hadhanah*) with real execution includes grammatical (language) and systematic interpretation. Judges tend to read the *textual* soundings of the articles related to real execution by literally understanding that condemnatory decisions (punishing the defendant to do or submit something) can be immediately executed, without distinguishing between movable or immovable objects or children (humans).

based on the understanding that the verdict in the Supreme Court decision study Number: 1026 K/Ag/2023 is *condemnatory in nature*, which reads: "Determining that the child with the initials AIC, male, born in Surabaya on August 2, 2016, is under the care of the Counterclaimant (FATHER) with the obligation to provide the widest possible access to the Counterclaimant (MOTHER) to meet and provide affection to the child; " with the order, namely punishing the party (MOTHER) to hand over something, in this case a child. Therefore, the order is considered to be executable as well as the real execution of an object if the object, then it will easily transfer from the Defendant to the Plaintiff even by force ¹⁸. This raises a legal debate because children are not objects that can be equated with land or goods. This legal ambiguity shows the need for more detailed regulations by considering the position of children as legal subjects and protection of children's rights which should be the main priority in the execution of child custody (*hadhanah*).¹⁹

¹⁶ Ibid.

¹⁷ Anis Widyawati et al., "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws," *Jambura Law Review* 7, no. 1 (January 5, 2025): 127-151, <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/27595>.

¹⁸ Arne Huzaimah, "Reformulasi Hukum Acara Peradilan Agama Dalam Pelaksanaan Eksekusi Putusan Hadhanah."

¹⁹ Widowati and Vu Le Giang, "Child Punishment Versus the Principle of Non-Discrimination in the Perspective of Human Rights: A Legal Comparison Between Indonesia and Vietnam," *Jurnal Suara*

Best interest of the child is the mandate of the Convention on the Rights of the Child which has been ratified by Indonesia through Presidential Decree No. 36 of 1990. upholding the best interests of children which requires the continuation of emotional relationships with appropriate parents. As in the Supreme Court Decision Number: 1026K / Ag / 2023 which experienced difficulties, so that if there is no instrument that presses such as *dwangsom*, the Court will lose a pressure tool to ensure that children are immediately placed in the best environment for children. As in the Kaloka Religious Court Decision Number: 291 / Pdt.G / 2018 / PA.Klk the application of *dwangsom* is seen as closely related to the psychological protection of children, and this is in line with the Results of the 2012 Supreme Court National Working Meeting and Article 606 a and 606 b Rv, which emphasize the importance of considering the psychological aspects of children in child custody disputes (*hadhanah*).

Dwangsom (forced money) was not included in the petition. As a result, the Panel of Judges did not impose *dwangsom* in the verdict. This has an impact on the weak coercive power of the decision, so that the implementation of execution becomes an effort that must be taken, especially because the losing party (MOTHER) is reluctant to hand over the child to the party who won custody (FATHER). This is proven by the submission of an execution request by the father to the Surabaya PA through Determination Number: 5723/Pdt.Eks/2023/PA.Sby. In the context of child custody (*hadhanah*), forced execution of a child is not only technically difficult, but also carries high psychological risks. Therefore, to overcome this difficulty, *dwangsom* (forced money) becomes an important instrument, especially when the child is separated from the caregiver who has been the dominant figure in his life.

In another consideration in the Religious Court Decision Number: 43/Pdt.G/2021/PTA. Bjm Considers, that basically all judge's decisions containing punishment can be imposed *dwangsom*, except for punishment in the form of payment of a sum of money. as stated in the decision of the Supreme Court of the Republic of Indonesia Number 244 K/Pdt/2008 dated December 29, 2008, which stated: " *The possibility of actual execution is not an obstacle to bringing down a dwangsom. The only obstacle to bringing down a dwangsom is the penalty of paying a sum of money.*"

Considering, that in determining child custody, the thing that needs to be considered is the interests of the child, not the interests of both parents

according to the Decision of the Supreme Court of the Republic of Indonesia Number: 906 K/SIP/1973 dated June 25, 1974 which states "*the interests of the child must be used as a benchmark for determining which of the parents is entrusted with the care of the child.*" This is in accordance with the principle of the best interests of the child as adopted in Article 2 letter (b) of Law Number 23 of 2002 which has been amended by Law Number 35 of 2014 concerning Child Protection. Likewise, Article 4 of the Law has mandated that every child has the right to live, grow, develop and participate naturally in accordance with human dignity and honor, and to receive protection from violence and discrimination .

Based on the type of case that falls under the authority and power of the religious court environment accompanied by a *dwangsom demand* , it is all decisions of religious court judges that are *Condemnatoir in nature*. The authority of the Religious Court is regulated in Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, which was later updated by Law No. 50 of 2009 "covers cases in the field of marriage including; inheritance, wills, grants, endowments, zakat, infak, and sharia economics. " A *condemnatory* decision can be accompanied by the imposition of a *fine (dwangsom)* to encourage the losing party to comply with the court's decision , especially in cases of child custody (*hadhanah*).

Based on the above regulations, the Judge may consider and add *amar dwangsom* in the decision even though it is not explicitly requested, as long as it is deemed necessary to ensure compliance with the contents of the decision and prevent legal uncertainty for parties who obtain their rights through the judicial process.²⁰ This is also in accordance with the mandate that Indonesia adheres to a judicial system based on justice and legal protection as mandated in the constitution.²¹ The Judge may consider stating that there is an indication that the losing party in the decision (MOTHER) will neglect her obligations regarding the decision of the Panel of Judges to hand over the child to the party who has child custody (*hadhanah*) , namely the FATHER.

Reason juridical above also supported by rule Islamic law *Qiyas* which can used For see *dwangsom* as something law . To see what laws can

²⁰ Dicky Eko Prasetyo, Muh. Ali Masnun, and Noviyanti Noviyanti, "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, no. 1 (January 31, 2025): 176-196, <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/26999>.

²¹ Muhamad Ali Muhsim, Erfaniah Zuhriah, and Ali Hamdan, "Penerapan Dwangsom Pada Putusan Hak Asuh Anak Perspektif Teori Keadilan Aristoteles," *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (2022): 124-150.

be equated or categorized with forced punishment (*dwangsom*), it is described as follows:

" *Dwangsom* (forced money) in the settlement of child custody disputes (*hadhanah*) is intended to facilitate the implementation of the decision in the form of the handover of the child by the Defendant/Convicted to the holder (*hadhanah*) by prioritizing the welfare and best interests of the child. In the Islamic civil law system, there is no punishment similar to *dwangsom*, but in this discussion we will look at what legal terms in Islamic civil law can be equated with *dwangsom*."

The above statement explain that the application of *dwangsom* is in line with the purpose of Allah SWT in His legal law to protect the welfare of children after divorce and avoid *mafsadat* (damage) to children both physically, morally and socially. The benefit of applying *dwangsom* in Supreme Court Decision Number 1026 K / Ag / 2023 is to provide peace, justice, and order, protecting the best interests for children whose existence is on the defendant's side. The principle of benefit in the Islamic view brings benefits (*jalb al-maslahah*)²², where *dwangsom* as a sanction in the form of additional punishment in the form of payment for each day of delay can encourage the party ordered to hand over the child to immediately carry out the decision voluntarily .

2. The Authority of the Judge in Set *Dwangsom* (Money Force) In Case Right Caring for Children (*Hadhanah*) According to Law Positive in Indonesia

The application of the principle of *the judicial trilogy* contained in Article 4 paragraph (2) of Law 48 of 2009 concerning Judicial Power states that "*The court assists justice seekers and strives to overcome all obstacles and barriers to achieve simple, fast and low-cost justice*". The role of judges is essential in addressing the challenges of implementing child custody decisions (*Hadhanah*). As the party examining and adjudicating cases, judges bear the responsibility of upholding law and justice. This aligns with Gustaf Radbruch's view that good law is one that embodies legal certainty, utility, and justice.²³

The judge's authority in determining *dwangsom* (forced money) in child custody cases (*hadhanah*) according to positive law in Indonesia is based

²² Mochamad Ikwan Nurul Hikmah, Syahid Akhmad Faisol, Dicky Eko Prasetyo, Kamaluddin Nurdin Marjuni, "Professional Waqf 5.0: Penta Helix Strategy and Legal Pluralism in the Digital Era," *Krtha Bhayangkara* 20, no. 1 (2026): 173-194.

²³ Muhsim, Zuhriah, and Hamdan, "Penerapan *Dwangsom* Pada Putusan Hak Asuh Anak Perspektif Teori Keadilan Aristoteles."

on positive law as a basis as stated in Law Number 1 of 1974, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, the Civil Code/BW and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. A. Mukti Arto's opinion states that the *dwangsom order* is included in the criteria for the judge's authority *ex officio* because the *dwangsom order* has fulfilled the *ex officio order*, namely:

1. Has a legal basis, namely:
 - a) Article 2 paragraph (4) and Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power.
 - b) Article 58 paragraph (2) of Law Number 7 of 1989 concerning Religious Courts states that "*Courts assist justice seekers to achieve simple, fast and low-cost trials both in examining cases and in executing decisions.*"
 - c) It is not a civil right of the Defendant that a decision can only be made if there is a request (*petitum*);
 - d) Only with regard to the rights and obligations of the parties outside the main case (*main petitum*), namely the surrender of the child;
 - e) It's not about legal relations;
 - f) Still in the same legal system as the subject matter;
 - g) Directly related to the ease of resolving cases;

The judge has *discretion* to determine *dwangsom* even though the nature of *dwangsom* is only as a complement to *Accesoir*. *Accesoir* means complement, so it cannot be imposed without a principal penalty. *Dwangsom* can only be enforced if there is a main decision which, in this case, orders the child to be handed over to the party who wins the case. If the losing party, namely the mother, has carried out the basic sentence, then *the dwangsom* that has been determined along with the basic sentence will no longer have legal force.

Legally, the Judge has the authority to determine *the dwangsom* even though it is not explicitly requested in the petition of the lawsuit. The concept of action that the Judge has in determining the additional penalty of *dwangsom* (forced money) is based on freedom of action and consideration of policy known as the Judge's *discretion*. The term "*discretion*" comes from Dutch and can be interpreted as wise conduct, individual judgment, and the authority to make decisions freely (*the power of free decision making*).²⁴ Based on the following grounds:

²⁴ Nindry Sulistya Widiastiani, "Kekuasaan Diskresi Hakim Pengadilan Hubungan Industrial," *Veritas et Justitia* 7, no. 1 (2021): 31-55.

- 1) Supreme Court Decision Number: 1043 K/SIP/1971 dated December 3, 1974 " Affirms that Judges have the obligation and authority to complete legal considerations in the deliberation process, including by adding legal reasons not submitted by the parties. This provision is in line with Article 178 Paragraph (1) *HIR (Herzein Inlandsch Reglemnt)* which states "Judges, due to their position during deliberations, are obliged to provide sufficient legal reasons; which are not submitted by both parties"
- 2) Supreme Court Decision Number: 556/K/SIP/1971 dated January 8, 1972, stated that the issuance of a verdict exceeding the demands (*ultra petita*) is permitted as long as the verdict remains within the limits of the material events proven in court. Thus, the Judge still has room for discretion in the form of imposing an additional penalty in the form of *dwangsom* in assessing and accommodating relevant facts, even if it exceeds the formal request in the petitum.

Supreme Court Decision Number: 425 K/SIP/1975 dated July 15, 1975, which emphasized that judges are permitted to grant demands not explicitly stated in the petitum as long as the substance does not deviate from the posita (the arguments underlying the lawsuit). This is based on the principle that in the Indonesian procedural legal system, both civil and criminal, the judge's role is active in exploring material truth

CONCLUSION

Based on results research that has been analyzed about urgency *dwangsom* (Money force) in the case execution child consequence divorce on the decision Supreme Court Number : 1026 K/ Ag/2023, can concluded that *dwangsom* need implemented use give certainty law related right foster care child although arrangement execution Children in Indonesia still refer to the real execution contained in Article 1033 Rv (*Reglemnt op de Burgerlijke Rechtvoordering*) Article 200 *HIR (Herzien Indonesich Reglement)* . Based on The aim of Islamic law is to prevent *mafsadah* (damage) to children must handed over to entitled party on *hadhanah* so that if *dwangsom* No requested in petitum The Judge's lawsuit has authority in set sanctions *dwangsom* For objective justice . Based on results analysis that has been is done , then the Judge is expected to can cut off case right foster care child (*hadhanah*) with consider welfare substantial , so that can apply *dwangsom* as a functioning instrument ensure implementation proper decision applied by the Judge in the environment religious courts

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