

## Reassessing *Dwangsom* in Indonesian Civil Procedure Law: Legality, Preferences, and Urgency

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### Abstract

*Dwangsom* are intended to compel the losing party to comply with a legally binding court decision. However, in Indonesian civil procedural law, they continue to cause uncertainty and debate. Generally, previous research has focused only enforcement of a fine obstacles rather than on normative limitations, issues with the principle of justice, and the sustainability of *dwangsom*. This research aims to discuss the legality, preferences, and urgency of *Dwangsom* through doctrinal legal research methods, drawing on statutory, conceptual, and comparative approaches. The analysis was conducted on Indonesian regulations by comparing them with Dutch civil procedural law as a reference. The findings highlight three key points. First, the application of *dwangsom* can be traced back to Articles 606a and 606b of the Reglement op de Rechtsvordering (Rv) serve as the primary legal basis for the imposition of *dwangsom* in Indonesian civil procedure. Second, the principle of proportionality demonstrates that *dwangsom* should not be applied to judgments involving the payment of a sum of money or debt obligations, because monetary obligations already have their own enforcement mechanism. Third, future reform of Indonesian civil procedure law is necessary to establish measurable standards for determining the *dwangsom*. The absence of clear limitations regarding the amount and duration of *dwangsom* creates significant risks of abuse. These findings expand on previous studies by positioning *dwangsom* as a procedural sanction that must be tested through the principles of proportionality and legal certainty.

**Keywords:** *Dwangsom*; Civil Procedure Law; Proportionality; Legal Certainty.

### Introduction

In the general structure of a judgment, there are two key elements to consider: the legal reasoning and the dispositive portion. The legal reasoning



serves as the basis for the judge's argumentation, explaining the reasons behind the judge's decision. Therefore, the legal reasoning must be well-reasoned, logical, and relevant to the legal issues at the heart of the dispute.<sup>1</sup> Meanwhile, the operative part of the judgment is a summary or the essence of the legal reasoning, which clearly states the final outcome of the court's decision.<sup>2</sup> A court judgment may be enforced if its ruling is condemnatory (imposing a penalty), as it provides a clear order to be carried out. Conversely, a ruling that is merely declaratory (stating a fact) or constitutive (establishing a legal status) cannot serve as the basis for enforcement.<sup>3</sup>

In modern civil law enforcement, an executable civil judgment is an important indicator of the judiciary's authority. It helps strengthen societal legitimacy by demonstrating that "the court is the right place to resolve issues with certainty and justice." In this regard, it is important to examine the type of judgment and its "enforceability," which is crucial in the theoretical landscape and directly related to the protection of the rights of those seeking justice.

One form of enforceable condemnatory judgment is a penalty payment. This judgment is intended to compel the defendant to comply with a court decision that has become final and binding (*in kracht van gewijsde*). A penalty payment imposes a financial sanction on the party that fails to comply with the decision, thereby encouraging the fulfillment of the obligations ordered by the court.<sup>4</sup> This sanction compels the defendant to comply with the judgment by imposing a daily financial penalty until the judgment is fully enforced. The provisions governing this penalty are outlined in Article 606 (a) and (b) of *Reglement op de Rechtsvordering* (Rv), making it an important tool for ensuring the enforcement of court judgments.<sup>5</sup>

The issue of coercive fines in civil cases, as noted by Ade Darmawan, lies in their ineffective enforcement due to the lack of clear implementing

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<sup>1</sup> Judith M. Stinson, "Preemptive Dicta: The Problem Created by Judicial Efficiency," *Loy. LAL Rev* 54 (2020), <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=3104&context=llr>.

<sup>2</sup> Zainal Asikin, *Hukum Acara Perdata Di Indonesia* (Jakarta: Prenada Media, 2019).

<sup>3</sup> Andi Akram et al., "Gender Mainstreaming through Guarantees of Legal Protection and Access to Justice for Women and Children in Religious Court," *Jurnal Hukum Dan Peradilan* 12, no. 2 (2023), <https://doi.org/10.25216/jhp.12.2.2023.267-292>.

<sup>4</sup> Aries Saputro, "Payment of Compensation for Officials Who Did Not Implement the Decision of the State Administrative Court," *Yuridika* 35, no. 2 (2019), <https://doi.org/10.20473/ydk.v35i2.15305>.

<sup>5</sup> Danialsyah, Muhammad Ridwan Lubis, and Gomgom T.P. Siregar, *HUKUM ACARA PERDATA Teori Dan Praktek* (Medan: CV. Sentosa Deli Mandiri, 2023).

regulations.<sup>6</sup> I K Sukaarsana also noted that the lack of implementing regulations makes it difficult to enforce fines effectively.<sup>7</sup> Sanyoto et al. examined the function of a coercive order as a form of psychological pressure to encourage the enforcement of a judgment, as in Indonesian Supreme Court Decision No. 1429 K/Pdt/2006, in which the plaintiff's claim was granted following an appeal.<sup>8</sup>

Previous studies found that the implementation of *dwangsom* in Indonesia faces multidimensional challenges arising from legal, cultural, economic, and procedural factors. From a legal perspective, the inconsistent application of *dwangsom*, particularly by government institutions that often delay or avoid compliance, weakens its effectiveness as a mechanism for enforcing court decisions.<sup>9</sup> This problem is exacerbated by the absence of strict enforcement mechanisms and accountability for public officials who disregard judicial orders<sup>10</sup>, as well as by the complexity and overlap of existing laws and regulations that hinder coherent implementation and administrative reform.<sup>11</sup> Culturally, societal perceptions that court decisions are not always authoritative or deserving of compliance. Especially among state actors that undermine public trust in the judiciary and reduce the legitimacy of *dwangsom* as a legal remedy.<sup>12</sup> In certain cases, such as child support disputes, *dwangsom* is intended to function as psychological pressure on defendants, yet its effectiveness is often limited by perceptions that such sanctions are ineffective or unfair.<sup>13</sup>

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<sup>6</sup> Ade Darmawan, "IMPLEMENTASI PELAKSANAAN DWANGSOM (UANG PAKSA) DALAM GUGATAN PERDATA," *El-Iqthisadi: Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum* 1, no. 2 (2020), <https://doi.org/10.24252/el-iqthisadi.v1i2.11892>.

<sup>7</sup> I K Sukaarsana, "Pengaturan Dwangsom Dan Penerapannya Dalam Perkara Perdata Di Indonesia," *LAPORAN PENELITIAN-2020*, 2021, [https://repository.trisakti.ac.id/usaktiana/index.php/home/detail/detail\\_koleksi/0/LPN/judul/00000000000000103735#menu](https://repository.trisakti.ac.id/usaktiana/index.php/home/detail/detail_koleksi/0/LPN/judul/00000000000000103735#menu).

<sup>8</sup> 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 (2013), <https://doi.org/10.20884/1.jdh.2008.8.2.50>.

<sup>9</sup> F 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>.

<sup>10</sup> Chandra et al.

<sup>11</sup> M P H Wijaya and M Z Ali, "Legislation Impediments in Reorganising Government Bodies in Indonesia," *Bestuur* 9, no. 1 (2021): 1–12, <https://doi.org/10.20961/bestuur.v9i1.51633>.

<sup>12</sup> H J Noor, K Afkar, and H Glaser, "Application of Sanctions Against State Administrative Officials Failing to Implement Administrative Court Decisions," *Bestuur* 9, no. 1 (2021): 53–67, <https://doi.org/10.20961/bestuur.v9i1.49686>.

<sup>13</sup> L Sudirman and M A Fasieh, "Dwangsom: Investigate the Conceptual Basis of Religious Court on Child Custody Rulings," *Jurnal Ilmiah Al-Syir'ah* 21, no. 2 (2023): 173–85, <https://doi.org/10.30984/jis.v21i2.2500>.

Economically, the imposition of *dwangsom* may create financial burdens for businesses and public institutions, potentially increasing operational costs, discouraging investment, and diverting public funds from essential services.<sup>14</sup> Moreover, corruption within the judicial environment further complicates compliance and facilitates the evasion of penalty payments.<sup>15</sup> Procedurally, the dual judiciary system in Indonesia, which separates general courts from administrative courts, creates inefficiencies and differing legal interpretations that complicate the enforcement of *dwangsom*<sup>16</sup>, while existing regulatory gaps and the lack of harmonization in administrative procedural law continue to generate legal uncertainty in its implementation.<sup>17</sup>

Nevertheless, these studies generally still focus on implementation issues and practical obstacles in the field, while studies that specifically examine the philosophical foundations, normative consistency, and long-term relevance of *dwangsom* in Indonesian civil procedural law remain limited. The novelty of this research lies in its attempt to identify and clarify which Indonesian regulations can legitimately serve as the legal basis for the imposition of *dwangsom*. It is important to identify which Indonesian regulations can legitimately serve as the legal basis for imposing *dwangsom*, because unclear legal foundations create inconsistency in judicial practice and weaken legal certainty for the parties. It is equally necessary to examine why *dwangsom* should not be applied to judgments involving the payment of a sum of money, since debt obligations already have their own enforcement mechanism through seizure and execution of the debtor's assets, making additional coercive fines potentially disproportionate and unjust. Furthermore, the absence of clear rules regarding the amount, duration, and limits of *dwangsom* creates serious risks of abuse, particularly where plaintiffs may use it as a tool for excessive financial gain rather than legitimate enforcement. Therefore, future regulation is urgently needed to establish clear standards that ensure proportionality, prevent abuse of rights, and maintain *dwangsom* as a fair and effective instrument of civil judgment enforcement.

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<sup>14</sup> Chandra et al., "Is Forced Money (Dwangsom) the Key to Enforcing Administrative Court Decisions? Examining Its Impact on Compliance."

<sup>15</sup> F M Nelson, "In Search of a Deferred Prosecution Agreement Model for Effective Anti-Corruption Framework in Indonesia," *Hasanuddin Law Review* 8, no. 2 (2022): 122–38, <https://doi.org/10.20956/halrev.v8i2.3292>.

<sup>16</sup> W Pujiningrum, R Agustina, and H Nursadi, "CIVIL DISPUTES BETWEEN GOVERNMENT AND INDIVIDUALS: A COMPARATIVE STUDY OF INDONESIA AND FRENCH LEGAL SYSTEM," *Jurnal Hukum Unissula* 40, no. 2 (2024): 110–33, <https://doi.org/10.26532/jh.v40i2.39388>.

<sup>17</sup> F R Kartabrata, M E Ernawan, and I A Dwinanda, "Harmonizing the Administrative Court Legal System to Ensure Legal Certainty in the Administrative Lawsuit Time Limit," *Jurnal Litigasi* 26, no. 2 (2025): 1–36, <https://doi.org/10.23969/litigasi.v26i2.26164>.

## Methodology

This research uses the doctrinal legal research method, which focuses on the examination, interpretation, and resolution of legal issues based on norms, principles, court decisions, and evolving doctrines.<sup>18</sup> This method was chosen because the research aims to assess the legitimacy, application limits, and relevance of dwangsom in Indonesian civil procedural law, thus emphasizing normative analysis over empirical data collection. The approaches used include legislative, conceptual, and comparative approaches. The legislative approach involves examining the *Reglement op de Rechtsvordering* (Rv), the Indonesian Civil Code, and other related regulations. The conceptual approach is used to examine legal certainty, proportionality, procedural justice, the presumption of innocence, and the abuse of rights. Meanwhile, a comparative approach is used to examine the regulations of Indonesia and the Netherlands, specifically Articles 611a and 611b of the *Wetboek van Burgerlijke Rechtsvordering* (Rv), to identify a direction for legal reform. Legal materials consist of primary, secondary, and tertiary legal materials. Primary materials include relevant legislation and court decisions. Secondary materials consist of books, journal articles, and expert opinions. Tertiary materials include legal dictionaries and other reference sources that support the understanding of legal terms.

The theoretical framework includes legal certainty and proportionality. The theory of legal certainty is used to assess the clarity of the legal basis for dwangsom, the theory of proportionality to measure the balance between sanctions and the goals of enforcing the decision, and the theory of procedural justice to evaluate the fairness of its application for the parties involved. Within the framework of legal certainty theory, regulations governing dwangsom must be formulated in a clear, coherent, and accessible manner so that individuals and state institutions can fully understand their respective rights and obligations. Normative clarity is essential to prevent inconsistent application and arbitrary interpretation by judicial or administrative authorities, thereby ensuring predictability, consistency, and fairness.<sup>19</sup> The principle of proportionality requires that the regulation and imposition of dwangsom maintain a reasonable balance between the objective of enforcing compliance with judicial decisions and the burden imposed on the obligated party. Any coercive measure should therefore be justified, necessary, and proportionate

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<sup>18</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media, 2008).

<sup>19</sup> I D Kurniawan and S Ezzerouali, "Revisiting the Principle of Legal Certainty: A Contemporary Analysis through the Lens of Legal Positivism," *Nusantara: Journal of Law Studies* 3, no. 2 (2024): 137–46, <https://doi.org/10.5281/zenodo.17385496>; O Shcherbanyuk, V Gordiciev, and L Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (2023): 21–31, <https://doi.org/10.24818/TBJ/2023/13/1.02>.

to the nature of the obligation and the degree of non-compliance<sup>20</sup>, thereby preventing excessive or arbitrary sanctions while ensuring the effectiveness of judicial enforcement.

## Discussion

### Legal Basis of Dwangsom

From the perspective of legal certainty, every sanction imposed by the court must have a clear legal basis, measurable application criteria, and predictable limitations.<sup>21</sup> In this case, the application of dwangsom is not sufficiently justified if it is based solely on practical reasons; it must also rest on a consistent normative foundation.

Compulsory payment is governed by Articles 606a and 606b of the *Reglement op de Rechtsvordering* (Rv).<sup>22</sup> Article 606a of the *Reglement op de Rechtsvordering* (Rv) provides a legal basis for judges to impose a penalty payment as a means of financial pressure on a party that fails to comply with its obligations under a court decision; however, this penalty payment is excluded in cases involving “payment of a sum of money.” Article 606b of the *Reglement op de Rechtsvordering* (Rv) grants the prevailing party the authority to request enforcement of the penalty payment already set forth in the court’s decision, without the need to file a new lawsuit or obtain additional legal grounds. However, the losing party (the defendant) retains the right to file an objection to the enforcement of such penalty payment if they object or have specific legal grounds.

The purpose of a coercive order lies in its function as an instrument to ensure compliance with court rulings. However, the implementation of this mechanism often faces various challenges. The imposition of a coercive order must be consistent with the principle of legal certainty; therefore, judges must issue it based on clear statutory provisions. A coercive order must take into account the interests of all parties in a proportionate manner to avoid abuse or unfair consequences.<sup>23</sup> In this context, the imposition of fines must ensure fair

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<sup>20</sup> V F Comella, “Beyond the Principle of Proportionality,” in *Comparative Constitutional Theory, Second Edition*, 2025, 312–30, <https://doi.org/10.4337/9781035306411.00021>; J Sieckmann, “Proportionality as a Universal Human Rights Principle,” in *Proportionality in Law: An Analytical Perspective*, 2018, 3–24, [https://doi.org/10.1007/978-3-319-89647-2\\_1](https://doi.org/10.1007/978-3-319-89647-2_1).

<sup>21</sup> Firdaus Arifin et al., “Open Legal Policy Criteria in the Constitutional Court Decision: An Evaluation and Recommendation,” *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 12, no. 3 (2025): 216–33, <https://doi.org/10.22304/2442-9325.1335>.

<sup>22</sup> Arne Huzaimah and Syaiful Aziz, “Urgensi Penerapan Lembaga Dwangsom (Uang Paksa) Pada Perkara Hadhânah Di Pengadilan Agama Dalam Perspektif Maqâshid Al-Syarî’ah,” *AL-’ADALAH* 15, no. 1 (2018), <https://doi.org/10.24042/adalah.v15i1.3383>.

<sup>23</sup> Retno Damayanti et al., “Kajian Yuridis Penerapan Asas Keberlangsungan Usaha Dalam Penundaan Kewajiban Pembayaran Utang Untuk Mencegah Pailit,” *Jurnal Restorative*

and equal treatment of all individuals within the legal system; therefore, fines must be imposed judiciously, taking into account the balance between rights and obligations.<sup>24</sup>

A fine should not be interpreted as a means of securing unilateral gain, but rather as an instrument for restoring the status quo disrupted by the defendant's failure to comply with a court ruling. This concept of restoration is also recognized in criminal law, such as in restorative justice, which emphasizes the restoration of relationships between the parties involved in a conflict, rather than merely the imposition of sanctions.<sup>25</sup> Article 606a of the *Reglement op de Rechtsvordering* (Rv) provides that penalty payments are excluded in cases involving the payment of a sum of money. Therefore, legal protections for individual rights must be clearly established in legislation to ensure a balance between law enforcement and justice for all parties.<sup>26</sup>

A fine cannot be imposed in cases involving claims for payment of a sum of money, as affirmed in Supreme Court Decision No. 793 K/SIP/1972 dated February 26, 1973, and Supreme Court Decision No. 244 K/Pdt/2008 dated December 29, 2008.<sup>27</sup> By comparison, in the Netherlands, a penalty payment may be imposed in both administrative and civil cases as a sanction against a party that fails to comply with a final and binding court decision. The provisions regarding penalty payments in civil cases in the Netherlands are set forth in Article 611a of the *Wetboek van Burgerlijke Rechtsvordering* (Rv) (the Dutch Civil Procedure Code).<sup>28</sup>

Article 611a of the *Wetboek van Burgerlijke Rechtsvordering* (Rv) provides that a court may, at the request of one of the parties, impose a penalty payment as a sanction to ensure compliance with a court ruling.<sup>29</sup> However, this provision

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*Justice* 7, no. 2 (2023): 70–88, <https://ejournal.unmus.ac.id/index.php/hukum/article/view/5596/3253>.

<sup>24</sup> Debi Triyani Murdiyambroto, "Penyelesaian Kasus Tersangka Odg Melalui Restorative Justice," *Jurnal Impresi Indonesia* 2, no. 9 (2023): 843–49, <https://doi.org/10.58344/jii.v2i9.3505>.

<sup>25</sup> Andrie Irawan and Wahyono Wahyono, "Restorative Justice Bagi Anak Pelaku Pidana Dalam KUHP Baru Di Indonesia," *Sanskara Hukum Dan Ham* 2, no. 03 (2024): 169–78, <https://pdfs.semanticscholar.org/166c/fdc0a129c3d9cc66f9d6beb11392ff94b699.pdf>.

<sup>26</sup> Denny Pangalila, Bernard Nainggolan, and Hulman Panjaitan, "Perlindungan Hukum Hak Atas Penggunaan Merek Yang Berakhir Dengan Penetapan Merek Di Indonesia," *Action Research Literate* 8, no. 7 (2024): 1–8, <https://doi.org/10.46799/ar.v8i7.435>.

<sup>27</sup> Darmawan, "IMPLEMENTASI PELAKSANAAN DWANGSOM (UANG PAKSA) DALAM GUGATAN PERDATA."

<sup>28</sup> H de Waele, "Annotatie Bij: HvJ EU 19 December 2019, Zaak C-752/18, Deutsche Umwelthilfe," *Jurisprudentie Bestuursrecht.-Den Haag*, 2020, [https://repository.uantwerpen.be/docman/irua/84fc29/de\\_waele.pdf](https://repository.uantwerpen.be/docman/irua/84fc29/de_waele.pdf).

<sup>29</sup> AW Jongbloed, "Onderscheid Dwangsomrechter En Executierechter Blijkt Te Subtiel: Laten We Het Gemakkelijker Maken," *Tijdschrift Voor de Procespraktijk* 1 (2020),

explicitly states that a penalty payment cannot be imposed in the case of a judgment ordering the payment of a sum of money, since such payment obligations already have their own enforcement mechanisms under Dutch civil law.<sup>30</sup>

This provision is reinforced in *Nederlandse Jurisprudentie* (NJ) 2023/315, in which the Dutch Supreme Court ruled that a court may not impose a penalty payment ex officio without an explicit request from one of the interested parties.<sup>31</sup> Furthermore, in ECLI:NL:HR:2015:1128 *Nederlandse Jurisprudentie* (NJ 2015/266), the Dutch Supreme Court reiterated that a penalty payment under Article 611a of the *Wetboek van Burgerlijke Rechtsvordering* (Rv) may only be imposed at the request of an interested party and cannot be imposed ex officio by the court. In this case, which concerned a taxpayer's obligation to provide information to the tax authorities, the Dutch Supreme Court overturned the lower court's decision because the imposition of a penalty in that context was deemed invalid without an explicit request from the aggrieved party.<sup>32</sup> Thus, this case law clarifies that a penalty payment cannot be used to enforce a monetary obligation, cannot be imposed automatically by the court, and must be explicitly requested by the interested party, in accordance with the fundamental principle set forth in Article 611a of the *Wetboek van Burgerlijke Rechtsvordering* (Rv).

The legal basis for the fact that a monetary payment cannot be subject to a penalty is grounded in the principle that payment obligations already have their own enforcement mechanisms under civil law. Under Indonesian law, this is guaranteed by Article 1131 of the Indonesian Civil Code, which states that "All movable and immovable property belonging to the debtor, whether existing or future, serves as security for the debtor's individual obligations." According to Suwinto Johan, this article serves as the basis for resolving non-performing loans (in enforcement terms, as security for the enforcement of

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<https://dspace.library.uu.nl/server/api/core/bitstreams/8932c351-a066-4e68-9211-eb6b46d89ea0/content>.

<sup>30</sup> T.J. de Graaf and H.B. Krans, "Verhaal Op Bitcoins Door Gedwongen Medewerking van de Schuldenaar," *WPNR* 7217, 2018, <https://www.recht.nl/vakliteratuur/alletijdschriften/artikel/451395/verhaal-op-bitcoins-door-gedwongen-medewerking-van-de-schuldenaar>.

<sup>31</sup> H Wolswijk, "Case Note: ECLI: NL: HR: 2023: 633," *Nederlandse Jurisprudentie*, 2023, [https://pure.rug.nl/ws/portalfiles/portal/845378848/NJ\\_2023\\_315\\_-\\_Geen\\_noodweer\\_bij\\_schietpartij\\_waarbij\\_deelnemers\\_praktisch\\_gelijktijdig\\_op\\_elkaar\\_hebben\\_geschoten.pdf](https://pure.rug.nl/ws/portalfiles/portal/845378848/NJ_2023_315_-_Geen_noodweer_bij_schietpartij_waarbij_deelnemers_praktisch_gelijktijdig_op_elkaar_hebben_geschoten.pdf).

<sup>32</sup> G. A. van der Veen and A. H. J. Hofman, "Case Note: ECLI:NL:HR:2015:1128. AB 2016/344. Casenote over: Hoge Raad (Civiele Kamer), 24/04/2015, 14/02407, ECLI:NL:HR:2015:1128 AB," *Rechtspraak Bestuursrecht* 36 (2016): 2149--2155, [https://pure.rug.nl/ws/portalfiles/portal/591049202/93529664\\_8650907\\_AFSTEM1.PDF](https://pure.rug.nl/ws/portalfiles/portal/591049202/93529664_8650907_AFSTEM1.PDF).

payment of a sum of money).<sup>33</sup> Thus, every debt or payment obligation is secured by the debtor's entire estate, which may be seized or subject to enforcement if the debtor fails to fulfill the obligation. Nevertheless, Indonesian civil procedural law differs from modern civil procedural law because it has not systematically explained the relationship between the ordinary execution mechanism and the application of dwangsom. This condition creates inconsistencies in judicial practice and doctrinal uncertainty.

In addition to being established by law and having its own specific mechanism, the payment of a sum of money cannot be subject to a penalty payment due to the defendant's inability to fulfill their obligation. In the context of civil law, a penalty is intended to compel the losing party to comply with a court ruling, except in the case of monetary payments. However, if applied to a monetary payment obligation, this has the potential to create injustice for the defendant, who may indeed be in a difficult financial situation.

In certain situations, the defendant's inability to pay their debt is not intentional but rather caused by economic conditions beyond their control, such as bankruptcy, a financial crisis, or other force majeure events. If, under such circumstances, the court still imposes a penalty, the defendant's financial burden becomes even heavier. Not only must the defendant pay the principal debt that has already fallen due, but they are also forced to pay a penalty as an additional sanction, which could actually worsen their financial condition. As an alternative, the law provides a mechanism for settling payment obligations through the execution of the debtor's assets, as stipulated in Articles 1131 and 1132 of the Indonesian Civil Code. This principle establishes that all of the debtor's property serves as collateral for their entire debt, and if they fail to pay, their assets may be seized to fulfill their obligations to the creditor. Thus, a penalty becomes irrelevant in the context of monetary payment obligations, as the law has provided a fairer resolution pathway that does not impose a disproportionate double burden on the defendant.

Judgments regarding the payment of a certain amount of money are generally based on a breach of contract by the defendant under an agreed-upon agreement. In contract law, the principle of *pacta sunt servanda* holds that a validly entered into contract is binding on the parties and must be performed in good faith.<sup>34</sup> This principle is also set forth in Article 1338 of the Indonesian Civil Code; under this principle and provision, if one party fails to fulfill its obligations, the other party is entitled to seek enforcement of the agreement,

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<sup>33</sup> Suwinto Johan, "Pelaksanaan Eksekusi Jaminan Pribadi Pada Transaksi Pembiayaan Ritel Oleh Lembaga Keuangan Berdasarkan Perundang-Undangan," *Masalah-Masalah Hukum* 52, no. 1 (2023), <https://doi.org/10.14710/mmh.52.1.2023.64-73>.

<sup>34</sup> Jiang Zhifeng, "Pacta Sunt Servanda and Empire: A Critical Examination of the Evolution, Invocation, and Application of an International Law Axiom," *Michigan Journal of International Law*, no. 43.3 (2022), <https://doi.org/10.36642/mjil.43.3.pacta>.

including through a court order requiring payment of a certain sum of money as compensation for the breach of contract.

In this context, a penalty clause cannot be used as a means of enforcement against a breach of contract, because the mechanism for enforcing the fulfillment of contractual obligations is already governed by separate provisions. As stated in Article 1243 of the Indonesian Civil Code, “compensation for costs, losses, and interest resulting from the non-performance of an obligation becomes mandatory if the debtor remains in default despite having been declared in default (in gebreke gesteld), or if the obligation can only be fulfilled within a specified timeframe that has already expired.” This mechanism demonstrates that default in monetary payments already has its own resolution system, through the enforcement of the debtor’s assets. Therefore, a penalty clause is not relevant to be applied in monetary payment obligations, as the law has provided a solution in the form of civil enforcement based on the breached obligation.

### **Presumption of Guilt and the Presumption of Innocence in Civil Cases**

The presumption of innocence, which ensures a fair trial and serves as a tangible manifestation of the rule of law, is typically applied in criminal cases. This principle must be applied in practice, not merely in theory.<sup>35</sup> This principle protects suspects or defendants from being presumed guilty before a final and binding court decision is issued, ensuring that judges remain objective and the public does not rush to judge someone as a criminal. In criminal trials, the presumption of innocence affects many aspects, including the burden of proof and the rights of the defendant. This principle affirms that a person must not be punished before being found guilty by a court, and the burden of proof rests entirely with the prosecution.<sup>36</sup>

Simply put, the presumption of innocence requires that any individual who is charged or accused must be presumed innocent until a court ruling declares otherwise, as explained by Pitriani.<sup>37</sup> This principle is not merely a legal principle, but also a human right that must be respected by law enforcement officials, the public, and the judiciary. Therefore, judges must maintain objectivity and must not be influenced by public opinion or personal

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<sup>35</sup> Oksana Khablo and Ivo Svoboda, “International Standards for the Application of the Presumption of Innocence in Criminal Proceedings,” *Scientific Journal of the National Academy of Internal Affairs* 29, no. 1 (2024): 55–63, <https://doi.org/10.56215/naia-herald/1.2024.55>.

<sup>36</sup> Rebekah Durham, “Innocent Until Suspected Guilty,” *University of Cincinnati Law Review* 90, no. 2 (2021), <https://scholarship.law.uc.edu/uclr/vol90/iss2/7/>.

<sup>37</sup> Pitriani Pitriani, “Peran Bantuan Hukum Terhadap Perlindungan Hak-Hak Tersangka Dan Terdakwa Yang Tidak Mampu,” *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 13, no. 1 (2015): 1–14, <https://media.neliti.com/media/publications/559869-peran-bantuan-hukum-terhadap-perlindungan-746f3573.pdf>.

biases when deciding a case, so that the decisions they make are truly based on legal facts and admissible evidence.<sup>38</sup>

By adhering to the principle of the presumption of innocence, rights can be respected and protected.<sup>39</sup> The protection of legal rights within the criminal justice system through the principle of the presumption of innocence is also emphasized by Azwar et al.<sup>40</sup> The presumption of innocence is not limited to law enforcement officials; in a broader context, Dewi pointed out that media coverage must not interfere with the application of the presumption of innocence.<sup>41</sup> This indicates that the protection of individual rights within the criminal justice system must be a priority, and judges must be able to uphold the presumption of innocence despite external pressure. Finally, to ensure that the presumption of innocence is applied.<sup>42</sup>

It is important to understand that the application of the presumption of innocence often faces challenges in practice, as pointed out by Pangaribuan. He examines the paradox in the application of this principle, wherein law enforcement officials have a duty to gather evidence to designate someone as a suspect or defendant, yet at the same time they must continue to treat that person as innocent until proven guilty. This reflects the tension between the state's duty to enforce the law and the protection of individual rights in the criminal justice system.<sup>43</sup> Therefore, within the criminal justice system, the principle of the presumption of innocence must be upheld so that it does not merely remain a legal slogan, but is genuinely applied at every stage of the criminal justice process—from the initial inquiry and investigation through the

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<sup>38</sup> I Nyoman Gede Remaja, "Penerapan Asas Praduga Tak Bersalah Bagian Dari Perlindungan Hak Asasi Manusia Yang Harus Dijamin Oleh Negara," *Kertha Widya* 6, no. 1 (2019): 8–19, <https://doi.org/10.37637/kw.v6i1.293>.

<sup>39</sup> Fatahuddin Aziz Siregar, "Pemeriksaan Perkara Dan Asas Praduga Tak Bersalah (Analisis Hak Asasi Tersangka Dalam Perspektif Hukum Islam)," *Studi Multidisipliner: Jurnal Kajian Keislaman* 9, no. 1 (2022), <https://scispace.com/pdf/pemeriksaan-perkara-dan-asas-praduga-tak-bersalah-analisis-2dd7gvx7.pdf>.

<sup>40</sup> Jaili Azwar, Madiasa Ablisar, and Marlina, "Implementasi Hak-Hak Tersangka Anak Terkait Asas Praduga Tidak Bersalah Dalam Suatu Perkara Tindak Pidana Anak Pada Proses Pemeriksaan Tingkat Penyidikan (Studi Pada PPA-POLRESTA Deli Serdang)," *Neoclassical Legal Review: Journal of Law and Contemporary Issues* 1, no. 1 (2022): 40–53, <https://doi.org/10.32734/nlr.v1i1.9602>.

<sup>41</sup> Putu Nia Rusmiari Dewi and I Made Wirya Darma, "Pengaturan Asas Praduga Tak Bersalah (Presumption of Innocent) Pelaku Tindak Pidana Kesusilaan Dalam Pemberitaan Media Massa," *VYAVAHARA DUTA* 18, no. 2 (2023): 60–71, <https://doi.org/10.25078/vyavaharaduta.v18i2.2771>.

<sup>42</sup> Rangga Sasmita, "Penerapan Atas Praduga Tak Bersalah Dalam Praktek Penanganan Tindak Pidana Pencurian (Studi Kasus Di Kota Mataram)," *LAW REFORM* 7, no. 1 (2011): 50–75, <https://doi.org/10.14710/lr.v7i1.12501>.

<sup>43</sup> Aristo Pangaribuan, "Paradoks Asas Praduga Tidak Bersalah," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 16, no. 02 (2016): 169–85, <https://doi.org/10.30631/alrisalah.v16i02.306>.

trial to the court's verdict. In this way, the rights of suspects or defendants remain protected, while the state can still fulfill its role in enforcing the law while respecting fundamental human rights.

The presumption of innocence is indeed closely linked to criminal procedure law, but a similar principle can also be found in civil procedure law, even though this principle is not explicitly codified in statute. One of the key aspects derived from this principle is the burden of proof. In civil procedure, the party filing the lawsuit (the plaintiff) must prove that the defendant has committed a breach of contract or an unlawful act before the judge can grant the claim.

When linked to the theory of procedural justice, the legitimacy of a judge's decision is greatly influenced by the parties' perception that they are treated neutrally, equally, and fairly.<sup>44</sup> The imposition of sanctions based on the assumption of future non-compliance can undermine legitimacy if there has been no concrete act of defiance by the losing party.

When imposing a penalty, the judge acts on the presumption that the defendant will fail to comply with the court's decision in the future; thus, this penalty actually conflicts with the presumption of innocence, which is reflected in the burden of proof (*onus probandi*).

With regard to a penalty order, the judge imposing the order essentially acts on a presumption—that is, the judge already assumes that the defendant will not comply with the court's decision in the future. This approach potentially conflicts with the presumption of innocence, which in civil law is reflected in the principle of the burden of proof (*onus probandi*). In other words, a penalty places the defendant in a position as if they were certain to violate the court's decision, without evidence that they will actually do so. This contradicts the principle that every individual must be presumed to comply with the law until proven otherwise, which is a derivative of the presumption of innocence in the context of civil law.

### **Avoiding Potential Abuse of Sanctions by the Plaintiff**

The potential abuse of penalties by plaintiffs in the context of civil law in Indonesia is an issue that warrants serious attention. A penalty is a financial sanction imposed on a party that fails to fulfill its legal obligations. The potential for abuse often arises when plaintiffs use this sanction as a tool to pressure defendants. According to Izzati, in the context of civil law, an imbalance in bargaining power between the plaintiff and the defendant can

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<sup>44</sup> Kenghui Lin and Ben Bradford, "The Generalisability of Procedural Justice in Post-Confucian Societies—A Test of Normative versus Instrumental Models in Taiwan," *Journal of Criminology*, 2025, 1–35, <https://doi.org/https://doi.org/10.1177/26338076251376923>.

create an opportunity for abuse.<sup>45</sup> Imaman noted that in some cases, plaintiffs may file lawsuits with the intent to intimidate the defendants, rather than to seek justice.<sup>46</sup>

In this situation, a penalty becomes a means to achieve an unethical goal, which ultimately harms the defendant. Therefore, it is important for judges to carefully evaluate each request for a penalty and consider whether such a request is based on good faith. Nuralim emphasizes that any penalty imposed must be proportionate to the violation committed and must not unfairly harm the party involved.<sup>47</sup>

In this context, judges have a responsibility to ensure that fines are not used as a coercive tool that harms the defendant. Thus, judges must have a deep understanding of the context and background of each case they handle. Furthermore, the misuse of fines can also have a negative impact on public trust in the legal system. Septian et al. demonstrate that when the public perceives that the law can be abused, this can erode their trust in the justice and integrity of the legal system.<sup>48</sup> To prevent the misuse of fines, clear regulations and effective oversight mechanisms are necessary. Hidayat pointed out that oversight of the enforcement of fines can help prevent misuse and ensure that such penalties are applied fairly.<sup>49</sup>

A new fine is only enforceable and may be collected after the judgment has become final and binding (*inkracht van gewijsde*).<sup>50</sup> This means that even though the judge has imposed a penalty payment in the judgment, the obligation to pay does not take effect immediately; rather, it can only be enforced once the judgment has become final and binding (*inkracht van gewijsde*) and no ordinary legal remedies, such as an appeal or cassation, can be filed. With the imposition of a penalty payment, the defendant is obligated

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<sup>45</sup> Nabiyla Risfa Izzati, "Penerapan Doktrin Penyalahgunaan Keadaan (Undue Influence) Sebagai Alasan Pembatalan Perjanjian Kerja Di Pengadilan Hubungan Industrial," *Masalah-Masalah Hukum* 49, no. 2 (2020): 180–91, <https://doi.org/10.14710/mmh.49.2.2020.180-191>.

<sup>46</sup> Kevin Berlianto Imaman, "Penyalahgunaan Koleksi Di Perpustakaan Nasional Republik Indonesia," *Jurnal Ilmu Informasi, Perpustakaan, Dan Kearsipan* 20, no. 2 (2018): 57–67, <https://scholarhub.ui.ac.id/jipk/vol20/iss2/2/>.

<sup>47</sup> Nuralim Nuralim, "Penyalahgunaan Napza Pada Generasi Milenial Di Kabupaten Bone (Prespektif Hukum Islam)," *Journal of Comprehensive Science (JCS)* 2, no. 11 (2023), <https://doi.org/10.59188/jcs.v2i11.541>.

<sup>48</sup> Adilla Septiani et al., "Peranan E-Government Dalam Pelayanan Publik," *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan* 3, no. 5 (2022): 302–13, <https://doi.org/10.36418/syntax-imperatif.v3i5.183>.

<sup>49</sup> Tengku Arif Hidayat et al., "Pelaksanaan Pemberian Rehabilitasi Terhadap Penyalahguna Narkotika Dalam Perspektif Teori Relatif," *Mutiara: Multidisciplinary Scientific Journal* 1, no. 2 (2023): 77–85, <https://doi.org/10.57185/mutiara.v1i2.12>.

<sup>50</sup> Huzaimah and Aziz, "Urgensi Penerapan Lembaga Dwangsom (Uang Paksa) Pada Perkara Hadhânah Di Pengadilan Agama Dalam Perspektif Maqâshid Al-Syari'ah."

to voluntarily comply with the judgment once it has become final and binding. If the defendant still fails to comply with the judgment, the penalty becomes enforceable as a form of legal coercion requiring the defendant to pay a certain amount of money to the plaintiff.

From the plaintiff's perspective, a penalty provides an advantage, as it can serve as a coercive tool to compel the defendant to promptly comply with the judgment without having to go through a lengthy enforcement process. However, a penalty also opens the door to abuse of power, as the plaintiff may exploit it to gain more than is rightfully due, even though under civil procedure law, the plaintiff may still petition the court for enforcement to uphold their rights. Thus, a penalty payment has the potential to become an instrument of abuse of power, especially if used not in the spirit of upholding justice, but rather as a tool of pressure that can be exploited to gain an advantage. Furthermore, there is no clear benchmark regarding the ideal amount of a penalty payment to be set in a judgment; this can potentially reinforce the penalty payment as an instrument of abuse of circumstances.

### **Considering the Formula for the Amount of Dwangsom**

A penalty, as a sanction imposed on a party that fails to fulfill its legal obligations, has the potential to be an effective tool in promoting compliance with court rulings. However, the application of penalties also requires special attention to prevent their misuse. The urgency of penalties in civil procedure law lies in their ability to serve as a deterrent to the losing party in a case. According to Maulidiyah and Satriana, dwangsom can serve as a tool to ensure that the losing party fulfills its obligations, particularly regarding the enforcement of court decisions.<sup>51</sup>

With the imposition of a penalty, the plaintiff has the assurance that their rights will be protected, and the defendant will be more motivated to comply with the court's decision. This is consistent with the principle of justice, which requires each party to be held accountable for their actions.<sup>52</sup> However, the challenges associated with the application of punitive damages must also be taken into account. One potential misuse of punitive damages occurs when a plaintiff uses them as a means to obtain excessive profits, and the lack of a standard for determining the amount of punitive damages.

In this context, clear regulations are indeed necessary to prevent the misuse of coercive fines. With strict regulations in place, it is hoped that coercive fines can serve as an effective and fair law enforcement tool. Finally, to ensure that fines remain relevant and effective in Indonesian civil procedure

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<sup>51</sup> Nurfauzah Maulidiyah and Yustria Novi Satriana, "Eksistensi Digital Evidence Dalam Hukum Acara Perdata," *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 69–76, <https://doi.org/10.26905/idjch.v10i1.2616>.

<sup>52</sup> Maulidiyah and Satriana.

law, regulatory updates are necessary. The urgency of updating civil procedure law must be addressed, and such updates must accommodate the changing times and the needs of society.<sup>53</sup>

A penalty for non-compliance in civil cases is actually unnecessary, as there are already enforcement mechanisms in place that allow court decisions to be effectively enforced. Ironically, to obtain a penalty for non-compliance, the plaintiff must still go through the enforcement process, so that ultimately the penalty offers no significant advantage over existing enforcement mechanisms. In other words, a penalty for non-compliance merely adds procedural complexity without providing any tangible benefit in expediting the enforcement of court decisions.

However, if future legal developments indicate that the penalty payment is to be retained, then reform of civil procedure law becomes absolutely essential. One of the main issues with penalty payments is the lack of clear rules regarding how long they may be imposed, potentially burdening the defendant indefinitely. If not properly regulated, the defendant may be subject to penalty payments for an unreasonably long period, even after facing difficulties in complying with the court's decision. Therefore, reform of civil procedure law is urgently needed, particularly regarding the establishment of time limits for the imposition of fines to ensure fairness and avoid unduly burdening the party subject to the judgment. One solution that can be implemented is adopting the mechanism as stipulated in Article 611b of the *Wetboek van Burgerlijke Rechtsvordering* (Rv), which grants judges flexibility in determining the time limits and the amount of fines to be paid. Under this provision, judges have the authority to impose fines in several forms, whether as a one-time payment, a payment calculated based on a delay within a certain period, or a payment imposed each time there is a violation of the court's ruling.

Furthermore, Article 611b of the *Wetboek van Burgerlijke Rechtsvordering* (Rv) also allows judges to set a maximum limit on the amount of a penalty payment that may be imposed, thereby preventing the defendant from being subjected to unending and unmeasurable financial pressure. If this principle is adopted in the reform of civil procedure law in Indonesia, the application of fines will be more measured, fair, and not protracted, while still maintaining their function as a coercive tool to ensure that the defendant complies with the court's decision.

In addition to the issue of time limits, the lack of a clear benchmark for determining the ideal amount of a penalty in a case also creates legal

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<sup>53</sup> Halida Zia, Mario Agusta, and Desy Afriyanti, "Pengetahuan Hukum Tentang Hukum Acara Perdata," *RIO LAW JURNAL* 1, no. 1 (2020), <https://doi.org/10.36355/v1i2.404>.

uncertainty. If the penalty is set too high, it will become an unfair burden on the defendant, especially if they have financial limitations. Conversely, if the penalty is too low, the sanction becomes ineffective in enforcing the judgment, as it does not provide sufficient pressure for the defendant to comply with their obligations. Therefore, there needs to be a more measured approach in determining the amount of the penalty, taking into account several factors, such as the value of the claim, the defendant's financial condition, and the urgency of enforcing the judgment.

However, determining the ideal amount of a penalty is extremely difficult, as judges set penalties *a priori*—that is, on the assumption that the defendant will not voluntarily comply with the judgment in the future. This risks granting judges overly broad discretion, which could ultimately lead to legal uncertainty for the parties involved in the case. By way of comparison, Indonesia already has regulations regarding limits on the amount of damages in criminal procedure law, as set forth in Government Regulation of the Republic of Indonesia No. 92 of 2015 on the Second Amendment to Government Regulation No. 27 of 1983 on the Implementation of the Criminal Procedure Code (KUHAP). Under Article 9 of Government Regulation No. 92 of 2015, the amount of compensation in criminal cases is already set within specific ranges, such as “IDR 500,000.00 to IDR 100,000,000.00 for certain cases under Article 77(b) and Article 95 of the KUHAP, Rp25,000,000.00 to Rp300,000,000.00 if resulting in serious injury or permanent disability, and Rp50,000,000.00 to Rp600,000,000.00 if resulting in death.”

If the principles governing compensation limits in criminal procedure law can be adapted to civil procedure law, particularly in determining *dwangsom*, clearer and more proportionate standards can be established, thereby reducing legal uncertainty and preventing excessive judicial discretion. The proposal is not to apply the exact nominal amounts used in criminal compensation, but to adopt a similar regulatory model that provides measurable minimum and maximum limits based on objective criteria. In civil cases, the amount of *dwangsom* should be determined by considering factors such as the value of the principal claim, the nature of the obligation, the defendant's financial capacity, the degree of urgency in enforcing the judgment, and the proportional relationship between the sanction and the obligation being enforced. For example, a coercive fine should not exceed a reasonable percentage of the principal obligation and should be subject to a maximum cumulative limit to prevent indefinite financial pressure. This approach reflects the structure found in Government Regulation No. 92 of 2015 concerning compensation in criminal procedure, where compensation is limited within specific statutory ranges to ensure fairness and predictability.

By adopting a similar framework, future Indonesian civil procedural law can preserve the coercive function of *dwangsom* without transforming it into a punitive or oppressive instrument. Such reform is particularly important for postcolonial legal systems that continue to rely on legacy procedural rules, where modernization must balance historical legal inheritance with contemporary demands for justice, proportionality, and procedural certainty. Therefore, future regulation must include clear parameters regarding proportionality, duration of imposition, maximum nominal limits, the defendant's economic capability, and judicial oversight mechanisms to prevent coercive fines from becoming instruments of abuse rather than legitimate tools of enforcement.

## Conclusion

The application of *dwangsom* can be traced back to Articles 606a and 606b of the *Reglement op de Rechtsvordering* (Rv). These provisions serve as the primary legal foundation for imposing *dwangsom* within Indonesian civil procedure. Historically, the inclusion of these articles reflects the influence of Dutch procedural law on Indonesia's legal system. In practice, they function as a mechanism to compel compliance with court decisions by attaching financial penalties for non-performance.

The principle of proportionality demonstrates that *dwangsom* should not be applied to judgments involving the payment of a sum of money or debt obligations, because monetary obligations already have their own enforcement mechanism. This reasoning is reinforced by the principle of preference, which prioritizes the use of established legal remedies specifically designed for the enforcement of monetary claims. In this regard, Article 1131 of the Indonesian Civil Code provides a clear and comprehensive basis for debt enforcement. Therefore, the imposition of *dwangsom* in cases of monetary obligations would be inconsistent with both proportionality and preference, as it risks duplicating enforcement measures and undermining the coherence of the legal system.

Finally, the absence of clear rules regarding the amount, duration, and maximum limits of *dwangsom* creates serious risks of abuse, particularly where plaintiffs may use coercive fines as a means of obtaining excessive financial advantage rather than legitimate enforcement. Therefore, the reform of Indonesian civil procedural law is urgently needed to establish proportionate standards for determining the amount of penalties, taking into account factors such as the value of the principal claim, the defendant's financial capability, and the urgency of enforcement. Indonesia may adopt the principles reflected in Article 611b of the *Wetboek van Burgerlijke Rechtsvordering* (Rv) which allows judges to determine the duration, method, and maximum limit of coercive fines in a measured and controlled manner. Clear statutory limits and judicial supervision are essential to prevent abuse of rights and to ensure that *dwangsom*

remains a legitimate enforcement mechanism rather than an instrument of oppression.

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