



## ARTICLE

# Is Forced Money (*Dwangsom*) the Key to Enforcing Administrative Court Decisions? Examining Its Impact on Compliance

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## Abstract

The implementation of forced money (*dwangsom*) in Indonesia's administrative courts is a legal tool aimed at ensuring compliance with court decisions, particularly in cases where government bodies fail to fulfill their obligations. This research explores the effectiveness of the *dwangsom* policy and its implications for improving compliance with administrative court rulings. Using a normative juridical approach, the study analyzes how *dwangsom* is applied in practice and its impact on the level of compliance by state institutions. The findings reveal that while the *dwangsom* policy has the potential to encourage compliance, its practical application remains inconsistent. In many instances, government agencies either evade or delay the payment of forced money, leading to minimal impact on ensuring timely enforcement of decisions. The research highlights the need for stricter enforcement mechanisms and greater accountability for public officials who fail to comply with court orders. This study introduces a novel perspective on the role of *dwangsom* in the broader context of administrative justice in Indonesia. It also addresses the urgency of enhancing its effectiveness to improve the credibility of the administrative courts. The contribution of this research lies in its critical evaluation of the *dwangsom* policy and its potential for reform. By offering recommendations for strengthening enforcement and compliance, this research aims to contribute to the ongoing discourse on improving the efficiency and accountability of Indonesia's



administrative justice system. The findings are particularly relevant to policymakers, legal practitioners, and reform advocates working towards a more responsive legal system.

### Keywords

*Forced Money (Dwangsom), Compliance, Administrative Court, Enforcement, Legal Reform*

## Introduction

In the realm of Indonesia's legal landscape, the concept of forced money, known as *dwangsom*, has emerged as a pivotal tool in the ongoing effort to ensure that judicial rulings are respected and enforced. As a mechanism designed to compel compliance from parties who lose in administrative disputes, *dwangsom* plays a crucial role in upholding accountability within the Administrative Court (*Peradilan Tata Usaha Negara*, PTUN). However, despite the framework established by Law No. 5 of 1986 on Administrative Courts—amended multiple times, most recently by Law No. 51 of 2009—the practical application of this legal instrument faces numerous challenges that hinder its effectiveness (Pratama & Wibowo, 2023). Enforcement challenges within the PTUN system have persisted since the court's inception. To tackle these issues, the introduction of coercive measures like *dwangsom* was codified in Law No. 9 of 2004, amending Law No. 5 of 1986. This law mandates financial penalties for public officials who fail to execute legally binding judgments. Yet, studies indicate that compliance rates with administrative court decisions remain disappointingly low, both before and after the *dwangsom* implemented. This situation raises serious concerns, as the primary role of administrative courts is to provide judicial oversight and uphold justice in public administration, ensuring fairness and accountability (Rahmadinata, 2022).

The ongoing debate about the effectiveness of *dwangsom* prompts critical questions regarding the adequacy of the current legal framework and the actual impact of these financial penalties on compliance. Although coercive measures are stipulated by law, their implementation is often hampered by unclear enforcement procedures and a lack of awareness among administrative officials

about their legal responsibilities. Consequently, when court decisions go unenforced, public trust in the judicial system and the integrity of public institutions can suffer. Moreover, timely examination of *dwangsom* is particularly relevant given the evolving landscape of administrative law in Indonesia, especially following the enactment of Law No. 30 of 2019 on Government Administration (Herlambang, Pratama Herry, 2020). This new law introduces significant changes that necessitate a reevaluation of existing enforcement mechanisms like *dwangsom*, highlighting the need for clarity and consistency in its application.

To better understand these complexities, it is essential to frame the application of *dwangsom* within Lawrence M. Friedman's Legal System Theory. Friedman argues that law is deeply intertwined with its social, cultural, and political contexts, which significantly shape how legal systems function. His theory consists of three interconnected components: legal structure, legal substance, and legal culture (Afifi et al., 2023). Legal structure refers to the formal framework within which laws operate—encompassing regulations and institutions responsible for enforcement. In relation to *dwangsom*, this involves legislative arrangements that govern coercive fines in PTUN cases and ensure judicial decisions are executed. Legal substance, on the other hand, pertains to the actual content of laws themselves. For *dwangsom*, this includes specific provisions within administrative law that govern financial penalties and outline enforcement procedures. The substance dictates the rights and obligations of parties involved in administrative disputes and establishes consequences for non-compliance (Rahman, 2023; Setyowati, 2023; Untoro, 2018).

Finally, legal culture encompasses societal norms, values, beliefs, and practices that influence how laws are understood and applied. This aspect is crucial in determining how willing administrative officials are to comply with court decisions and how effective *dwangsom* is as an enforcement tool. In Indonesia, legal culture is shaped by a blend of traditional legal systems, colonial legacies, and contemporary political practices. Factors such as patronage networks and political influence can often undermine formal legal obligations. Understanding how these three elements—legal structure, legal substance, and legal culture—interact is key to assessing the effectiveness of *dwangsom* in Indonesia. It becomes evident that compliance cannot be

mandated solely through formal statutes; rather, it depends on how these laws are perceived and implemented within their broader cultural context. To enhance *dwangsom* as an enforcement mechanism, it is vital to address not only legal provisions but also the cultural and institutional dynamics that influence administrative behavior (Sari, 2019).

This research aims to evaluate the relevance and effectiveness of *dwangsom* within the PTUN system by analyzing its practical application and impact on promoting compliance among public officials. Utilizing Friedman's Legal System Theory, this study will explore how legal structure, legal substance, and legal culture shape outcomes in administrative court decisions. By examining challenges related to enforcement—such as legal awareness, institutional capacity, and political influence—this research seeks to provide insights into improving the implementation of *dwangsom*. Additionally, this study will consider comparative perspectives from other jurisdictions with established administrative courts that employ similar financial sanctions for compliance enforcement. By analyzing best practices internationally, we aim to identify potential reforms that could be adapted to Indonesia's context, thereby enhancing the effectiveness of *dwangsom* and fostering a culture of accountability within public administration. This exploration is particularly timely given recent developments in Indonesia's administrative law landscape, including Law No. 30 of 2019 on Government Administration, which calls for a re-evaluation of existing enforcement mechanisms like *dwangsom*.

In summary, this study will contribute to ongoing discussions about coercive fines in administrative law while addressing broader themes of governance, accountability, and rule of law in Indonesia. By bridging theoretical insights with practical challenges, we hope to offer meaningful recommendations for reform that will strengthen Indonesia's administrative justice system and ultimately enhance public trust in its legal framework.

## ***Dwangsom* in Indonesian Administrative Law**

The concept of *dwangsom*, often translated as "forced money," plays a pivotal role in Indonesia's Administrative Court (*Pengadilan Tata Usaha Negara* or PTUN), serving as a legal mechanism to ensure compliance with court rulings. This instrument reflects a broader commitment to the rule of law by imposing

financial consequences on parties that fail to adhere to judicial decisions. Rooted in various legal traditions, *dwangsom* finds notable parallels in Dutch law, where the term originates, encapsulating the idea of punitive financial measures aimed at compelling adherence to court mandates (Syahrizal, 2019). This legal construct ensures that judicial decisions transcend symbolic authority, creating tangible accountability for non-compliance (Darmawan, 2020).

In Indonesia, the legal foundation of *dwangsom* is grounded in Articles 606a and 606b of the Dutch *Wetboek op de Burgerlijke Rechtshandhaving* (Rv), which continue to influence administrative court practices. Article 606a stipulates that when a court decision involves obligations beyond monetary payments, it may impose a fine—referred to as *dwangsom*—on the non-compliant party. Article 606b empowers the opposing party to enforce the *dwangsom* without seeking a separate legal action, underscoring the instrument's immediate executory nature. These principles have been adapted into Indonesian law through Article 116(4) of Law No. 9 of 2004, amended by Law No. 51 of 2009, which explicitly allows for forced money and/or administrative sanctions when public officials fail to comply with legally binding court rulings.

Legal scholars, such as Prof. Mr. P. A. Stein and Marcel Some, provide nuanced definitions of *dwangsom*. Stein describes it as a sum stipulated in a judicial decision, payable to the plaintiff if the defendant fails to comply, designed to exert psychological pressure to fulfill the primary obligation (Mulyadi, 2001). Some, meanwhile, defines as the payment of a specific sum of money stipulated in a court decision, which is awarded to the plaintiff if the convicted party fails to comply with the ruling (Tumpa, 2010). In practice, forced money serves as an ancillary measure, activated only when the primary judgment remains unfulfilled, thereby ensuring its role as an enforcer rather than a standalone punishment.

Despite its theoretical robustness, the practical application of forced money in Indonesia is fraught with challenges. One significant issue is the limited awareness among administrative officials regarding their legal obligations under court rulings. This knowledge gap often leads to inconsistent compliance, raising questions about the overall effectiveness of *dwangsom* as a tool for enforcing accountability in public administration (Cahyani et al.,



2022). Moreover, the absence of a specialized enforcement mechanism further undermines its efficacy, leaving judicial decisions vulnerable to non-compliance. Addressing these shortcomings requires a multifaceted approach. Indonesia could benefit from studying international best practices, particularly from European jurisdictions where *dwangsom* enforcement is supported by robust administrative oversight. Mechanisms such as regular audits, compliance assessments, and independent monitoring bodies ensure accountability and minimize the risk of non-compliance. Additionally, enhancing legal literacy among administrative officials is imperative. Tailored training programs and workshops focusing on the implications of judicial decisions could bridge knowledge gaps and foster a culture of compliance and respect for the rule of law. By integrating structural reforms, drawing lessons from global practices, and investing in legal education, Indonesia can enhance the practical effectiveness of forced money. This will not only strengthen the authority of its judiciary but also promote greater accountability within its administrative framework, ultimately reinforcing public trust in the legal system.

The historical context of forced money (*dwangsom*) in Indonesia illustrates a broader trend in administrative law where financial sanctions are utilized to enforce compliance with court orders. This legal mechanism is aligned with similar practices in other jurisdictions, notably the Netherlands, where the concept of *dwangsom* originally emerged (Eko Purwanto, 2024). In the Netherlands, *dwangsom* serves as a tool to compel individuals or entities to adhere to court rulings by imposing a financial penalty for non-compliance. The concept has been adapted in various legal systems around the world, with Indonesia being no exception. The introduction of forced money in Indonesian administrative law represents a significant shift, aiming to provide an enforceable means of ensuring compliance with decisions made by the Administrative Court (Pengadilan Tata Usaha Negara or PTUN). It reflects the growing reliance on financial penalties as a deterrent against non-compliance in the realm of public administration. However, despite its theoretical promise, the application of *dwangsom* in Indonesia has faced numerous challenges. While the legal framework for its implementation exists, issues such as bureaucratic inefficiency, a lack of awareness among administrative officials about their legal obligations, and the absence of robust enforcement

mechanisms have resulted in limited success. As a result, the goal of *dwangsom*—to compel compliance and hold individuals accountable—has often been undermined by a failure to ensure its consistent application in practice (Purwanto, 2024).

The establishment of PTUN in Indonesia marked a crucial milestone in the development of administrative justice. PTUN was created to provide a legal recourse for individuals and legal entities to challenge decisions made by government officials that are deemed unjust or arbitrary. The introduction of forced money (*dwangsom*) as a remedy for non-compliance with PTUN rulings was an essential part of this evolution, as it provided a concrete means of enforcing administrative court decisions. However, the implementation of this mechanism has been contentious. Some legal scholars argue that while forced money offers a theoretical solution to the enforcement problem, its practical application often falls short. One of the key issues is the lack of understanding and awareness among officials about the significance of forced money and their responsibility under the law. Research shows that many administrative officials are unaware of the legal obligations associated with forced money, which often leads to a lack of urgency or action when it comes to enforcing court orders (Susanto, 2019). This gap in understanding reflects a deeper issue in Indonesia's administrative system, where institutional inertia and resistance to change can hinder the effectiveness of legal reforms aimed at improving accountability in public administration.

In this context, forced money (*dwangsom*) serves not only as a penalty for non-compliance but also as a reminder of the broader need for reform in Indonesia's administrative practices. The lack of consistent enforcement has raised concerns about the overall effectiveness of *dwangsom* as a tool for promoting compliance. The disconnection between legal theory and practice often results in a situation where the forced money imposed by the court remains an abstract concept, rather than a tangible tool for enforcement. This highlights the need for greater legal education and awareness among administrative officials to ensure that forced money is not just a theoretical remedy, but a practical one that can be used to ensure compliance and accountability (Susanto, 2019).

Before further examining forced money in the context of PTUN, it is important to distinguish between forced money (*dwangsom*) and

compensation (*ganti rugi*), as these two concepts are often confused. In legal terms, compensation refers to a legal remedy that compensates a party for harm or loss suffered due to the wrongful acts of another. This can occur when a party has experienced damage due to the negligence, mistake, or intentional actions of another party. In a court ruling, compensation is typically considered the primary penalty and is imposed on the party found guilty of unlawful conduct (*onrechmatige*) or breaching a contractual obligation (*wanprestasi*). The convicted party must pay the compensation amount as specified in the court's ruling. Forced money (*dwangsom*), on the other hand, is a financial penalty imposed by the court in its ruling, which the convicted party is required to pay if they fail to comply with the court's orders. However, unlike compensation, forced money is not a primary penalty. If the convicted party adheres to the court's ruling, they are not required to pay the forced money. The obligation to pay forced money only arises when the convicted party fails to comply with the decision (which is condemnatory in nature).

This distinction highlights the essential difference between compensation and forced money. While compensation is a primary penalty for wrongful conduct, forced money serves as an accessory penalty aimed at compelling compliance with a court order. Forced money (*dwangsom*) is thus considered an auxiliary penalty, meaning it is a supplementary punishment designed to ensure that the primary penalty or court order is enforced. It is not a punishment in itself but a tool to secure the execution of the court's decision. As such, forced money functions more as an execution tool rather than a primary punishment. This distinction is important for understanding the role of forced money within the broader legal framework, particularly in the context of PTUN. As a coercive measure, forced money aims to pressure the losing party to comply with the court's orders, ensuring that the decision does not remain symbolic, but carries real consequences for non-compliance (Mulyadi, 2001).

The challenges in enforcing forced money in practice are compounded by the general resistance to implementing sanctions within Indonesia's administrative system. Many legal scholars argue that there is a need for reforms to address these challenges and make forced money more effective as a tool for ensuring compliance and accountability. Improving the awareness of administrative officials, increasing training on the legal implications of forced



money, and enhancing the enforcement mechanisms are all essential steps in ensuring that this tool can achieve its intended objectives. Only through such reforms can Indonesia's legal system fully realize the potential of forced money as an instrument of justice and accountability.

## Forced Money (*Dwangsom*) Policy Comparison

In the legal system of the Netherlands, the provision for forced money (*dwangsom*) is regulated under Article 611 of the Dutch Code of Civil Procedure (Rv). This provision allows a party to request that the court impose a financial penalty, known as forced money, on the opposing party if they fail to comply with the primary judgment, without affecting their right to claim compensation for damages (Article 611a, Rv). In essence, forced money is designed as a supplementary enforcement tool rather than a core penalty, ensuring that the primary ruling is executed by adding a financial consequence for non-compliance. Importantly, the court can only enforce the forced money once the defendant has been notified of the ruling, and the court may set a specific deadline by which the forced money is to be paid (Dutch Civil Code, 2024).

The application of forced money (*dwangsom*) extends beyond initial judgments. According to the Dutch legal framework, forced money can also be requested during appeals or objections (*verzet*), making it a versatile tool in ensuring compliance at various stages of litigation. The mechanism is designed to prevent parties from evading court orders by offering a financial deterrent that escalates over time. Therefore, the longer the party resists complying with the judgment, the larger the penalty they face, effectively encouraging adherence to the ruling (Ten Berge & Stroink, 2024). Further elaborating on this system, Ten Berge and Stroink explain that under Article 103, number I of the Dutch Administrative Law, if a government agency fails to comply with a ruling from the State Council's judicial department (*Afdeling Rechtspraak van de Raad van State*) within the specified timeframe, or if it is impossible to comply at all, the agency must notify the affected parties. If the claim is deemed reasonable, the court may impose compensation or order the government agency to comply within a certain time frame. If the agency fails to fully comply, the court can then impose forced money (*dwangsom*) as an

additional penalty. This mechanism is meant to ensure that the ruling is not only issued but also enforced, maintaining the integrity of the judicial process (Ten Berge & Stroink, 2024).

In France, the equivalent of forced money is called *astreinte*. This provision is outlined in Article L.911-4 of the Law No. 80-539, dated July 16, 1980, and further clarified in Decree No. 95-830, July 3, 1995. According to French law, if the government fails to carry out a decision it is legally obliged to implement, *astreinte*—similar to the Dutch *dwangsom*—is imposed. The longer the *government* delays in fulfilling the court's ruling, the higher the forced money amount becomes, placing an increasing burden on the administrative officials responsible. This escalating financial penalty serves as a powerful motivator for the government to adhere to judicial decisions in a timely manner (Fahrudin, 2003). Both the Dutch and French systems of forced money are structured to ensure compliance with judicial decisions, particularly in administrative law. These legal provisions reflect a broader trend of using financial penalties to encourage adherence to the law, safeguarding the effectiveness of the judicial system by holding parties accountable for non-compliance. Such mechanisms ensure that court rulings do not remain mere formalities but are enforceable realities that have practical consequences for failure to comply.

The implementation of forced money (*dwangsom*) in Indonesia's Administrative Courts (Pengadilan Tata Usaha Negara, PTUN) remains relatively rare. This is primarily because the regulation outlining the execution of forced money has not yet been issued. Moreover, there are significant gaps in understanding, as well as several issues concerning its application. These include: 1) which types of decisions can be subject to forced money, 2) to whom the forced money can be imposed, and 3) what constitutes the ideal amount of forced money a judge may order. Below, each of these concerns will be addressed and discussed in detail. Theoretically, court decisions are categorized based on their nature into declaratory, constitutive, and condemnatory decisions (Harahap, 2016). A declaratory decision (*declator vonnis*) is a statement made by the judge in the ruling, which clarifies, affirms, or establishes a specific legal right, title, or status. This type of decision serves to clarify the law or the situation but does not enforce any action. In contrast, a constitutive decision (*constitutief vonnis*) creates, modifies, or nullifies a

legal state, essentially establishing a new legal reality. Meanwhile, a condemnatory decision (*condemnatoir vonnis*) is one that imposes a penalty or compels the losing party to fulfill certain obligations, such as paying compensation or complying with specific actions (Harahap, 2016).

Based on Article 606a of the Dutch Code of Civil Procedure (*Wetboek op de Burgerlijke Rechtsvordering / Rv*), forced money may only be applied in condemnatory decisions. This provision states that when a judgment requires the payment of money or the fulfillment of specific obligations, the court may also impose forced money as a penalty if the losing party fails to comply with the judgment. However, forced money cannot be applied to declaratory or constitutive decisions, as these do not involve mandatory actions or financial penalties. For instance, in the context of Indonesian Law No. 5 of 1986 concerning the Administrative Courts, as amended by Law No. 51 of 2009, condemnatory decisions may include: a) the obligation to revoke an unlawful or invalid administrative decision, b) the obligation to issue a new administrative decision, c) the obligation to revoke and reissue a new decision, and d) the obligation to implement rehabilitation in administrative disputes related to employment (Harahap, 2016). Indonesian administrative law does not specifically regulate to whom forced money should be charged. The law merely indicates that the procedure for enforcing forced money is subject to other legal provisions. In practice, however, forced money should be imposed on the personal finances of the administrative official responsible for the failure to comply with the court's ruling. This is based on the argument that when a public official, while performing their duties according to the law, causes harm to an individual or the public due to negligence, the financial consequences of their failure should be borne by the government or state, as it is considered an official error (Lotulung, 1986).

This approach aligns with the French legal theory that distinguishes between official errors (*faute de service*) and personal errors (*faute personnelle*), where the state is liable for the former but not for the latter. When an administrative body fails to comply with a court order, the forced money should be charged to the state or the responsible public official's finances. This rationale is particularly compelling because the forced money is designed to apply psychological pressure on the official to comply with the court's decision, as a tool of enforcement (Lotulung, 1986). In practice, this could be

likened to the forced money system in civil courts, where the penalty continues to accumulate until the judgment is executed. One of the critical issues surrounding forced money is determining the ideal amount to be imposed by the judge. Since forced money is essentially a psychological enforcement tool, the amount should be significant enough to compel the losing party to comply with the court's ruling, but not so large as to be impossible to enforce. A reasonable approach might be to set the forced money at an amount equivalent to a certain percentage of the official's salary, for example, one-third of the official's monthly income, ensuring it is financially enforceable (Lotulung, 1986). The goal of forced money is not just to punish but to ensure that the judgment is implemented. Therefore, it must be large enough to provide a real incentive for compliance but also structured so that it can be practically collected. This would ensure that forced money serves as an effective tool of execution, ensuring compliance without placing an undue burden on the official or the government. As the amount of forced money accumulates over time, it increases the psychological pressure on the party responsible to comply, thereby fulfilling its function as a means of enforcement.

## Conclusion

The exploration of the forced money (*dwangsom*) policy within Indonesia's Administrative Court system reveals both its potential and the significant challenges it faces in promoting compliance with judicial rulings. As a legal mechanism intended to enforce accountability, *dwangsom* is crucial for ensuring that public officials adhere to court decisions. However, despite its theoretical framework established by various laws, including Law No. 5 of 1986 and its amendments, the practical application of this policy is often marred by issues such as limited awareness among administrative officials, unclear enforcement procedures, and bureaucratic inefficiencies. The study underscores the importance of understanding *dwangsom* through Lawrence M. Friedman's Legal System Theory, which highlights the interplay between legal structure, legal substance, and legal culture. This theoretical framework emphasizes that the effectiveness of legal instruments like *dwangsom* is not solely determined by statutory provisions but is also significantly influenced by the cultural and

institutional contexts in which they operate.

To enhance the effectiveness of dwangsom, it is essential to address these underlying challenges through comprehensive reforms. This includes improving legal literacy among administrative officials, establishing robust enforcement mechanisms, and drawing lessons from international best practices that have successfully integrated financial sanctions into their administrative frameworks. Furthermore, the recent enactment of Law No. 30 of 2019 on Government Administration presents an opportune moment for reevaluating existing enforcement mechanisms and ensuring that dwangsom can fulfill its intended role in promoting accountability within public administration. Ultimately, this research contributes to the broader discourse on governance and accountability in Indonesia's administrative law landscape. By bridging theoretical insights with practical challenges, it aims to provide meaningful recommendations for reform that can strengthen Indonesia's administrative justice system and enhance public trust in its legal framework. Through these efforts, dwangsom can evolve from a theoretical concept into a practical tool for ensuring compliance and upholding the rule of law in Indonesia.

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