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The Implementation of Dwangsom in the Execution of Hadhanah Matters and its Relationship to the Ultra Petita Basis

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Abstract

This article aims to examine the reasons why dwangsom is urgent in hadhanah cases and how it is implemented in hadhanah execution cases and its relationship with the ultra petita principle. This article is empirical normative legal research with qualitative descriptive analysis method. The urgency of dwangsom in hadhanah cases is an effort to provide psychological pressure so that the defendant wants to carry out the judge's order voluntarily, namely handing over the child who is the object of the case. If the defendant does not hand over the child as the judge's decision, then the defendant must pay dwangsom. The institution of dwangsom is not widely known to the public, but dwangsom is an appropriate and effective solution because the surrender of children cannot be done through forced execution. Dwangsom can be implemented in hadhanah cases if the plaintiff submits a dwangsom application. The petition must also explain the chronology of the plaintiff's reasons for requesting dowry. If dowry is not submitted in the petita, then the judge is not authorized to decide dowry, because granting dowry without a request from the plaintiff is an ultra petita action.

Keywords: Child Protection; Criminalization; Street Crime

INTRODUCTION

A case decided by the court does not mean that it is finished with the judge's decision. The decision must be implemented by the parties in accordance with the dictum of the decision. The judge's decision aims to restore the rights of people who have been harmed. Therefore, every judge's decision is expected to be immediately implemented by the losing party, because a court decision that is not implemented has no meaning for the justice seeker.

Basically, every judge's decision is expected to be implemented voluntarily by the losing party. Voluntarily implementing a court decision means that the losing party is willing to fulfill the obligation to perform that the court imposes through its decision. If the losing party voluntarily implements the court's decision, it means that justice has been achieved, the plaintiff's rights have been restored. Thus, the case is completed without assistance from the court in implementing the decision (Muhammad, 2008). However, the implementation of judges' decisions sometimes experiences obstacles due to both juridical and non-juridical factors. One of the constraints of non-juridical factors is that the losing party is reluctant to

implement the judge's decision and continues to defend the object of dispute (Yarsa, n.d.), so court assistance is needed to forcibly implement the decision. In this case, the winning party can apply for execution so that the court's decision is carried out by force.

Execution is an action taken by the court forcibly against the losing party in a case (Harahap, 2005). Execution can be carried out if the losing party does not want to carry out the judge's decision voluntarily. The solution is that the winning party can apply for execution. However, the execution of child custody rights cannot be carried out forcibly by using the power of state instruments. Children as objects of execution cannot be treated like goods that can be taken by force by state apparatus (Alfiah, 2018). Execution of children should be carried out peacefully. Some legal experts say that the execution of children should not be carried out, because execution is only carried out against objects, not people. Therefore, the execution of children cannot be carried out (Manan, 2005). Article 54 paragraph (3) of Law No. 48/2009 on judicial power mandates that court decisions be implemented with due regard to humanitarian values and justice. To maintain the value of humanity, the surrender of children should be carried out voluntarily outside the court as much as possible. Or if execution is requested by the court, the execution should be carried out amicably.

One solution that can be done to ensure the implementation of the judge's decision on hadhanah is dwangsom (forced money). The institution of forced money terminology comes from the word "dwangsom" in the Dutch family or the word "astreinte" in the French legal family (Mulyadi, 2012) According to Haripin Tumpa, dwangsom (forced money) is a penalty imposed by a judge on one of the parties in the form of payment of a sum of money, if the main sentence is not carried out (Tumpa, 2010). The purpose of filing dwangsom is to psychologically pressure the defendant to carry out their obligations. If the defendant does not carry out his obligations, then he is obliged to pay forced money, the amount of which is in accordance with the judge's decision.

This research is important to understand the urgency of dwangsom as an alternative to provide legal protection to the winning party in hadhanah cases. As a solution to overcome parties who deliberately hide children, even in the name of maintaining the psychological condition of the child and then deliberately do not want to surrender the child voluntarily. In addition, it was found that there was no unity of opinion among the judges to decide dwangsom as a solution to overcome the difficulty of hadhanah execution. On the one hand, judges are of the opinion that dwangsom cannot be applied because the Rv as the legal basis for dwangsom in Indonesia is no longer valid since the enactment of HIR and Rbg, while some judges state that dwangsom can be applied to cover the legal vacuum and can provide benefits so that there is legal certainty, preserving children's rights. In addition, the institution of dwangsom is still not widely known among the public, so it is still very rare for dwangsom demands to accompany hadhanah lawsuits.

Several articles discussing dwangsom have three trends. First, Arne Huzaimah and Syaiful Aziz's article states that the application of dwangsom for hadhanah cases is very important to be applied to defendants, especially for parties who refuse to implement court decisions. Although not requested by the plaintiff, the judge can decide on a dwangsom penalty to the defendant to ensure the fulfillment of children's rights (Aziz, 2018). Second, Khoirudin Nasution (K. Nasution & Nasution, 2021) stated that the failure of efforts to protect children's

rights in the settlement of cases in the Religious Courts is due to judges' tendency to think administratively rather than substantively. Although theoretically judges encourage justice, and the work of judges is not only to provide legal certainty, but also benefits for justice seekers (K. Nasution & Nasution, 2021). In line with Khoiruddin, Mas'ud's research states that the judge's decision in a hadhonah case due to divorce on the grounds that one of the parents apostatized and did not apply dwangsom is contrary to Maqashid al Shari'ah. The judge's decision to give hadhonah rights to Muslim parents is an effort to protect the child's religion to avoid the possibility of apostasy (Mas'ud et al., 2023).

Third, Asni's opinion that another alternative to the settlement of hadonah cases is to apply a decision immediately. Decisions can be immediately executed even though the opposing party makes legal efforts. This effort can be taken by the judge if there are concerns that the losing party will make negative efforts that can harm the winning party (Asni, 2021).

The similarity between this article and several similar studies as described above is that both examine the urgency of dwangsom in child hadhonah disputes. Children are living beings that cannot be executed by force like inanimate objects. Execution of children must be done peacefully. If there is an indication of bad faith from the defendant, the judge can award dwangsom. It is different with Arne Huzaimah who states that dwangsom can be applied by the judge even though it is not submitted in the lawsuit. Judges can apply ex officio rights. Meanwhile, in this study, the author emphasizes that dwangsom can be decided by the judge if the plaintiff submits it in the lawsuit. If not, the judge cannot decide dowry, because if there is a dowry decision without a plaintiff's request, it is an ultra petita decision. This refers to the Supreme Court Circular Letter No. 3/2018 which limits dowry to only be applied to cases that are demanded in the petitum, so that judges can no longer exercise ex officio rights to protect the parties from the other party's fraud.

The problem in this research is to examine the reasons why dwangsom is very urgent in hadhanah cases, how the implementation of dwangsom in hadhanah execution cases and its relationship with the ultra petita principle. While the purpose of this article is to provide understanding and socialization to the public about the importance of dwangsom in child hadhonah disputes to facilitate the execution of hadhonah decisions, avoiding forced child execution. The execution of children should proceed peacefully to realize justice, maintain the child's psychology and the best interests of the child.

RESEARCH METHODS

This research is literature research with normative juridical and empirical juridical approaches. The normative juridical approach is carried out by conducting a literature study of laws and regulations, theories, and concepts related to dwangsom, especially the provisions contained in the Rv, SEMA No. 3 of 2015 and SEMA No. 3 of 2018 concerning dwangsom and its relation to the principle of ultra petita. Meanwhile, the empirical juridical approach is carried out to complete the data on how the implementation of dwangsom in the Religious Court. This effort was made by interviewing Religious Court judges to find out how the judges view the application of dwangsom in hadhanah cases in the Religious Court, whether judges are only authorized to grant dwangson limited to cases in which the petitum demands dwangsom or judges can use ex offocio rights.

Data analysis is carried out in the form of qualitative analysis, namely by describing data in the form of sentences arranged systematically, completely, and in detail according to the subject matter that has been determined, this is to facilitate interpretation and draw conclusions as answers to research problems. The results of the analysis and discussion are then written in the form of a research report that describes completely, clearly, and systematically.

RESULTS AND DISCUSSION

The Existence of Dwangsom in Indonesian Judicial Practice

Dwangsom (forced money) according to Aripin Tumpa is a penalty imposed by a judge on one of the parties in the form of payment of a sum of money, if the main penalty is not implemented (Tumpa, 2010). Meanwhile, according to Abdul Manan, dwangsom is an additional punishment to a person who is sentenced to pay a sum of money other than that mentioned in the main punishment with the intention that he is willing to carry out the main punishment properly and on time (Abdul Manan, 2005). The regulation of dwangsom in judicial practice in Indonesia is regulated in Articles 606 and 606 b BRv which have been used by Rad van Justitie and Hoegerechtteschof since 1983Abdul Manan, Application of Civil Procedure Law in Religious Courts, 438. In addition, it is also regulated in Supreme Court Jurisprudence No. 38/K/SIP/1967 dated May 7, 1967, Supreme Court Jurisprudence No. 244 K/Pdt/2008 dated December 29, 2008, which confirms that "the possibility of real execution is not an obstacle to imposing dwangsom. The only obstacle to the imposition of dwangsom is a verdict whose principal punishment is the payment of a sum of money" (Tumpa, 2010).

Basically, HIR (Herziene Indonesisch Reglemant) and Rbg (Rechtsreglement Buitengewesten) as sources of civil procedural law in court practice do not regulate dwangsom (forced money). The regulation of dwangsom is found in Chapter V section 3 of the Rv (Reglement of de Rechtsvordering) in Articles 606 and 606 b and is the basis for the application of dwangsom (forced money) in practice in the judiciary in Indonesia.

> Article 606 (a-b) Rv reads (Tumpa, 2010): "To the extent that a judge's decision contains a sentence for something other than paying a sum of money, it can be determined that as long as or whenever the defendant does not fulfill the sentence, he must submit a sum of money whose amount is determined in the judge's decision and the money is called dwangsom" Furthermore, Article 606b Rv: "If the judgment is not complied with, the opponent of the defendant is authorized to enforce the judgment against the specified amount of dwangsom without first obtaining a new legal right".

There has been a debate on the application of dwangsom in the civil procedure law system in Indonesia. Supomo and several other legal experts agree in principle that the Rv has been declared invalid in Indonesia with the abolition of the Raad van Justitie and Hoogerechtshof (Mulyadi, 2012). With the abolition of these two rules, the only sources of civil procedural law in Indonesia are HIR and Rbg. Meanwhile, Article 393 paragraph (1) HIR jo Article 721 R. Bg expressly prohibits all forms of procedural law other than those regulated in HIR and RBg. Therefore, all provisions contained in the Rv including the rules regarding dwangsom should not apply and can no longer be applied in Indonesia.

Meanwhile, Mertokusumo stated his legal opinion that although the HIR and RBg do not regulate the institution of dwangsom, this dwangsom institution is considered important for the plaintiff to force the defendant to carry out the judge's decision. According to Lilik Mulyadi,

although the Rv is no longer valid as a guideline for civil procedural law in Indonesia, due to the need for certain circumstances, where the existing regulations are inadequate, our judicial practice sometimes must use the provisions of procedural law in the Rv as guidelines, including in the case of this dowry institution (Mulyadi, 2012a). Supreme Court Jurisprudence No. 38 K/SIP/1967 dated May 6, 1967, and Supreme Court Jurisprudence No. 244 K/Pdt/2008 dated December 29, 2008, confirmed that "the possibility of real execution is not an obstacle to imposing dwangsom. The only obstacle to the imposition of dwangsom is a penalty in the form of payment of a sum of money (Tumpa, 2010).

The application of dwangsom is strengthened by the results of the National Working Meeting (Rakernas) of the Indonesian Supreme Court in Manado in 2012. The results of this meeting have recommended the application of dwangsom in hadhanah cases. The formulation of the results of the Rakernas of the Indonesian Supreme Court states that basically the decision of the hadhanah case can be executed, but in its implementation, it must pay attention to the interests and psychology of the child. To avoid difficulties in execution, the judge can punish the defendant by paying dwangsom (Bisri, n.d.). The judge's decisions that can be imposed with dwangsom are all condemnatory civil decisions, whose main punishment is not the payment of a sum of money. Declaratory and constitutive verdicts as well as verdicts whose main punishment is the payment of a sum of money cannot be imposed dwangsom.

Hadhanah in Islamic Family Law

Hadhanah in the conception of Islamic law is caring for children who are not yet able to live independently, including education, and everything that is needed both in the form of organizing the needs of children and in the form of avoiding something that can damage them (Rafiq, 2013). Hadhanah is an attitude such as positioning something between the ribs and knees while sitting. Simply put, someone who does something is like a mother who puts her baby on her knees while breastfeeding. The meaning of hadhanah is the seriousness of the mother in protecting and caring for her baby (A. Nasution & Nasution, 2021). Hadhanah is a consequence of the breakdown of marital relations in the form of the obligation of husbands and wives to protect and care for their children in the form of control of parenting rights and child support obligations.

Normatively, the right of hadhanah of an immature child lies with the mother, while the father is obliged to provide maintenance through the mother. To realize the protection and survival of children, the panel of judges ex officio can oblige the father to bear the costs of living for his child until the child is able to live independently based on the provisions of Article 156 (f) KHI (Musawwamah, 2020). In some cases, the court's decision to grant parenting rights is based on which parent was dominant in the care of the child before the divorce (Braver et al., 2011). However, there are disparities in judges' decisions regarding child custody, because of research by Adelina Nasution, Pagar and Asmuni (A. Nasution et al., 2022) that differences in Religious Court decisions are based on consideration of witness testimony and facts in the field. The next reason is that the KHI format regarding child custody is not absolute to be implemented but needs other evidence by listening to expert witness testimony. Mental considerations, the environment and the condition of the child are also prioritized to determine child custody in the best interests of the child.

Hadhanah is obligatory for both parents as stated in Surah al-Baqarah verse 233:

۞وَٱلۡوَٰلِدَٰتُ يُرۡضِعۡنَ أَوۡلَٰدَهُنَّ حَوۡلَيۡنِ كَامِلَيۡنِۖ لِمَنۡ أَرَادَ أَن يُتِمَّ ٱلرَّضَاعَةَۚ وَعَلَى ٱلۡمَوۡلُودِ لَهُۥ رِزۡقُهُنَّ وَكِسۡوَتُهُنَّ بِٱلۡمَعۡرُوفِۚ لَا تُكَلَّفُ نَفۡسٌ إِلَّا وُسۡعَهَاۚ لَا تُضَآرَّ وَٰلِدَةُۢ بِوَلَدِهَا وَلَا مَوۡلُودٞ لَّهُۥ بِوَلَدِهِۦۚ وَعَلَى ٱلۡوَارِثِ مِثۡلُ ذَٰلِكَۗ فَإِنۡ أَرَادَا فِصَالًا عَن تَرَاضٖ مِّنۡهُمَا وَتَشَاوُرٖ فَلَا جُنَاحَ عَلَيۡهِمَاۗ وَإِنۡ أَرَدتُّمۡ أَن تَسۡتَرۡضِعُوٓاْ أَوۡلَٰدَكُمۡ فَلَا جُنَاحَ عَلَيۡكُمۡ إِذَا سَلَّمۡتُم مَّآ ءَاتَيۡتُم بِٱلۡمَعۡرُوفِۗ وَٱتَّقُواْ ٱللَّهَ وَٱعۡلَمُوٓاْ أَنَّ ٱللَّهَ بِمَا تَعۡمَلُونَ بَصِيرٞ

Meaning; Mothers may breastfeed their children for two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.

In addition, Surah at Thalaq verse 7 states that:

لِيُنفِقۡ ذُو سَعَةٖ مِّن سَعَتِهِۦۖ وَمَن قُدِرَ عَلَيۡهِ رِزۡقُهُۥ فَلۡيُنفِقۡ مِمَّآ ءَاتَىٰهُ ٱللَّهُۚ لَا يُكَلِّفُ ٱللَّهُ نَفۡسًا إِلَّا مَآ ءَاتَىٰهَاۚ سَيَجۡعَلُ ٱللَّهُ بَعۡدَ عُسۡرٖ يُسۡرٗا

Meaning; Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease.

The provision of hadhanah in the Marriage Law is regulated in Article 41 letters a and b which reads:

> "As a result of the breakdown of marriage due to divorce, either the mother or father remains obliged to maintain and educate their children, based solely on the interests of the child. If there is a dispute regarding the control of the children, the Court gives its decision, namely the father is responsible for all the costs of maintenance and education needed by the child, if the father in reality cannot fulfill this obligation, the Court can determine that the mother shares in these costs "(Marriage Law, 1974) Meanwhile, Article 45 paragraphs 1 and 2 of the Marriage Law states that : "both parents are obliged to maintain and educate their children as well as possible. The obligation of these parents applies until the child is married or can stand on his own. This obligation continues even if the marriage between the parents breaks down." (Marriage Law, 1974)

Normative provisions on hadhanah are also contained in the Compilation of Islamic Law as in Article 105 KHI (Compilation of Islamic Law, n.d.).

a. The maintenance of a child who is not yet mumayyiz or 12 years old is the right of the mother;
b. The maintenance of a mumayyiz child is left to the child to choose between the father or mother as the custodian;
c. The father's maintenance costs are borne by his father.

Article 156 KHI further stipulates that:

a) Children who are not yet mumayyiz are entitled to hadhanah from the mother, if the mother has died, then his position is replaced by women in a straight line up from the mother, father, women in a straight line up from the father, sister of the child concerned, women by blood according to the father's side line;

b) Children who are mumayyiz have the right to choose whether to receive hadhanah from their father or mother;
c) If the hadhanah holder cannot guarantee the physical and spiritual safety of the child, even though the child's maintenance and hadhanah costs have been met, then at the request of the relative concerned the Religious Court can transfer the right to hadhanah to another relative who also has hadhanah rights;
d) All costs of hadhanah and child maintenance are the responsibility of the father according to his ability, at least until the child is an adult who can take care of himself (21 years);
e) Where there is a dispute over hadhanah and child maintenance, the Court shall give its decision based on letters a, b and d;
f) The court may also, having regard to the father's capacity, determine the amount of costs for the maintenance and education of the children who do not participate in the marriage.

From these normative provisions, it can be understood that the responsibility for child maintenance remains the obligation of the father and mother even though the marriage between the two parents has broken down. The father's obligation to provide for his children does not fall even if he has divorced from his wife, even if the father has remarried. Meanwhile, the right to hadhanah for children who are not yet mumayyiz is the right of the mother, because the mother is more understanding and patient in caring for and educating her child. So it can be reaffirmed that in terms of post-divorce child maintenance, the mother's duty as the holder of hadhanah rights does not necessarily mean that the mother is responsible for fulfilling all of her child's maintenance. The obligation to fulfill the child's maintenance and living expenses is the father's obligation, unless the father is unable, then the court can determine that the mother is also obliged to bear the child's maintenance.

The occurrence of divorce between husband and wife leads to conflict over who holds the right to hadhanah of the child. However, it often happens that the father controls the child who is not yet mumayyiz and separates him from his mother, then in the divorce process the wife demands the right to hadhanah of the child. However, when the judge's decision has permanent legal force, the implementation of the judge's decision on hadhanah rights is often not implemented by the defendant, so that the judge's decision is only illusory.

The Urgency of Dwangsom in the Execution of Hadhanah Cases

Obstacles in the execution of child hadhanah occur because the execution/surrender of children cannot be carried out forcibly by using state power tools as the execution of decisions whose objects are objects. Children cannot be treated like goods that can be taken by force or seized by force by the state apparatus. The complexity of the child hadhanah execution process, makes dwangsom as an alternative or a solution in dealing with cheating parties who do not want to hand over the child according to the dictum of the judge's decision. Dwangsom in the execution of a verdict in the form of a penalty to perform certain actions has a very urgent function, namely to provide psychological pressure so that the defendant wants to carry out the judge's order voluntarily. Dwangsom or forced money in execution serves to provide psychological pressure to the defendant to voluntarily perform the actions stated in the judge's decision. As an additional punishment, it is expected that the defendant will voluntarily surrender the child who is the object of the case as the main punishment ordered by the judge, so that the execution of the surrender of the child can run smoothly, fairly and humanely (Mukti Arto, 2018).

The urgency of Dwangsom:

1. Dwangsom serves to put psychological pressure on the defendant so that he is motivated and voluntarily wants to hand over the child who is the object of the dispute to the plaintiff as ordered by the judge.

2. If the defendant fails to hand over the child as ordered by the judge, the defendant must pay the dwangsom.
3. If the dues are not paid, the property of the defendant can be confiscated and auctioned as collateral to pay the dues.
4. Duties may continue until the defendant is willing to surrender the child to the respondent.

Duress in execution serves to put pressure on the defendant to voluntarily perform certain actions ordered by the judge. If the defendant does not want to hand over the child as ordered by the judge, then the defendant must pay the dwangsom. If the dwangsom is not paid, the property of the defendant can be confiscated and auctioned as collateral for the payment of the dwangsom (Alfiah, 2018). The payment of dues may continue until the defendant is willing to surrender the child to the plaintiff. Dwansom (forced money) is a form of indirect execution, where the fulfillment of the achievement is achieved after an effort to put psychological pressure on the defendant so that the defendant carries out the judge's decision voluntarily.

The Implementation of Dwangsom in Hadhanah Case Execution and its Relationship with Ultra Petita Principle

In the civil procedural law system, the basis for examining civil cases is the existence of a lawsuit. Therefore, if in a lawsuit over a hadhanah case the plaintiff demands dwangsom, the judge is obliged to consider the demand. As stipulated in Article 56 paragraph (1) of Law No. 7 of 1989 which has been amended by Law No. 3 of 2006 and Law No. 50 of 2009, the court may not refuse to examine and decide a case submitted on the pretext that the law does not exist or is unclear, but must examine and decide it.

The principles of dwangsom contained in Article 606 a and Article 606b Rv are (Manan, 2005).

1) Dwangsom is accessoir, so a lawsuit regarding dwangsom can only be granted by the judge if it is filed together with the main lawsuit. This means that a claim for dowry cannot be filed separately from the main lawsuit, it must follow the main lawsuit. Dwangsom cannot be granted if the main lawsuit is not granted. Dwangsom can be filed in a case that is complimentary.
2) Dwangsom is an additional or subsidiary penalty. This means that the dwangsom imposed by the judge together with the main charges will only apply if the defendant (punished) does not fulfill the main sentence in the judge's decision. If the main punishment has been fulfilled by the defendant (punished), then automatically the dwangsom decision has no legal force anymore and does not need to be carried out by the defendant. Conversely, if the defendant does not execute the main sentence and only executes the dwangsom as in the judge's decision, then the execution of dwangsom cannot eliminate the main sentence. The obligation to carry out the main punishment is not canceled only by carrying out the dwangsom.
3) Dwangsom is a way to put psychological pressure on the defendant to carry out the judge's decision. If there has been a dwangsom decision while the defendant is still neglecting to carry out the decision, then the consequence is that the defendant must pay a fine as stated in the judge's decision. So the function of dwangsom is to put psychological pressure on the defendant to immediately carry out the judge's decision.

Before deciding dwangsom, the judge needs to pay attention to whether the dwangsom penalty is actually requested by the plaintiff expressly in the petitum. This needs to be considered by the judge, because the judge is not allowed to impose a dwangsom penalty by exercising ex officio rights, but must be based on a request from the litigant which is expressly stated in the petitum (Harahap, 2005). It must even be supported by a clear posita. The

obligation to include a claim for dowry in the petitum of this lawsuit is in line with Supreme Court Circular Letter No. 3/2018 in point III of the Formulation of the Religious Chamber Letter A number 9 concerning Ultra Petita Decisions (SEMA No. 3/2018), stating that: "The provision of SEMA No. 03 of 2015 letter C number 10 is refined so that it reads: Determination of hadhanah rights as long as it is not submitted in a lawsuit / request, the judge may not determine ex officio who the child's caregiver is. Determination of hadhanah and dwangsom without a claim is ultra petita."

The enactment of SEMA No. 3/2018 ends the ability of judges to decide dwangsom ex officio, as stipulated in SEMA No. 3/2015. SEMA No. 3/2018 emphasizes that the determination of hadhanah and dwangsom rights must be based on a lawsuit or petition. If no lawsuit is filed, the judge cannot exercise ex officio rights. The determination of hadhanah and dwangsom without a lawsuit is considered ultra petita. Ultra Petita is a decision that exceeds what is requested (Siallagan, 2010). The legal basis of Ultra Petita is regulated in Article 178 paragraphs (2) and (3) of the Herziene Indonesisch Reglement (HIR) and Article 189 (2) and (3) of the Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura (RBg) which prohibits a judge from deciding more than what is demanded (Siallagan, 2010). Yahya Harahap revealed that judges who grant more than the posita and petitum of the plaintiff are considered to have exceeded the limits of authority or ultra vires, namely acting beyond the powers of his authority. If the verdict contains ultra petitum, it must be declared invalid even though it was done by the judge in good faith and in accordance with the public interest. Adjudicating by granting more than what is claimed, can be equated with illegal actions even though it is done in good faith.

The dwangsom decision procedure according to (Judge Nurkholis, 2020) that dwangsom can be granted if it is submitted by the plaintiff in his petition. If the plaintiff does not submit a dwangsom request, the judge is not authorized to decide dwangsom, because it is considered ultra petitum partium. The same thing was conveyed by judge Seprilyadi that the judge may not decide more than what is demanded by the plaintiff, if dowry is not submitted in the petitum, then the judge cannot decide dowry (Seprilyadi, 2019). However, in the practice of hadhonah case settlement, dowry claims are rarely filed by the parties. This is because dwangsom is not widely recognized by the public (Alfitri, 2022). Although dwangsom is effective in psychologically pressuring the defendant, it can only be applied if the defendant is financially capable. On the other hand, dwangsom also creates new problems for the defendant, if the defendant does not fulfill the demand for dwangsom. (Hakim Asrori, 2022). So, it can be understood that the claim for dwangsom in hadhanah cases can be granted if the plaintiff files a dwangsom claim in his lawsuit. If not, then the judge cannot decide on dowry because this is an ultra petita action.

Therefore, before dropping penalty, the judge needs to pay attention to several things, namely:

a) Penalty payment expressly requested by the plaintiff

   Punishment*penalty*This was indeed requested by the plaintiff expressly in the petitum of his lawsuit letter. Hence, the demanded *penalty* must be supported by adequate positive arguments. The judge is not justified in dropping the dwangsom because of rights *out of office*.

b) Penalty *payment* filed together with the main claim

   A lawsuit filed by the plaintiff together with the main lawsuit. This is important to note first because dwangsom punishment may only be granted if it is filed together with the main punishment. Without the basic punishment, dwangsom application is not possible and cannot be granted due to nature*penalty* is *accessory*, in the sense that the existence of

dwangsom depends on and follows the existence of the basic punishment, there is no dwangsom without the basic punishment (Mulyadi, 2012)

c) The main demand requested is not the payment of a certain amount of money
Things to consider before granting *penalty* is that the main penalty requested in the case is not a penalty of paying a sum of money (Mulyadi, 2012). In line with the provisions of Article 606a R, where *penalty* can only be imposed on a judge's decision where the principal punishment does not consist of payment of a sum of money. If the main punishment is payment of a sum of money, then the execution can be carried out by *execution seizure.*

d) Convicted in a state of being able and able to carry out the principal sentence.
The next thing the judge needs to pay attention to before granting it *penalty* is that the condemned person is able and possible to fulfill and implement the basic law. *Penalty payment* cannot be imposed if the judge previously assessed that the defendant/convict will not be able to fulfill the basic sentence.

It is) *Penalty* payment be an effective solution for resolving cases *gift* the main purpose of imposing dwangsom is as an effective solution for the settlement of cases when the defendant is not willing to voluntarily fulfill the basic sentence within the specified time limit. Therefore, before sentencing *penalty* the judge needs to confirm first that the sentence *penalty* will really be an effective solution for resolving this case.

Another important thing for the judge to consider in a dwangsom lawsuit is that the judge is not obliged to grant every dwangsom claim submitted in a hadhanah dispute as stated in Article 606a RV. The judge is obliged to consider the abilities of the convict/defendant, so that *penalty* truly effective as a solution to case execution *gift* So dwangsom really becomes an effective solution in executing hadhonah cases.

CONCLUSION

The reason is important *penalty* in the examination of the matter*Hadnanah* is to anticipate parties who do not have good intentions to carry out the judge's decision voluntarily. Implementation of the judge's decision regarding *gift* This should be done voluntarily, not by force, to maintain the child's psychological condition. *Penalty* serves to pressure the losing party to immediately implement the judge's decision. If it is not implemented, the losing party is obliged to pay a fine according to the judge's decision.

Penalty is *accessory*, it means *penalty* can only be granted by a judge if it is submitted by the plaintiff simultaneously with the main lawsuit. Lawsuit*penalty* cannot be filed separately from the main lawsuit. Lawsuit *penalty* must be supported by clear posita. Connection *penalty* with the ultra petitum decision is *penalty* can be applied if submitted in the petitum. If not, then consider it *beyond the request*. Decisions *beyond the request* cannot be made even in good faith. If there are indications that the execution of the hadhanah is difficult, then the competent party provides legal assistance by providing information and suggestions for the plaintiff to submit *penalty* inorderto ensure execution *gift.*

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