

***Dwangsom* and Judgment Enforcement in Land Disputes from an Islamic and Indonesian Law Perspective**

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Abstract:

Land ownership disputes often result in final and binding civil judgments that are ineffective in practice, leaving the prevailing party with only a normative victory and no actual restoration of rights. *Dwangsom* functions as a coercive mechanism to ensure compliance with judgments; however, its application in Indonesia remains jurisprudential and lacks a standardized operational framework. Moreover, studies integrating *dwangsom* within the frameworks of justice in judgment enforcement, *maqāṣid al-sharīʿa*, and the Sustainable Development Goals (SDGs) remain limited. This article examines *dwangsom* as an instrument of judgment enforcement by analyzing Supreme Court Decision No. 1429K/Pdt/2006. It evaluates its relevance from the perspectives of *maqāṣid al-sharīʿa* and SDG 16. Employing a normative juridical method with statutory, case, and conceptual approaches, the study finds that *dwangsom* is effective in enforcing non-monetary obligations by altering the incentives of non-compliant parties and accelerating the restoration of rights. It further develops a *maqāṣid*-based framework for the enforcement of judgments, comprising three indicators: legal certainty, expediency, and proportionality. This framework positions *dwangsom* as a strategic tool to strengthen the effectiveness of court decisions and enhance access to justice.

Keywords:

dwangsom; Islamic law; judgment enforcement; land disputes

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Introduction

Land ownership disputes often end in final and binding civil decisions, but their enforcement is ineffective. The main problem lies not simply in the delay in implementation, but also in the enforcement gap, namely the absence of an effective enforcement mechanism to ensure compliance with non-monetary obligations, particularly the transfer of land. As a result, the winning party often achieves only a "normative victory" without any real restoration of rights.¹

This situation highlights three major weaknesses in the civil justice system. First, there is a normative gap because *dwangsom* is not comprehensively regulated in Indonesian civil procedure law and continues to rely on jurisprudence.² Second, there is inconsistency in judges' applications, both in granting and determining the amount of *dwangsom*. Third, there are executional weaknesses, particularly in land disputes involving physical and administrative complexity, which give the losing party room to delay the implementation of the decision without immediate consequences.³

Numerous studies have examined land disputes, the effectiveness of law enforcement, and financial enforcement mechanisms such as *astreinte*.⁴ However, there are two important gaps in existing research. First, there is no

¹ Anshori Ilyas and Hamzah Hamzah, "Administrative Land Conflicts and Reforming State-Owned Enterprises in Indonesia," *Hasanuddin Law Review* 8, no. 2 (2022): 186–93, <https://doi.org/10.20956/halrev.v8i2.2362>; Devina Maya Ganindra and Faizal Kurniawan, "Kriteria Asas Pemisahan Horizontal terhadap Penguasaan Tanah dan Bangunan," *Yuridika* 32, no. 2 (August 24, 2017): 228–59, <https://doi.org/10.20473/ydkv32i2.4850>.

² Indriati Amarini et al., "Exploring the Effectiveness of Mediation in Resolving Disputes in the Indonesian Administrative Court," *Journal of Indonesian Legal Studies* 9, no. 1 (May 9, 2024): 353–84, <https://doi.org/10.15294/jils.vol9i1.4632>.

³ Martin Roestamy et al., "A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest," *Land Use Policy* 120 (September 2022): 106275, <https://doi.org/10.1016/j.landusepol.2022.106275>.

⁴ Francesca Ferrari and Nataliya Bocharova, "The *Astreinte* in the Italian and Russian Administrative (Judicial) and Civil Proceedings," *Russian Law Journal* 3, no. 3 (2015): 8–45, <https://doi.org/10.52783/rj.v3i3.180>; Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, "Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia," *Heliyon* 9, no. 11 (November 2023): e21280, <https://doi.org/10.1016/j.heliyon.2023.e21280>; Atikah Mardhiya Rohmy, Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, "Judicial Mafia and Ecological In-Justice: Obstacles to Policy Enforcement in Indonesian Forest Management and Protection," *Trees, Forests and People* 17 (September 2024): 100613, <https://doi.org/10.1016/j.tfp.2024.100613>; Rebecca Meckelburg and Agung Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia," *Land Use Policy* 137 (February 2024): 107017, <https://doi.org/10.1016/j.landusepol.2023.107017>.

operational framework that systematically assesses *dwangsom* based on justice indicators, particularly in the context of decision execution. Second, studies linking *dwangsom* to Islamic law remain limited to the permissibility aspect, without developing an analysis grounded in *maqāṣid al-sharīʿa* as an evaluative framework encompassing objectives, proportionality, and justice.⁵

This research offers novelty in three ways. First, it formulates the concept of executorial justice as an analytical framework measurable through three indicators: legal certainty, expediency, and proportionality. Second, this research presents an operational analysis of *dwangsom* in land ownership disputes through a case study of Supreme Court Decision No. 1429K/Pdt/2006. Third, this study integrates the perspective of *maqāṣid al-sharīʿa* with the framework of access to justice in the Sustainable Development Goals (SDGs), especially Goal 16 on effective institutions and access to justice.

Based on this background, this study poses the following questions. First, what is the position of *dwangsom* in civil justice practice in Indonesia, particularly in land disputes? Second, how were the Supreme Court's considerations constructed in granting *dwangsom* in Decision No. 1429K/Pdt/2006? Third, to what extent can *dwangsom* be justified from the perspective of *maqāṣid al-sharīʿa*, particularly regarding the protection of property rights and the prevention of injustice? Fourth, how is *dwangsom* relevant in strengthening access to justice and institutional effectiveness as mandated by SDG 16?

Furthermore, this study also builds an analytical bridge between *dwangsom* and SDG 16. *Dwangsom* serves as a compliance enforcement mechanism that can close the execution gap. This mechanism encourages effective implementation of decisions, enhances the credibility of judicial institutions, and strengthens public trust in the law. Thus, *dwangsom* functions not only as a procedural instrument but also as part of the justice architecture, contributing to the strengthening of accountable and effective institutions.

⁵ Zaeni Mahmud, "Tinjauan Maqasid Al-Syari'ah terhadap Pasal 195 Kompilasi Hukum Islam (KHI) tentang Saksi dalam Wasiat," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 2 (December 3, 2021): 357, <https://doi.org/10.22373/ujhk.v4i2.11146>; Islam, "Al-Mal: The Concept of Property in Islamic Legal Thought," *Arab Law Quarterly* 14, no. 4 (1999): 361–68, <https://doi.org/10.1163/026805599125826552>; Mohammad Abdullah, "Waqf, Sustainable Development Goals (SDGs) and Maqasid Al-Shariah," *International Journal of Social Economics* 45, no. 1 (January 8, 2018): 158–72, <https://doi.org/10.1108/IJSE-10-2016-0295>.

This research uses a normative juridical method. The author applies a statutory, case, and conceptual approach. The author also employs a normative reading of Islam through fiqh and *maqāṣid al-sharīʿa*. Primary and secondary legal materials are analyzed qualitatively to produce prescriptive conclusions.

***Dwangsom* as a "Compliance Machine" for Civil Decisions: Colonial Norms, Jurisprudence, and Execution Gaps**

One of the persistent problems in civil law is the gap between decisions and their implementation. Many cases end in legal victory for the plaintiff. Still, those rights are not immediately realized because the losing party delays or avoids implementing the decision. This phenomenon is known as the enforcement gap, which, in the legal and governance literature, is seen as an indicator of the quality of the rule of law and the effectiveness of judicial institutions.⁶ In this context, *dwangsom* emerged as a mechanism to bridge the gap between norms and reality.

In the continental legal tradition, *dwangsom* is rooted in the concept of *astreinte*, which developed in Europe as a form of indirect coercion against defendants. Ferrari and Bocharova explain that *astreinte* functions as ongoing financial pressure to compel the losing party to fulfill non-monetary obligations, such as surrendering an object or stopping an action.⁷ This instrument is not intended as compensation, but rather as a compliance mechanism that operates while the decision is pending.

Indonesia adopted this concept through the Regulation on *de Rechtsvordering* (Rv), specifically Article 606a, which allows judges to impose compulsion for obligations other than the payment of a sum of money. However, because the HIR and RBg do not explicitly regulate it, the practice of *dwangsom* has developed primarily through jurisprudence.⁸ This dependence has concrete implications for judicial practice, namely the emergence of inconsistencies in

⁶ World Justice Project, "Rule of Law Index 2024" (Washington, DC, 2024), <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIIndex2024.pdf>; Miguel Alves Pereira et al., "An Integrative Approach to Reviewing the Literature on Judicial Efficiency in Europe," *Socio-Economic Planning Sciences* 98 (April 2025): 102137, <https://doi.org/10.1016/j.seps.2024.102137>.

⁷ Ferrari and Bocharova, "The *Astreinte* in the Italian and Russian Administrative (Judicial) and Civil Proceedings."

⁸ Sanyoto Sanyoto et al., "Tuntutan *Dwangsom* dalam Sengketa Pemilikan Tanah (Studi terhadap Permohonan Kasasi yang Dikabulkan pada Putusan Mahkamah Agung No. 1429K/Pdt/2006)," *Jurnal Dinamika Hukum* 8, no. 2 (October 20, 2013), <https://doi.org/10.20884/1.jdh.2008.8.2.50>.

application, including the conditions for granting, the amount, and the timing of the *dwangsom*'s effectiveness. In some cases, *dwangsom* is granted incrementally. In contrast, in others, it is not granted at all despite similar factual circumstances. This situation indicates that *dwangsom* has not yet functioned as a standardized instrument in the judicial system.

Comparative literature shows that post-decision financial pressure can increase compliance rates, especially when physical execution is slow or expensive.⁹ In disputes requiring concrete action—such as the transfer of land—the absence of a coercive instrument creates an incentive for the losing party to delay implementation, as the costs of delay are relatively small compared to the benefits of controlling the disputed object. In this context, *dwangsom* serves as a corrective to this rationality by altering the parties' incentive structure.

This problem becomes even more complex in the land sector. Research shows that land conflicts have widespread and often protracted socio-economic impacts due to weak governance and low compliance with legal decisions.¹⁰ Therefore, court decisions require instruments capable of ensuring effective rights restoration. *Dwangsom*, in this case, can be understood as a micro-judicial intervention to address structural weaknesses in the implementation of decisions.

Theoretically, *dwangsom* sits between sanctions and incentives. It is not punishment in the criminal sense, but neither is it compensation. *Dwangsom* works as a disincentive to continued non-compliance. A law and economics perspective suggests that legal compliance increases when the costs of violation are progressive and predictable.¹¹ Thus, *dwangsom* shifts the parties' rationality: the longer the delay, the greater the burden, making compliance a more rational choice.

However, *dwangsom* cannot be positioned as a structural solution that completely resolves the weaknesses of the enforcement system. Without a clear

⁹ Wijatmoko, Armawi, and Fathani, "Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia."

¹⁰ Roestamy et al, "A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest"; Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

¹¹ Steven Shavell, *Foundations of Economic Analysis of Law* (Harvard University Press, 2009), <https://doi.org/10.2307/j.ctv1m0kjr4>.

operational framework, *dwangsom* risks creating new uncertainties. Comparative studies emphasize the importance of proportionality parameters, direct links to non-monetary obligations, and certainty regarding the initiation and termination of sanctions.¹² Countries that have successfully implemented similar mechanisms have generally integrated them into transparent and measurable systems.

In the Indonesian context, *dwangsom*'s position as a product of colonial norms revived through jurisprudence creates a paradox.¹³ On the one hand, *dwangsom* is desperately needed to close implementation loopholes. On the other hand, the lack of comprehensive regulations leaves its implementation dependent on judicial discretion. This situation emphasizes that *dwangsom* is currently better understood as a transitional instrument. This corrective tool works on a case-by-case basis to fill gaps. Still, it has not yet become part of an established institutional design.¹⁴

Thus, *dwangsom* functions not only as a complement to decision-making but also as a mechanism that encourages transforming decisions from normative declarations into legal reality. However, to function consistently and fairly, *dwangsom* requires institutionalization through clearer regulations and measurable parameters. Without this, *dwangsom* will remain ad hoc: effective in specific cases but unable to close gaps in civil law enforcement systematically.

The Supreme Court's Logic in Upholding *Dwangsom* in Decision No. 1429K/Pdt/2006

Supreme Court Decision No. 1429K/Pdt/2006 is an important reference because it affirms the acceptance of *dwangsom* in land ownership disputes. The Supreme Court did not simply grant additional demands; instead, it positioned

¹² Ferrari and Bocharova, "The Astreinte in the Italian and Russian Administrative (Judicial) and Civil Proceedings"; Alessio Caracciolo, Federica Stamerra, and Fabrizio Cesareo, "Astreintes and Italian Law," *Civil Procedure Review* 8, no. 2 (2017): 45–72, <https://civilprocedurereview.faculdadebaianadedireito.com.br/revista/article/view/150>.

¹³ Sri Winarsi, "Legal Consequences of Disobedience of Provisional Decision of the Administrative Court," *Sriwijaya Law Review*, January 31, 2024, 152–70, <https://doi.org/10.28946/slrev.Vol8.Iss1.3201.pp152-170>.

¹⁴ Francisca Romana Harjiyatni and Suswoto Suswoto, "Implikasi Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan terhadap Fungsi Peradilan Tata Usaha Negara," *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (October 2017): 601–24, <https://doi.org/10.20885/iustum.vol24.iss4.art5>.

dwangsom as an instrument to ensure the actual implementation of the principal decision. In land dispute practice, plaintiffs often obtain recognition of their rights but still face obstacles in handing over the disputed object. Sanyoto et al. show that in this context, *dwangsom* functions as a pressure tool to encourage the actual implementation of the decision.¹⁵

The Supreme Court builds its argument by distinguishing the nature of obligations within the decision. *Dwangsom* applies only to non-monetary obligations (to do or not to do something) and not to obligations to pay a sum of money. This principle aligns with the classical doctrine that rejects the application of coercive money to obligations to pay money. In its jurisprudential publications, the Supreme Court emphasized that the purpose of *dwangsom* is to encourage the voluntary implementation of legally binding decisions without always resorting to forced execution.¹⁶

Within this framework, the application of *dwangsom* in Decision No. Decree No. 1429K/Pdt/2006 can be understood as a consequence of the nature of the principal ruling, which requires the surrender of land. Sanyoto et al. note that the Supreme Court views *dwangsom* as psychological pressure calculated from the date the decision becomes legally binding to encourage immediate compliance.¹⁷ Furthermore, the Supreme Court considered the effectiveness of execution, given that actual execution in land disputes is often complex and requires significant time and cost.¹⁸

Nevertheless, the Supreme Court's considerations in this ruling require critical analysis. First, from a proportionality perspective, this ruling does not yet provide clear parameters for determining the amount and duration of *dwangsom*. The Supreme Court affirmed *dwangsom*'s function as a coercive tool. Still, it did not explicitly outline reasonable limits to prevent it from becoming an excessive burden. It raises the question of whether the judges' considerations

¹⁵ Sanyoto et al., "Tuntutan *Dwangsom* dalam Sengketa Pemilikan Tanah (Studi terhadap Permohonan Kasasi yang Dikabulkan pada Putusan Mahkamah Agung No. 1429K/Pdt/2006)."

¹⁶ Adji Prakoso, "Yurisprudensi MA: Dasar Penjatuhan Uang Paksa (*Dwangsom*)," marinews.mahkamahagung.go.id, 2025, <https://marinews.mahkamahagung.go.id/putusan/yurisprudensi-ma-dasar-penjatuhan-uang-paksa-dwangsom-0zm>.

¹⁷ Sanyoto et al., "Tuntutan *Dwangsom* dalam Sengketa Pemilikan Tanah (Studi terhadap Permohonan Kasasi yang Dikabulkan pada Putusan Mahkamah Agung No. 1429K/Pdt/2006)."

¹⁸ Munawir S.H., "Implementasi Eksekusi Uang Paksa (*Dwangsom*): Studi terhadap Putusan-Putusan Hakim tentang Uang Paksa (*Dwangsom*) di Pengadilan Negeri Ponorogo," *Justicia Islamica* 12, no. 2 (March 7, 2016), <https://doi.org/10.21154/justicia.v12i2.329>.

were based on a measurable principle of proportionality or were more pragmatic, aimed at encouraging compliance in specific cases.

Second, this decision demonstrates a pragmatic approach to addressing execution weaknesses. *Dwangsom* is used as a practical solution to address delays in implementing decisions, but has not been accompanied by the development of normative parameters that can serve as general guidelines. Munawir points out that in judicial practice, the granting of *dwangsom* often relies on the need to strengthen voluntary compliance, rather than on uniform standards. It reinforces the indication that the application of *dwangsom* remains case-by-case.

Third, when compared with other decisions that do not consistently grant *dwangsom* in disputes with similar characteristics, Decision No. 1429K/Pdt/2006 cannot be considered fully representative. Variations in the granting of *dwangsom*—both in whether it is granted and in the amount—indicate the lack of a stable jurisprudential pattern. Slamet and Olivia also emphasize that *dwangsom* is often used to fill gaps in enforcement regulations. However, its application still depends on the judge's interpretation in each case.¹⁹

On the other hand, the Supreme Court maintains that *dwangsom* is an additional (accessory) punishment dependent on the primary obligation. *Dwangsom* does not stand alone and ceases when the primary obligation has been fulfilled.²⁰ This characterization is consistent with the doctrine that positions *dwangsom* as a mechanism to encourage the implementation of judgments, not as a substitute for compensation.²¹

Thus, Decision No. 1429K/Pdt/2006 demonstrates two aspects simultaneously. On the one hand, this decision reinforces the notion of judgment enforcement by ensuring that judgments do not stop at normative recognition but culminate in the actual restoration of rights. On the other hand, this decision also demonstrates limitations in normative aspects, particularly regarding the

¹⁹ Sri Redjeki Slamet and Fitria Olivia, "Dwangsom sebagai Upaya Paksa Putusan Hakim," *Lex Jurnalica* 20, no. 2 (2023): 239–46, <https://doi.org/10.47007/lj.v20i2.6746>.

²⁰ AS Leonardus L. Tobing, Aris Machmud, and Fokky Fuad, "Analisis Hukum terhadap Eksekusi Dwangsom (Uang Paksa) dalam Perkara Perdata sebagai Tagihan Sederhana," *Binamulia Hukum* 14, no. 1 (July 19, 2025): 229–39, <https://doi.org/10.37893/jbh.v14i1.1029>.

²¹ Sanyoto et al., "Tuntutan Dwangsom dalam Sengketa Pemilikan Tanah (Studi terhadap Permohonan Kasasi yang Dikabulkan pada Putusan Mahkamah Agung No. 1429K/Pdt/2006)."

parameters of proportionality and consistency of application. Therefore, this decision is better understood as an important precedent that is progressive in nature, but has not yet fully established a well-established jurisprudential standard. These findings emphasize the need to develop a clearer normative framework so that *dwangsom* is not only effective on a case-by-case basis, but also consistent and fair in the civil justice system.

***Dwangsom's* Executorial Justice Test: Certainty, Benefit, and Proportionality**

Justice in civil decisions does not stop at determining who is right and who is wrong. Justice is truly realized when the rights that have been decided can be realized. In this context, the concept of judgment enforcement is relevant: justice that is not merely declaratory but also operational. A decision that cannot be effectively executed may give rise to "pseudo-justice." *Dwangsom* works in this space by bridging norms and reality so that decisions do not remain mere legal texts.

To strengthen its analytical value, the concept of executorial justice in this study is formulated as a test framework (the judgment enforcement test) comprising three main indicators: legal certainty, expediency, and proportionality. These three indicators are not only normative but also operationalized, allowing them to be systematically applied in decision analysis.

First, the indicator of legal certainty is measured through three parameters: (a) clarity of the legal basis for granting *dwangsom*, both through norms and jurisprudence; (b) certainty of the time the *dwangsom* takes effect (e.g., from the date the decision becomes legally binding); and (c) a direct link between *dwangsom* and the principal obligations mandated in the verdict. Tobing et al. assert that *dwangsom* serves to maintain the authority of the verdict and encourage voluntary implementation by the losing party.²² Thus, legal certainty is achieved when *dwangsom* provides a clear signal that the verdict has real consequences.

Second, the indicator of usefulness is measured through two main parameters: (a) the ability of *dwangsom* to expedite the restoration of rights concretely; and (b) its effectiveness in changing the behavior of the losing party

²² L. Tobing, Machmud, and Fuad, "Analisis Hukum terhadap Eksekusi *Dwangsom* (Uang Paksa) dalam Perkara Perdata Sebagai Tagihan Sederhana."

to choose compliance rather than delay implementation. In land disputes, delays in the handover of objects often result in economic and social losses for the plaintiff. Munawir points out that *dwangsom* functions as ongoing pressure that accelerates the realization of rights as long as the principal obligations remain unfulfilled.²³ Therefore, the usefulness of *dwangsom* lies in its ability to transform the verdict from mere recognition of rights to restoration of rights.

Third, the proportionality indicator is measured through three parameters: (a) the reasonableness of the amount of the *dwangsom* compared to the value and character of the principal obligation; (b) the nature of the accessories that follow the validity of the principal obligation; and (c) the existence of rational limits so that the *dwangsom* does not become an excessive burden. Slamet and Olivia emphasized that *dwangsom* is neither compensation nor a criminal sanction, but rather a legal pressure tool to ensure compliance.²⁴ Therefore, proportionality is key to maintaining a balance between effectiveness and justice.

This test framework was then applied to Supreme Court Decision No. 1429K/Pdt/2006. From a legal certainty perspective, the decision met the parameters because the *dwangsom* was imposed on a non-monetary obligation (land surrender), was directly linked to the principal ruling, and was effective from the date the decision became legally binding.[31] From a utility perspective, *dwangsom* serves as a driver of compliance by creating increasing financial pressure over time, thereby accelerating the recovery of the plaintiff's rights. However, from a proportionality perspective, this ruling remains flawed because it does not explicitly define the reasonable limits of the *dwangsom* amount, potentially leading to inconsistent application in other cases.

From a procedural justice perspective, *dwangsom* also maintains a balance between the parties. The defendant retains the option to enforce the judgment and avoid financial consequences. At the same time, the plaintiff gains a more effective protection mechanism. Thus, *dwangsom* does not use physical coercion, but rather builds rational pressure that can be avoided through compliance.

²³ S.H., "Implementasi Eksekusi Uang Paksa (Dwangsom): Studi terhadap Putusan-Putusan Hakim Tentang Uang Paksa (Dwangsom) di Pengadilan Negeri Ponorogo."

²⁴ Slamet and Olivia, "Dwangsom sebagai Upaya Paksa Putusan Hakim."

More broadly, the judgment enforcement indicators formulated from these three indicators demonstrate that *dwangsom* can serve as a measurable instrument for assessing the quality of civil judgment enforcement. This framework not only explains concrete cases but can also be replicated in the analysis of other decisions to assess whether they truly deliver operational justice. Thus, the concept of executorial justice has ceased to be a normative concept and has developed into a systematic analytical tool in the study of civil law.

Dwangsom* in the Perspective of Islamic Law: Protecting Property, Preventing Injustice, and Upholding *Maqāṣid

In Islamic law, protection of property rights is not merely an additional issue but part of the main objective of the Sharia (*maqāṣid al-sharī'a*), especially *hifẓ al-māl* (protection of property). The *maqāṣid* approach demands that the law does not stop at the text but is directed toward achieving goals in the form of benefit and preventing harm (*mafsada*).²⁵ Therefore, every legal instrument, including *dwangsom*, must be assessed based on its ability to protect rights and prevent injustice. This approach aligns with the views of Iffatin Nur et al., which place *maqāṣid* as an ethical-spiritual foundation in the development of contemporary law.²⁶

In the context of land ownership disputes, Islam views possession without rights and delaying the restoration of rights as a form of injustice (*zulm*). Rights that have been decided must not be withheld without a valid reason. In Islamic agrarian studies, fair distribution of ownership is seen as part of the mandate of social justice, which must be maintained by law.²⁷ Thus, normatively, *dwangsom* can be understood as an instrument to prevent "post-decision defiance" that harms the entitled party.

²⁵ Maskur Rosyid and M. Nurul Irfan, "Reading Fatwas of MUI a Perspective of Maslahah Concept," *Syariah: Jurnal Hukum dan Pemikiran* 19, no. 1 (June 2, 2019): 91–117, <https://doi.org/10.18592/sjhp.v19i1.2726>.

²⁶ Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqāṣid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), <https://doi.org/10.15408/ajis.v20i2.18333>.

²⁷ Koko Komaruddin, "Fairness in the Distribution of Land Ownership in Indonesia Based on Islamic Law Perspective," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 20, no. 2 (December 29, 2020): 211–34, <https://doi.org/10.18326/ijtihad.v20i2.211-234>.

However, a *maqāṣid* analysis does not stop at justification but also demands a critical evaluation of potential deviations. One key issue is the risk of *dwangsom* as a form of excessive financial coercion. If the amount or duration of *dwangsom* is not controlled, this instrument may exceed its objective of protecting rights and even give rise to new injustices. From a *maqāṣid* perspective, this condition can be categorized as *mafsada* because it creates a disproportionate burden and has the potential to cause excessive harm to one of the parties.

To assess the legitimacy of *dwangsom* within the framework of Islamic law, a systematic analogous analysis (*qiyās*) with the concept of *ta'zīr* is required. In the *fiqh* of *mu'āmalah* (Islamic jurisprudence), *ta'zīr* is understood as a discretionary sanction imposed by authorities to maintain order and prevent violations. Zawawi points out that in contemporary practice, the National Sharia Council (DSN-MUI) permits the imposition of financial sanctions on wealthy parties who intentionally delay obligations, provided that the primary objective is to discipline (*ta'dīb*), not to profit.²⁸

The analogy between *dwangsom* and *ta'zīr* can be formulated through three elements. First, the similarity of *illat* (*ratio legis*), namely the existence of an act of delay or non-compliance that harms another party. Second, the similarity of objectives, namely, encouraging compliance and preventing ongoing harm. Third, the preventive-corrective nature: sanctions are imposed not as retaliation but as a mechanism to stop violations. Thus, *dwangsom* can be understood as a form of *ta'zīr* in a civil context, provided it fulfills the objectives of *maqāṣid*.

However, applying this analogy must be accompanied by clear limitations. First, *dwangsom* must be proportional and not exceed the level necessary to encourage compliance. Second, *dwangsom* must not become an instrument of exploitation or unilateral gain. Third, its application must take into account the parties' conditions, including their economic capacity and good faith. Absori et

²⁸ Zawawi Zawawi, "Fatwa Klausul Sanksi dalam Akad: Studi Komparatif Fatwa Dewan Syariah Nasional (DSN) Majelis Ulama Indonesia (MUI) dan Majma Fiqh Organisasi Konferensi Islam (OKI)," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 16, no. 2 (January 24, 2017): 237, <https://doi.org/10.18326/ijtihad.v16i2.237-255>.

al. emphasize that *maqāshid* is dynamic, but must maintain a balance between benefit and prevention of harm.²⁹

Furthermore, the role of judges from an Islamic legal perspective is not only to enforce norms but also to serve as guardians of substantive justice. Bilalu et al. demonstrate that judges in Islamic judicial practice employ normative and contextual approaches to ensure that decisions fairly resolve disputes.³⁰ In this context, judges must ensure that the use of *dwangsom* is not only effective but also fair and in line with the objectives of Sharia.

Thus, from the perspective of *maqāshid al-sharī'a*, *dwangsom* can be assessed as an instrument that, in principle, aligns with the goals of protecting property and preventing injustice. However, this legitimacy is conditional. *Dwangsom* can only be justified if it meets the principle of proportionality, does not give rise to new *mafsada* (principles of justice), and functions as a corrective tool rather than as a means of excessive punishment. This analysis demonstrates that *dwangsom* in Islamic law is not simply a matter of "permissible or not," but also of "how and to what extent" it is used fairly within the *maqāshid* framework.

***Dwangsom* and the SDGs: Strengthening Access to Justice, Certainty of Redress, and Effective Institutions (SDG 16)**

Dwangsom is directly relevant to the Sustainable Development Goals (SDGs) agenda, particularly Goal 16, which emphasizes access to justice and the development of effective, accountable, and inclusive institutions. However, this relevance cannot be understood merely normatively; it needs to be explained through a causal pathway that demonstrates how *dwangsom* contributes to the quality of law enforcement.

Within an analytical framework, the relationship between *dwangsom* and SDG 16 can be explained through three causal stages. First, *dwangsom* functions as a compliance mechanism that reduces the enforcement gap. With progressive financial consequences, the losing party has an incentive to enforce the decision promptly. Second, increased compliance with decisions enhances

²⁹ Absori et al., "Transformation of Maqāshid Al-Syarī'ah (An Overview of the Development of Islamic Law in Indonesia)," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, no. 1 (July 3, 2016): 1–18, <https://doi.org/10.19105/al-lhkam.v11i1.854>.

³⁰ Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (October 3, 2022): 514, <https://doi.org/10.22373/sjhkv6i2.12441>.

law enforcement effectiveness, as decisions no longer remain merely normative declarations. Third, this effectiveness contributes to increased public trust in the judiciary (institutional trust), a crucial element in building strong institutions as mandated by SDG 16.

This causal pathway can be linked to concrete indicators used to measure legal quality. The World Justice Project (WJP), for example, assesses the quality of civil justice through indicators such as "civil justice is effectively enforced" and the timeliness of case resolution.³¹ In this context, *dwangsom* plays a direct role in strengthening enforcement by exerting measurable pressure on non-compliant parties. Thus, *dwangsom* is not only conceptually relevant but also contributes to the empirical indicators used in measuring the rule of law.

In the land sector, the need for instruments that accelerate the restoration of rights is increasingly pressing. Land disputes impact not only individuals but also social and economic stability. Roestamy et al. show that weaknesses in land governance require the support of credible institutions and legal instruments to guarantee rights certainty.³² Meanwhile, Wardana et al. emphasize that legal mechanisms must produce substantive justice and avoid procedural injustice in land acquisition and control.³³ In this context, *dwangsom* functions as a micro-instrument that enhances decision effectiveness in situations where enforcement structures remain weak.

However, the effectiveness of *dwangsom* also depends on the consistency of its application. Research on the use of coercive money in judicial practice shows that this instrument can increase compliance rates. Still, the results are heavily influenced by the clarity of the rules and the level of institutional support.³⁴ Without uniform standards, *dwangsom* risks having only a partial and unsustainable impact on improving the quality of law enforcement.

³¹ World Justice Project, "Rule of Law Index 2025" (Washington DC, 2025), <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIIndex2025.pdf>.

³² Roestamy et al., "A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest"

³³ Azna Abrory Wardana et al., "Reconceptualization of Land Acquisition Regulations for Tourism Village Development Based on the Principle of Public Interest," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 2 (August 15, 2025): 405–28, <https://doi.org/10.29303/ius.v13i2.1809>.

³⁴ Felisha Chandra et al., "Is Forced Money (Dwangsom) the Key to Enforcing Administrative Court Decisions? Examining Its Impact on Compliance," *Indonesian State Law Review* 7, no. 2 (2024): 109–24, <https://doi.org/10.15294/islrev.v7i2.18874>.

The link between *dwangsom* and the SDGs can also be strengthened through the *maqāṣid al-sharī'a* approach. Within this framework, protecting rights and preventing harm are primary objectives, aligned with the Sustainable Development Agenda. Literature shows that Islamic legal values can be integrated with SDG indicators, including governance and social justice.³⁵ Thus, *dwangsom* can be positioned as an instrument that bridges two normative frameworks, namely *maqāṣid* and SDG 16, through concrete and measurable mechanisms.

Furthermore, research in contemporary Islamic law shows that normative instruments can be directed to support broader development goals. Maulida et al. and Rizal et al., for example, demonstrate how the concept of *maqāṣid* is used to assess public policies and their contribution to the SDGs.³⁶ This approach strengthens the argument that *dwangsom* is relevant not only in a procedural context but also for legal governance as a whole.

Thus, *dwangsom's* contribution to SDG 16 can be formulated analytically. First, *dwangsom* increases the effectiveness of decision enforcement through measurable incentive and disincentive mechanisms. Second, this increased effectiveness contributes to indicators of judicial quality, particularly in terms of enforcement and timeliness. Third, improving the quality of law enforcement strengthens public trust and the legitimacy of judicial institutions. This formulation demonstrates that *dwangsom* is not only normatively relevant to the SDGs but also measurable within the framework of global indicators on the rule of law and institutional effectiveness.

Conclusion

This study demonstrates that *dwangsom* serves as a central instrument in the enforcement of judgments, ensuring that civil decisions produce effective legal outcomes rather than merely declaratory recognition. The analysis of

³⁵ Burhanudin Harahap, Tastaftiyan Risfandy, and Inas Nurfadia Putri, "Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review," *Sustainability* 15, no. 8 (April 13, 2023): 6626, <https://doi.org/10.3390/su15086626>.

³⁶ Sri Maulida et al., "Post-Pandemic Digital Transformation in Zakat Management: Insights from Maqasid Syari'ah in South Kalimantan," *El-Mashlahah* 14, no. 2 (December 26, 2024): 281-302, <https://doi.org/10.23971/el-mashlahah.v14i2.7772>; Rizal Rizal, Ruslan Abdul Ghofur, and Pertiwi Utami, "The Role of Muslim Generation Community at Zakat Collection on Realizing Sustainable Development Goals (SDGs) in the Era of Digital Society 5.0," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 14, 2023): 105, <https://doi.org/10.31958/juris.v22i1.6562>.

Supreme Court Decision No. 1429K/Pdt/2006 confirms that *dwangsom* is particularly effective in enforcing non-monetary obligations in land disputes by altering the incentive structure of non-compliant parties and accelerating the restoration of rights. Theoretically, this study advances a shift from declarative justice toward judgment-enforcement justice by formulating a *maqāṣid*-based analytical framework grounded in legal certainty, expediency, and proportionality. This framework integrates civil procedural law with the objectives of *maqāṣid al-sharī'a*, particularly the protection of property (*hifz al-māl*) and the prevention of injustice.

From a practical and normative perspective, this study proposes two main recommendations. First, judges should apply *dwangsom* in a structured and proportionate manner, ensuring its direct linkage to non-monetary obligations and establishing reasonable limits to prevent excessive burdens. Second, legislators should institutionalize *dwangsom* within a clear procedural framework to ensure consistency, predictability, and legal certainty in its application. Normatively, *dwangsom* is conditionally justified within Islamic legal principles as a form of corrective coercion analogous to *ta'zīr*, provided that it remains proportionate and does not generate new forms of injustice. Ultimately, the institutionalization of *dwangsom* contributes to strengthening judicial effectiveness, enhancing public trust in legal institutions, and advancing the realization of SDG 16 on access to justice and effective, accountable institutions.[a]

Author Contribution Statement

Widyorini Indriasti Wardani: Conceptualization; Data Curation; Formal Analysis; Investigation; Methodology; Project Administration; Resources; Validation; Visualization; Writing Original Draft; Writing Review & Editing.

Muhamad Helmi Md Said: Data Curation; Funding Acquisition; Resources; Validation; Writing, Review & Editing.

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