

Legal Protection for Holders of Ownership Right Certificates Against Non-Procedural Land Execution

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Abstract

Land disputes frequently arise due to population growth and increasing land demands, where non-procedural land executions can harm holders of Certificate of Ownership (SHM). Although land certificates serve as strong proof of ownership under Article 19 of the Basic Agrarian Law (UUPA) and Article 32 of Government Regulation No. 24 of 1997, legal certainty for landowners remains incomplete. This study aims to analyze the legal protection for SHM holders facing non-procedural land executions. The research employs a normative juridical method with statutory and conceptual approaches, examining relevant laws and legal doctrines. The findings indicate that SHM holds strong evidentiary power as long as its physical and juridical data align with land survey documents and land registers. However, land executions must follow proper procedures, starting with an execution request and a court warning, while adhering to principles of legal certainty and justice. SHM holders subjected to non-procedural executions can file an objection to the execution or a lawsuit for Unlawful Acts (PMH) under Article 1365 of the Civil Code. Case, such as the forced eviction in Tambun (2025), highlight the importance of proper legal procedures. In conclusion, while SHM provides legal protection, measures such as execution objections and PMH lawsuits are necessary to safeguard landowners' rights. This study emphasizes the need for compliance with execution procedures and the protection of certificate holders to ensure legal certainty.

Keywords: Certificate of Ownership; Land Execution; Legal Protection.

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Introduction

Amidst population growth and increasing land demand, land disputes often become unavoidable. These conflicts can manifest in various forms, such as issues of ownership, land boundaries, or possession. It's not uncommon for disputes to also arise between indigenous communities and the government or corporations.¹ To realize the protection of land rights, Article 3 of Government Regulation No. 24 of 1997 concerning Land Registration states that one of the objectives of registration is to provide legal certainty and protection to holders of land rights, strata title units,

¹ Bibit Ayu Astriani dan Septi Indrawati, *Sengketa Tanah Dalam Prespektif Hukum Agraria di Indonesia* (Yayasan Tri Edukasi Ilmiah 2024).[1].

and other registered rights. This allows them to easily prove their ownership.² legal certainty is a crucial factor in law enforcement. It's an essential element for achieving overall societal well-being.³

The proof of registered land rights is a land certificate.⁴ This land certificate holds significant economic value in society as it falls under the category of valuable papers.⁵ Law Number 5 of 1960 concerning the Basic Agrarian Principles Regulation (Basic Agrarian Law) is a legal instrument designed to promote prosperity, happiness, and justice for the nation and its people, with the ultimate goal of creating a just and prosperous society.⁶ According to Article 1, paragraph 1 of the Land Registration Government Regulation, a land certificate is a proof of right as referred to in Article 19, paragraph (2) of Basic Agrarian Law for land rights, management rights, waqf land, ownership rights over strata title units, and mortgage rights, each of which has been recorded in the respective land register.⁷

Article 20 of the Basic Agrarian Law affirms that land rights held by citizens, particularly Ownership Rights, are hereditary, the strongest, and the most complete rights a person can have over land.⁸ Legally, the basis of land rights is established through written documents such as decrees, certificates, statements, acknowledgments, authentic deeds, or private agreements. In civil terms, when a person has a proven connection to the actual physical possession of the land or holds a juridical basis of rights in the form of civil data, the land is legally under their control or has become their property.⁹ Civil data, such as a Certificate of Ownership Rights issued by the National Land Agency

² Article 3 of Government Regulation No. 24 of 1997 concerning Land Registration.

³ Deny Haspada dan Efa Laela Fakhriah, 'The Development of Evidence Law in Civil Cases Towards the Unification of Civil Procedural Law' (2020) 35 Yuridika.[38].

⁴ Waskito dan Hadi Arnowo, *Penyelenggaraan Pendaftaran Tanah di Indonesia* (Kencana 2019).[42].

⁵ Aleksander Reynaldi Koli, Hendrikus Sina Nubae Lolonrian, dan Vinsensius Samara, 'Efektivitas Peran BPN Dalam Pendaftaran Tanah yang Kemudian Menimbulkan Persoalan Sertifikat Ganda (Studi Kasus di Kantor BPN Kupang)' (2023) 1 Hakim: Jurnal Ilmu Hukum dan Sosial.[181].

⁶ Firdaus, *et al.*, 'Returning the Stolen Land: The Current Settlement of the Senamanenek Kampar Indigenous People with PT. Perkebunan Nusantara V' (2023) 6 Jambe Law Journal.[208].

⁷ Article 3 number 1 of Government Regulation No. 24 of 1997 concerning Land Registration.

⁸ Article 20 paragraph (1) of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law.

⁹ Bambang Puji Mulyo, Achmad Faishal, dan Suprpto, 'Kekuatan Hukum Sertifikat Hak Milik yang Terbit di Dalam Kawasan Hutan Sebelum Keluarnya Keputusan Menteri Kehutanan Nomor SK.453/KPTS-II/1999' (2023) 6 Collegium Studiosum Journal.[286].

(BPN),¹⁰ serves as one of the juridical bases for physical land possession. This certificate constitutes strong evidence unless proven otherwise in court, as stipulated in Article 32 paragraph (1) of Government Regulation No. 24 of 1997.¹¹

Land registration, which results in land certificates, enables third parties to easily ascertain the rights and encumbrances attached to the land. This fulfills the principle of publicity (*openbaarheid*) in property rights.¹² The publicity principle in land rights is crucial as it creates transparency and legality in every transaction. It significantly reduces the potential for disputes and facilitates the execution of rights and obligations related to property.¹³

Although the Basic Agrarian Law recognizes land certificates, legal certainty for their owners is not fully guaranteed. This is because the regulation allows other parties who claim to be the rightful owners to challenge the name listed in the certificate in civil court. Additionally, lawsuits can also be filed against the Head of the BPN or the local Land Office at the State Administrative Court (PTUN), particularly concerning technical or administrative issues in the issuance of the certificate.¹⁴

For example, there have been cases of non-procedural land evictions, even against owners holding valid land certificates. One recent case was the forced demolition of residents' homes in Tambun, Bekasi Regency, in 2024, as reported by Metro TV. The eviction was carried out without proper notice and was suspected of bypassing the correct legal procedures, even though the residents claimed to have lawful possession of the land and held valid Certificates of Ownership.¹⁵ As is known, the execution process begins with an execution request. Once the request is submitted, the Head of the District Court uses their authority to issue a warning (*aanmaning*) to the party

¹⁰ Kharisma Setya Wardhani dan Septi Indrawati, *Panduan Praktis Konversi Tanah Letter C Menjadi Sertifikat Hak Milik (SHM)* (Yayasan Tri Edukasi Ilmiah 2025).[18].

¹¹ Article 32 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration.

¹² Arief Budiono, *et al.*, *Praktik Profesional Hukum Gagasan Pemikiran Tentang Penegakan Hukum* (Muhammadiyah University Press 2022).[133].

¹³ Asep Dedi Siwasta, *et al.*, *Pengantar Hukum Perdata* (CV. Tohar Media 2024).[70].

¹⁴ Arief Budiono, *et al.*, *Loc. Cit.*

¹⁵ Anggi Meidyana, 'Fakta-Fakta dan Kronologis Kasus Bongkar Paksa Sengketa Tanah di Tambun' (MetroTV 2025) <<https://www.metrotvnews.com/play/KYVC4Ywd-fakta-fakta-dan-kronologis-kasus-bongkar-paksa-sengketa-tanah-di-tambun>> accessed 4 June 2025.

facing execution.¹⁶

Therefore, the purpose of this scholarly article is to conduct an in-depth analysis of the legal protection that should be afforded to holders of Land Ownership Certificates in cases where execution is carried out in violation of proper legal procedures.

In the discussion section of this article, the first part addresses the legal standing of the Certificate of Ownership (SHM) as proof of land rights. This section examines the legal position of the Certificate of Ownership as valid and strong evidence within the national land tenure system. It elaborates on the legal foundations that legitimize land certificates, including the legal protections inherent to them. Additionally, it discusses the significance of certificates as a guarantee of legal certainty for landowners and their role in resolving ownership disputes.

The second part of the discussion focuses on land execution, providing a general explanation of its meaning and purpose within the context of land law. It then delves into the specific procedures for execution as regulated under Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration, including the required steps to ensure lawful execution. This section also analyzes actual cases of non-procedural execution. Furthermore, it examines the legal principles underlying execution, such as the principles of legal certainty, justice, and protection for legitimate rights holders.

The third part of the discussion explores legal remedies available to land certificate holders when facing non-procedural land execution. The analysis centers on forms of protection through both administrative and civil avenues, as well as the role of relevant institutions such as the BPN and the courts.

Method Research

Legal research methodology is a crucial element in scholarly writing, as it serves as a guide for efficiently collecting and analyzing legal materials. With the appropriate method,

¹⁶ Gilang Setiawan, et al., 'Pelaksanaan Eksekusi Riil terhadap Tanah dan Bangunan dalam Penyelesaian Perkara Perdata (Studi Penetapan Ketua Pengadilan Negeri Madiun Kelas 1B Nomor 02/Pen. Pdt.Eks/2021/ PN Mad)' (2023) 3 Sultan Jurisprudance: Jurnal Riset Ilmu Hukum.[2].

the process of drawing conclusions regarding the legal issues at hand becomes more manageable while also helping to establish a coherent and clear writing structure. In the context of this study, the research employs a Normative Juridical approach. This method focuses on literature review, where the researcher conducts an in-depth examination of various laws and regulations relevant to the issues under study. To achieve this, the research adopts two primary approaches: Statutory Approach – systematically analyzing pertinent laws and regulations. Conceptual Approach – examining legal doctrines and concepts to gain a comprehensive understanding. Through these approaches, the study aims to provide a well-founded legal analysis while ensuring methodological rigor.

The Legal Status of Ownership Rights

There are key differences between possession and ownership. Ownership is a more formal and legally defined concept than possession. It clearly establishes a direct relationship between a person and the item they own.¹⁷ Ownership Right is the strongest, most complete, and inheritable right that a person can hold over land, as stipulated in Article 20 paragraph (1) of the Basic Agrarian Law.¹⁸ This right can also be transferred or conveyed to another party, as regulated under Article 20 paragraph (2) of the Basic Agrarian Law.¹⁹

Ownership rights are considered comprehensive because they give the owner the most extensive authority over the land compared to other land rights. Unlike other forms of land tenure, property ownership is an independent right and can be used to establish other, more limited land rights. Additionally, it allows for a broader range of uses for the land.²⁰

Ownership Right is referred to as the “strongest and most complete” right to distinguish it from other land rights, such as Cultivation Rights, Building Rights, or Right of Use. This phrasing emphasizes that, among all land rights a person may hold,

¹⁷ Layyin Mahfiana, ‘Sengketa Penguasaan Hak Atas Tanah’ (2007) 4 *Justisia Islamica*. [48].

¹⁸ Article 20 paragraph (1) of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law.

¹⁹ Article 20 paragraph (2) of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law.

²⁰ Urip Santoso, ‘Pembebanan Hak Sewa Untuk Bangunan Atas Tanah Hak Milik: Prespektif Asas dan Pembuktian’ (2018) 33 *Yuridika*. [332-333].

Ownership Right is the most dominant and comprehensive.

Ownership Right over land can either “shift” or “be transferred”, though these terms carry distinct legal nuances. A “shift” occurs automatically without requiring active intervention from any specific party to initiate the transfer. In other words, no party deliberately causes the change in ownership. Conversely, a “transfer” is a passive process that requires an initiating subject (*subjek movens*) to actively execute the transfer of rights. For example, if A donates or sells their land to B, A acts as the *subjek movens* that facilitates the transfer of Ownership Right.²¹

The legal validity of certificates as proof of land rights is stipulated in Article 32 of Government Regulation No. 24 of 1997, which states that a certificate serves as strong evidentiary proof of the physical and juridical data contained therein, provided such data aligns with the information in the corresponding land survey document and land register.²²

If a land parcel has been lawfully certified under the name of an individual or legal entity that acquired the land in good faith and exercises actual control over it, other parties claiming rights to the land can no longer assert their claims unless they file a written objection to the certificate holder within five years of the certificate’s issuance.²³

Land certificates, as regulated under Government Regulation No. 24 of 1997, function as highly informative legal documents. They contain comprehensive property details, including:²⁴

- Land area and boundaries,
- Structures erected on the land,
- Type of ownership right,
- Any encumbrances or obligations attached to the land right.

All data recorded in the certificate carries binding legal force and must be recognized as valid, unless legally overturned by subsequent admissible evidence.²⁵

²¹ Richard Eddy, *Aspek Legal Properti, Teori, Contoh, dan Aplikasi* (Penerbit ANDI 2020).[3].

²² Article 32 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration.

²³ Article 32 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration.

²⁴ Nur Atika dan Abraham Ferry Rosando, ‘Kedudukan Sertifikat Hak Milik Dalam Penguasaan Kawasan Hutan’ (2023) 2 Journal Evidence Of Law.[42].

²⁵ Fadhilla Aditia Putri, Ngadino, dan Irma Cahyaningtyas, ‘Status Hukum Sertipikat Hak Atas Tanah Yang Diterbitkan Di Atas Kawasan Hutan(Studi Putusan 50/G/2014/Ptun.Smg)’ (2021) 14 Notarius. [815].

The final product of land registration - the land title certificate - serves multiple indispensable functions for its owner. Its primary function as strong evidentiary proof is explicitly affirmed in Article 19 paragraph (2) letter c of the Basic Agrarian Law.²⁶ This certificate enables individuals or legal entities to clearly and easily establish their status as rightful holders of land rights.²⁷

Land certificates hold crucial significance, with their evidentiary power producing both internal and external effects. Internally, the certificate provides security for owners and their heirs, preventing future complications. This means owners need not excessively worry about maintaining proof of ownership - simply safeguarding the certificate from potential damage suffices. Externally, the certificate serves as conclusive evidence of rights, where all physical and legal data contained within must be presumed valid unless contradicted by other valid evidence, such as competing certificates or other legally recognized proofs.²⁸

Thus, land title certificates constitute irreplaceable and conclusive proof of ownership, offering owners and heirs both security and legal certainty regarding the property's physical and legal status - unless conclusively proven otherwise through proper legal channels.

It can be concluded that Land Title Certificates, specifically Ownership Rights, possess evidentiary strength as regulated under Article 19 of the Basic Agrarian Law and Article 32 of Government Regulation No. 24 of 1997. These regulations stipulate that certificates serve as conclusive evidence of the physical and juridical data contained therein, provided such data corresponds with the information in the official land survey document and land register.

To ensure the smooth issuance of Land Title Certificates while providing legal certainty and protection, the land registration process at the Land Office must strictly comply with Government Regulation No. 24 of 1997 concerning Land Registration. However, should any party believe their legal interests have been adversely affected

²⁶ Article 19 paragraph (2) of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law.

²⁷ Nur Atika dan Abraham Ferry Rosando, *Op. cit.*, 42-43.

²⁸ *Ibid.*, 43.

by a certificate issued by the National Land Agency (BPN), they retain the right to file a legal claim at the local district court to seek justice and legal certainty regarding the true ownership status of the land.²⁹

Land Execution

When a court order becomes legally binding, its implementation is known as execution.³⁰ Court decisions are sometimes enforced by the judiciary at the request of a party. This is considered forced execution because the person being ordered to comply is unwilling to do so voluntarily.³¹

Civil execution is a process in which a court decision is enforced by force against the losing party in a lawsuit, typically the defendant. This action becomes necessary when the defendant fails to comply with a court ruling that has gained permanent legal force, meaning all legal appeals have been exhausted (for example, after a Supreme Court cassation decision). To compel the defendant's compliance, the court must take coercive measures.³²

In the context of Indonesian land law, land execution refers to the compulsory enforcement of a court decision or an executable legal document concerning land or land rights, aimed at ensuring legal certainty and justice for the prevailing party in a land dispute. Execution is carried out when the losing party fails to voluntarily comply with a legally binding court decision.³³ Forms of land execution include:

1. Physical Execution. The enforcement of a court order to vacate or surrender a plot of land to the entitled party. For example, real execution can encounter resistance

²⁹ Sendy Salsabila Saifuddin dan Yulia Qamariyanti, 'Kepastian Hukum Sertifikat Hak Milik Atas Tanah atas Terbitnya Surat Keterangan Tanah pada Objek Tanah yang Sama' (2022) 1 Notary Law Journal. [35-36].

³⁰ Fani Martiawan Kumara Putra, 'Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Atas Obyek Jaminan Hak Tanggungan' 2013 (28) Yuridika.[32].

³¹ Irma Garwan, 'Ideal Execution of Civil, Cases Based on Principles of Justice to Create a Simple and Low-cost Judiciary' (2020) 2 Journal of Humanities and Social Sciences Studies (JHSSS).[71].

³² Nuryanto Ahmad Daim, Rihantoro Bayuaji, dan Suwarno Abadi, 'Criminalizing Non-Compliance With Civil Execution Orders: A Strategy For Enhancing Legal Certainty And Business Efficiency' (2024) 13 Jurnal Hukum dan Peradilan.[344].

³³ Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Sinar Grafika 2021).[351].

from the public.³⁴

2. Auction Execution. Typically conducted based on a Mortgage Certificate, where the land is auctioned as collateral to settle outstanding debts.
3. Administrative Execution. The enforcement of a decision by a state administrative body, such as the BPN, regarding the revocation or annulment of land rights due to administrative legal defects.

The procedures for execution are governed by Articles 195 to 208 of the *Herziene Indonesisch Reglement (HIR)* concerning the enforcement of civil court decisions, as well as Law No. 4 of 1996 on Mortgage Rights over Land and Related Objects.³⁵

The implementation of execution on land objects is not only related to the fulfillment of civil rights but also reflects the social and public functions of the land law system. The main objectives of land execution are as follows:

Land execution serves as a means to realize the rights of parties who have obtained a court decision. Without execution, a court ruling would merely be a formality without implementative value.³⁶ Thus, land execution acts as a bridge between normative legal processes and the actual realization of rights in real life.

A state based on the rule of law requires that every valid court decision must be enforceable. If a party fails to voluntarily comply with a court ruling, the state, through judicial institutions, has the authority to enforce its execution—including in the context of land disputes.³⁷

Many land disputes drag on indefinitely due to delayed execution. In this regard, execution serves as the final resolution to agrarian conflicts while preventing unlawful land possession by unauthorized parties.³⁸

In the case of debt guarantees, land execution serves as a means to affirm land's

³⁴ Ismail Rumadan, 'Enforcement of Court Decision Regarding Payment of a Sum of Money in Civil Disputes to Support the Ease of Doing Business in Indonesia' (2020) 10 *Korea Legislation Research Institute Journal of Law and Legislation*. [389-414].

³⁵ R. Subekti, *Hukum Acara Perdata* (Pradnya Paramita 2014). [76-78].

³⁶ Andi Hamzah, *Hukum Acara Perdata Indonesia* (Sinar Grafika 2013). [98].

³⁷ Jimly Asshiddiqie, *Konstitusi dan Konstitusioanlisme Indonesia* (Konstitusi Press 2010). [103].

³⁸ Kurnia Toha, 'Masalah Eksekusi Putusan Perdata dalam Sengketa Tanah' (2007) 14 *Jurnal Hukum IUS QUIA IUSTUM*. [423].

function as a collateral object. Creditors can directly sell the mortgaged object without needing to file a lawsuit in court first.³⁹

Government Regulation No. 18 of 2021 does not explicitly regulate judicial execution concerning land disputes in Indonesia. However, Government Regulation No. 18 of 2021 provides administrative provisions and mechanisms for eviction orders or the return of land to rightful parties, particularly in cases of unlawful possession or land rights conflicts.

The implementation of land execution as a form of rights realization in Indonesia's legal system cannot be separated from fundamental legal principles that ensure not only procedural compliance but also legitimacy and substantive justice. These principles include the principle of legal certainty, the principle of justice, and the principle of protection for legitimate rights holders. Together, they form the normative foundation to prevent uncertainty, abuse of authority, or human rights violations in execution processes.

The principle of legal certainty serves as a fundamental tenet in a rule-of-law state, demanding clear, definitive, and enforceable laws. In the context of land execution, this principle mandates that execution can only proceed when supported by valid legal grounds and a legally binding court decision.⁴⁰ Legal certainty is closely tied to land registration, as emphasized in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Law, which states that the government conducts land registration to provide legal certainty for rights holders.⁴¹ Land certificates issued through this process carry strong evidentiary weight and serve as the reference point in all execution proceedings.

The principle of justice signifies that the law must not only be formal but must also ensure substantive fairness for all parties involved. In the context of land execution, this principle requires that:

- a. Execution must not result in injustice or arbitrary eviction, especially if the party subject to execution still has legal remedies available;

³⁹ Budi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya* (Djambatan 2005).[476].

⁴⁰ Yahya Harahap, *Op. Cit.*[431].

⁴¹ Article 19 paragraph (2) of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law.

- b. Judges and execution officials must consider the socio-economic conditions of the affected parties;
- c. In cases of horizontal land disputes, resolution must first undergo verification and clarification processes before execution is carried out.

This principle aligns with Article 28D Paragraph (1) of the 1945 Constitution, which guarantees fair treatment under the law. Therefore, execution measures must balance the proportionality between enforcing rights and protecting the interests of other parties.⁴²

Non Procedural Execution

As the name suggests, non-procedural execution is an execution carried out without following the applicable legal procedures. The implementation of an execution is based on the following legal provisions:⁴³

1. In the context of the *Reglement op de Rechtsvordering* (R.Bg), execution is regulated in several articles. The general procedure for execution is outlined in Articles 206 to 240 R.Bg and Article 258 R.Bg. Meanwhile, Article 259 R.Bg specifically regulates a court decision that obligates the losing party (the defendant) to perform a certain action.
2. In the context of the *Reglement op de Rechtsvordering* (Rv), execution is regulated in Article 1033 Rv, which specifically discusses real execution.
3. The rules on execution in the *Herzien Inlandsch Reglement* (HIR) are found in Articles 195 and 225 HIR.
4. Supreme Court Circular Letters (SEMA) Number 3 of 2000 and Number 4 of 2001 regulate the execution of court decisions that do not yet have permanent legal force, such as immediate enforcement (*uitvoerbaar bij voorraad*) and provisional decisions.
5. Articles 54 and 55 of Law No. 48 of 2009 concerning Judicial Power contain provisions on the procedures for executing court decisions.
6. Article 33, paragraphs (3) and (4) of Law No. 14 of 1970, as amended by Law No. 4 of 2004, regulate the implementation of decisions. Paragraph (3) explains that the Head of the Court, along with the Court Clerk and the Bailiff, is responsible for executing civil case decisions. Meanwhile, paragraph (4) emphasizes the importance of upholding the values of humanity and justice during the execution process.

Civil execution begins with the *aanmaning*, or warning, stage. This is the first step a winning party takes in a civil case to enforce a judgment. During this stage, the losing

⁴² Jimly Asshiddiqie, *Op. Cit.* [219].

⁴³ Wibisono Oedoyo, 'Analisis Putusan Hakim Dalam Pelaksanaan Eksekusi Perkara Perdata Di Indonesia' (2022) 10 *Jurnal Kertha Semaya*. [1644].

party (the respondent of the execution) may not appear for the initial warning hearing. If this happens, the Chief Judge of the District Court will typically issue a second summons. However, the respondent's absence doesn't necessarily halt the process. If the respondent doesn't inform the Chief Judge that they will voluntarily comply with the final court decision, the Chief Judge is legally authorized to proceed with the next stage of execution after the warning hearing.⁴⁴

Following the warning (*aanmaning*) phase, the second step in civil execution is execution confiscation. This is grounded in legal articles such as 197, 198, 199, 208, 209, and 210 of the HIR. Legally, an execution confiscation operates like a collateral confiscation, as it legally seizes the relevant property, whether it is real estate or movable assets. This stage is triggered only after the warning hearing has concluded and the losing party, the execution respondent, has still not voluntarily complied with the court's final, legally binding decision. For the confiscation to be carried out, two conditions must be fulfilled: the respondent must either fail to appear at the warning hearing without a good excuse, or simply refuse to voluntarily execute the contents of the final court decision.⁴⁵

At the enforcement phase of civil litigation, judges must decide whether to postpone a case. This decision is based on a structured process that considers several factors. A key factor is whether the case is dependent on another ongoing case; if a dependency exists, the case may be delayed. Judges may also face a postponement request from a party even when they don't believe a second, related decision is necessary. In such instances, a delay isn't required if the outcomes of the two cases won't be contradictory. The paragraph emphasizes that this decision-making process should be systematic, ensuring justice, legal certainty, and efficiency. It also suggests that the judge's decision to postpone a case shouldn't be made in isolation but should also consider the actions and filings of the involved parties.⁴⁶

⁴⁴ Ahyar Ari Gayo, 'Problematic in The Civil Decision Execution Process in Indonesia in Order to Realize Court Excellence' (2022) 22 *Jurnal Penelitian Hukum De Jure*. [551].

⁴⁵ Sujayadi dan Yuniarti, 'Pelaksanaan Sita Jaminan Dalam Hukum Acara Arbitrase' (2010) 25 *Yuridika*. [230-236].

⁴⁶ Peter Jeremiah Setiawan, Xavier Nugraha, dan Luisa Srihandayani, 'Konsep Penegakan Hukum Yang Sistematis Dalam Perselisihan Pra-Yudisial Di Indonesia' (2022) 29 *Jurnal Hukum Ius Quia Iustum*. [68-92].

The final step of a civil execution is the fourth stage: land emptying or building demolition. This is the last phase of the physical execution process, which involves clearing a building from a property.⁴⁷

In the incident of forced demolition of residents' houses in Tambun, Bekasi Regency, which occurred in 2024, the execution was carried out without proper notification and was suspected of not following the proper procedures, even though the residents claimed to have lawful possession of the land and held Certificates of Ownership. As is known, the execution process begins with an execution request. After the request is submitted, the Head of the District Court will use his authority to issue a warning (*aanmaning*) to the party to be executed. A *aanmaning* application must be submitted in writing. It should include the identities of the parties involved in the case, a copy of the court's final and legally binding decision, and a statement explaining the reasons for the request and the specifics of the execution being sought.⁴⁸ Without a warning, this action violates the procedures stipulated in Article 196 of the HIR and Article 207 of the R.Bg.⁴⁹ Furthermore, before the execution, no land measurement process was carried out, making it difficult to determine which objects should be evicted because there was no certainty regarding the sameness or differences of these objects. This is not in accordance with the procedures stipulated in Article 93 paragraph (2) of Government Regulation Number 18 of 2021.⁵¹

This case serves as an important example of why land execution must be carried out in accordance with existing laws and regulations - both to protect the rights of landowners and to uphold legal principles by ensuring legal certainty for all involved parties. The Tambun case highlights how deviations from proper execution procedures can lead to violations of property rights and undermine the rule of law in land disputes.

⁴⁷ Nuryanto Ahmad Daim, Op.Cit.[348].

⁴⁸ Budi Santoso, 'Alternative Solution on the Execution of Court's Verdict Within Employment Termination Dispute' (2018) 33 *Yuridika*. [379].

⁴⁹ Article 196 of the *Herzien Inlandsch Reglement*.

⁵⁰ Article 207 of the *Reglement op de Rechtsvordering*.

⁵¹ Article 93 paragraph (2) of Government Regulation Number 18 of 2021.

Another example occurred in 2018 when 44 residents of Pulosari, Surabaya, were subjected to a unilateral and allegedly non-procedural eviction by PT Patra Jasa. After their homes were destroyed, these residents were forced to live on the rubble for five years while seeking justice. According to their legal counsel, the execution was carried out without a warning (*aanmaning*) or prior discussion. Without a warning, this action violates the procedures stipulated in Article 196 of the HIR and Article 207 of the R.Bg.⁵²⁵³ More crucially, the plaintiffs were not included in the court ruling that served as the basis for the eviction. This situation was made worse by the fact that the residents had been independently developing the area since 2007. The sudden destruction of their facilities caused deep trauma, especially for the elderly and children. Additionally, the defendant's Building Rights Title (Sertifikat Hak Guna Bangunan, or SHGB) had reportedly expired in 2006.⁵⁴

Another example is the case where PT Tangerang Matra Real Estate (TMRE) and local residents became victims of alleged mistaken land execution. Their 45-hectare plot was executed by the Tangerang District Court on August 7, 2020, even though the court's ruling was actually for a dispute involving other parties. TMRE claims to have valid ownership documents, while the land registry deeds (*girik*) used by the opposing group are believed to be fake. This execution was based on a peace settlement between Darmawan and N.V Loa & Co, which allegedly contained an error in designating the location of the land.⁵⁵ This is certainly not in accordance with the procedures stipulated in Article 93 paragraph (2) of Government Regulation Number 18 of 2021.⁵⁶

One of the procedures not followed in the cases above is the failure to issue a warning. According to Yahya Harahap, execution cannot be carried out without a prior warning.

⁵² Article 196 of the Herzien Inlandsch Reglement.

⁵³ Article 207 of the Reglement op de Rechtsvordering.

⁵⁴ Juliana Christy, 'Lima Tahun Hidup di Atas Puing, Warga Pulosari Tuntut Keadilan atas Eksekusi Tanpa Peringatan' (Jawapos.com 2025) <<https://www.jawapos.com/surabaya-raya/016103106/lima-tahun-hidup-di-atas-puing-warga-pulosari-tuntut-keadilan-atas-eksekusi-tanpa-peringatan>> accessed 20 Agustus 2025.

⁵⁵ Eva Martha Rahayu, 'Eksekusi di Lahan yang Salah Rugikan Warga dan TMRE' (SWA 2020) <<https://swa.co.id/read/269681/eksekusi-di-lahan-yang-salah-rugikan-warga-dan-tmre>> accessed 20 Agustus 2025.

⁵⁶ Article 93 paragraph (2) of Government Regulation Number 18 of 2021.

An execution only becomes effective once the warning period has expired. This warning, or summons, is issued to the defendant, ordering them to comply with the court's decision within a timeframe set by the Head of the District Court. The warning is only necessary and used when the defendant is unwilling to voluntarily carry out the decision.⁵⁷

Legal Protection Measures for Land Certificate Holders

Legal protection for the public can be categorized as either preventive or repressive. Preventive measures are designed to stop conflicts before they begin, while repressive measures are used to resolve disputes that have already occurred, such as when a government decision is challenged by a group of people.⁵⁸

A land title certificate, as the product of land rights registration – including changes concerning its subject, the status of the rights, and legal transactions pertaining to the land – serves as strong evidentiary proof under Article 19(1)(c), Article 23(2), Article 32(2), and Article 38(2) of the Basic Agrarian Law. While the certificate constitutes conclusive evidence, it is not absolute or infallible. This means the recorded information carries legal weight and must be accepted as valid unless and until contradicted by other legally admissible evidence.⁵⁹

Pursuant to Article 28D (1) of the 1945 Constitution of the Republic of Indonesia:⁶⁰ “Every person shall have the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law”.

This provision affirms the state's obligation to protect citizens—including in matters of property rights as land rights – reflecting the nation's commitment to building a democratic state that ensures social justice and humanitarian principles.⁶¹

According to the Technical Guidelines for Administration and Judicial Procedures in General and Special Civil Matters (Book II), the party subject to execution has the

⁵⁷ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, (Sinar Grafika 2023). [30].

⁵⁸ Dimas Nur Arif Putra Suwandi, ‘Perlindungan Hukum Bagi Bank Pemegang Hak Tanggungan Peringkat Kedua dalam Eksekusi Objek Hak Tanggungan’ (2018) 1 Media Iuris.[430].

⁵⁹ Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah* (LPHI, 2005).[81].

⁶⁰ Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

⁶¹ Chelsya Vishien Tumewu, et al., ‘Perlindungan Hukum Atas Eksekusi Lahan Terhadap Pihak Ketiga Pemegang Akta Otentik’ (2024) 14 Lex Privatum.[3-4].

right to file an objection to the execution. However, to succeed, the party must be able to prove that they have a valid legal basis for their rights. This includes rights such as ownership rights, right of use, cultivation rights, building rights, mortgage rights (hak tanggungan), lease rights, or other relevant rights. Additionally, an objection to execution can also be filed if the legally binding court decision meets one of the following conditions: the decision is declaratory or constitutive in nature, the object to be executed is no longer under the control of the Defendant/Respondent in the execution, the object to be executed does not match what is stated in the court's ruling, or the court's ruling is technically impossible to execute. In this context, the party that can file an objection to the execution includes the litigating party and/or a third party who has an interest or claims to be harmed if it can be proven that the object of execution belongs to them, as regulated in the Supreme Court Circular Letter PERDATA UMUM/7.a/SEMA 7 2012 (SEMA 7 2012), and Article 195 paragraph (6), Article 207 HIR jo. 225 Rbg.⁶²

The holder of a Certificate of Ownership Right may also file a lawsuit for Unlawful Acts (PMH). Under Article 1365 of the Indonesian Civil Code, a person can be held liable for an unlawful act if their actions cause harm to someone else. This article mandates that anyone who, through their own fault, causes such harm must provide compensation.⁶³

According to M.A. Moegni Djojodirdjo, PMH constitutes either an active action or negligence that violates another person's rights, contravenes the legal obligations of the perpetrator, or breaches prevailing moral and social norms in interpersonal interactions or property matters.⁶⁴ Abdulkadir Muhammad defines PMH as an act that infringes upon another individual's rights, whether regulated by written or unwritten law, including violations of legal obligations as well as prevailing norms of propriety and morality in society.⁶⁵ The primary objective of a PMH lawsuit is to restore the plaintiff to their original position prior to the occurrence of the unlawful act. Agrarian.

⁶² Tim Publikasi Hukumonline, 'Pahami Aspek-Aspek Perlawanan Sita Eksekusi oleh Pihak Berperkara!' (Hukumonline 2023) <<https://www.hukumonline.com/berita/a/pahami-aspek-aspek-perlawanan-sita-eksekusi-oleh-pihak-berperkara-lt6459bc334eb1c/?page=all>> accessed 5 June 2025.

⁶³ Ilhami Ginang, 'Penerapan Forum Rei Sitae Dalam Gugatan Berdasarkan Perbuatan Melanggar Hukum' (2015) 30 Yuridika.[13].

⁶⁴ M.A. Moegni Djojodirdjo, *Perbuatan Melawan Hukum* (Pradnya Paramita 1982).[25].

⁶⁵ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia* (Citra Aditya Bakti 2010).[511].

Conclusion

The Certificate of Ownership (SHM) serves as a strong legal proof of land rights, in accordance with regulations such as Article 19 of the Basic Agrarian Law. However, legal certainty for SHM holders is not fully guaranteed, as there is still a potential for disputes and non-procedural executions.

Land execution must follow established procedures, beginning with an execution request and the issuance of a formal warning by the Chairman of the District Court. This procedure is regulated in several articles, including Articles 195 and 225 of the HIR and Articles 206 to 240 of the R.Bg. Furthermore, execution must uphold the principles of legal certainty, justice, and protection for legitimate rights holders. Cases such as the forced demolition in Tambun in 2024 and the eviction in Pulosari, Surabaya in 2018, serve as examples of executions that violated procedures by not issuing a prior warning.

SHM holders who have been harmed by non-procedural execution have access to legal remedies to obtain protection. The available legal actions include:

1. **Objection to Execution:** The aggrieved party can file an objection, especially if the object of execution does not match the court's ruling or if the ruling is technically impossible to execute. This can be filed by a litigating party or a third party with an interest.
2. **Unlawful Acts Lawsuit:** An SHM holder can also file a lawsuit for Unlawful Acts based on Article 1365 of the Indonesian Civil Code. The primary objective of a PMH lawsuit is to restore the plaintiff to their original position prior to the occurrence of the unlawful act.

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