

**PRAKTIK PENGGUNAAN DWANGSOM DALAM PELAKSANAAN
EKSEKUSI PUTUSAN HAK ASUH ANAK (HADHANAH)
DI PENGADILAN AGAMA KABUPATEN MALANG
(ANALISIS PUTUSAN NOMOR :
5122/PDT.G/2020/PA.KAB.MLG)**

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis implementasi penggunaan *dwangsom* dalam pelaksanaan eksekusi putusan hak asuh anak (*hadhanah*) di Pengadilan Agama Kabupaten Malang. Penelitian ini berfokus pada dua poin yaitu: 1) pertimbangan hukum Hakim dalam menjatuhkan hukuman uang paksa (*dwangsom*) pada perkara hak asuh anak (*hadhanah*) ditinjau dari Hukum Acara Peradilan Agama. 2) implementasi praktik penggunaan uang paksa (*dwangsom*) dalam pelaksanaan eksekusi hak asuh anak (*hadhanah*) berdasarkan Putusan Nomor: 5122/Pdt.G/2020/Pa.Kab.Mlg

Sifat dari penelitian ini merupakan perpaduan antara penelitian normatif dan empiris. Data penelitian ini terdiri dari data sekunder yang diperoleh dari penelitian kepustakaan berupa bahan hukum primer, sekunder, dan tersier serta data primer yang diperoleh dari penelitian berupa wawancara terhadap Hakim di Pengadilan Agama terkait.

Hasil penelitian ini menunjukkan bahwa pertimbangan hakim dalam Putusan Nomor: 5122/Pdt.G/2020/Pa.Kab.Mlg. didasarkan pada Undang-Undang Republik Indonesia Nomor 7 Tahun 1989 tentang Peradilan Agama yang menyatakan bahwa penegakan hukum di Indonesia didasarkan pada hukum dan keadilan. Apabila ditinjau berdasarkan hukum acara Peradilan Agama penjatuhan *dwangsom* dalam perkara *hadhanah* dapat dilaksanakan di lingkungan Peradilan Agama sejak berlakunya Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama. Dalam praktiknya penjatuhan *dwangsom* dalam eksekusi hak asuh anak dapat dijatuhkan secara *ex officio* oleh hakim, meskipun terkadang eksekusi *dwangsom* tersebut tidak dilakukan karena telah dilaksanakannya hukuman pokok. Terkait implementasi penjatuhan *dwangsom* berdasarkan *maqashid syariah* dapat dikatakan sebagai media (*wasilah*) agar tergugat/terhukum segera melaksanakan putusan yang telah dijatuhkan hakim di Pengadilan Agama agar tercapai kemaslahatan di antara para pihak dan anak sebagai objek sengketa.

Kata Kunci : *Dwangsom*, *Hadhanah*, Eksekusi.

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PRACTICE OF USING DWANGSOM IN THE IMPLEMENTATION OF EXECUTION CHILDREN'S CUSTODY DECISIONS (HADHANAH) AT THE RELIGIOUS COURT OF MALANG DISTRICT (ANALYSIS OF DECISION NUMBER : 5122/PDT.G/2020/PA.KAB.MLG) Galuh Widhosari³, Hartini⁴

ABSTRACT

This study aims to determine and analyze the implementation of using dwangsom in the execution of child custody decisions (hadhanah) in the Religious Courts of Malang Regency. This study focuses on two points, namely: 1) the legal considerations of the judge in imposing forced money punishment (dwangsom) in child custody cases (hadhanah) in terms of the procedural law of the Religious Courts. 2) Implementation of the practice of using forced money (dwangsom) in the execution of child custody (hadhanah) based on Decision Number: 5122/Pdt.G/2020/Pa.Kab.Mlg.

The nature of this research is a combination of normative and empirical research. The data of this research consisted of secondary data obtained from library research in the form of primary, secondary, and tertiary legal materials and primary data obtained from research in the form of interviews with judges in the relevant Religious Courts.

The results of this study indicate that the judge's considerations in the Decision Number: 5122/Pdt.G/2020/Pa.Kab.Mlg. based the Religious Courts since the enactment of Law Number 7 of 1989 which state that law enforcement in Indonesia is based on law and justice. Reviewed based on the procedural law of the Religious Courts, the imposition of dwangsom in the hadhanah case can be carried out within the Religious Courts since the enactment of Law Number 7 of 1989 concerning Religious Courts. In practice the imposition of dwangsom in the execution of child custody can be imposed ex officio by the judge, although sometimes the execution of the dwangsom is not carried out because the main sentence has been carried out. Regarding the implementation of the imposition of dwangsom based on maqashid sharia, it can be said as a medium (wasilah) so that the defendant/convict immediately implements the decision that has been handed down by the judge in the Religious Court in order to achieve benefit between the parties and the child as the object of the dispute.

Keywords: Dwangsom, Hadhanah, Execution.

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