COVERNOTE'S STANDING IN ELIGIBILITY ON CREDIT AGREEMENTS IN BANKING

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Article Info

Received:2022-08-09
Revised:2022-12-02
Accepted:2023-03-20

Keywords:
Concept, Minimum Wage, Principles of Justice

Abstract

Credit agreements signed by creditors and debtors by providing collateral in the form of certificates are generally bound by a notarial deed, whether made authentically or privately. The credit agreement will then be processed to encumber the rights to the collateral. Before the imposition process is completed, it is customary for the Notary-PPAT to create and publish a covernote so that the bank is confident in disbursing credit to the debtor. The aim of this research is to determine the position of covernotes in fulfilling the requirements of credit agreements in banking. This research uses normative research methods. Normative legal research is research conducted or aimed at written regulations because the research is carried out based on statutory regulations, namely the relationship between one regulation and another and its relationship to its application in practice. The research results show that the position of the covernote issued by the Notary-PPAT to fulfill the requirements of the credit agreement at the bank is only limited to being a certificate, to explain that a credit agreement has been agreed and signed by providing a guarantee. However, the covernote is not an object of collateral or guarantee, the covernote is only a certificate that can be used as temporary collateral as a guide for the bank to issue credit to the debtor.

I. Introduction

Banking institutions as a financial institution have a strategic role in a country's economy. This important role is to support the course of development and maintain economic stability for the country. Banking has the main function as an intermediation institution, namely collecting funds from the public and channeling them effectively and efficiently to real sectors to drive development and stability of the country's economy.[1]

The most dominant thing banks do in maintaining economic balance is lending. Providing credit aims to help people obtain additional business capital. Through credit activities and various services provided, banks serve financing needs and streamline payment system mechanisms for all economic sectors.

The most dominant thing banks do in maintaining economic balance is lending. Providing credit aims to help people obtain additional business capital. Through credit activities and various services provided, banks serve financing needs and streamline payment system mechanisms for all economic sectors.[2]

Collateral is property belonging to the debtor which will be tied up as collateral in the event of the debtor customer's inability to settle their debt in accordance with the credit agreement.[3] In general, the collateral used as collateral is in the form of land and/or house certificates.

Collateral used as collateral in a credit agreement must be checked first by the bank. Usually, when checking credit guarantees, banks require assistance from a notary. The role and function of a Notary is very important in helping the government and the public who need Notary services to provide certainty, order and legal protection, which can be made in the form of an authentic deed. An authentic deed is a deed made and prepared by a Notary or other official official (for example the Subdistrict Head as the Official Land Deed Maker) for the benefit of the parties to the contract.

A Notary can hold the same position as a Land Deed Official (PPAT), because the position of Notary and PPAT are like two currencies, different but inseparable, and these positions are related to each other. The role and function of the Notary-PPAT is very important in helping the government, especially banking, or other parties who need the presence of a Notary to be able to provide certainty, order and legal protection in legal actions as outlined in authentic deeds. Apart from authentic deeds and private letters made by Notaries, there is one type of letter which seems to be a legal product of Notaries which is often requested by banks to be made and issued to guarantee legal actions of interested parties, namely a certificate used as temporary collateral is called a covernote.

The covernote is made by the Notary-PPAT as a statement of the Notary-PPAT's

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[1] Dewi Rachmayani dan Agus Suwandono, "*Covernote* Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan", *Acta Diurnal; Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, Vol. 1, No. 1 (Desember 2017), hlm. 74.

[2] Dikutip dalam web tanya jawab D-LEAD (DDP *Legal Education & Development*), "Perbedaan Jaminan yang Bersifat Umum dan Khusus", https://dlead.co.id/Perbedaan Jaminan Yang Bersifat Umum dan Khusus - D-LEAD (dlead.co.id), (Selasa, 04 Oktober 2022).

[3] Rachmat Firdaus dan Maya Ariyanti, *Manajemen Perkreditan Bank Umum: Teori, Masalah, Kebijakan dan Aplikasi Lengkap dengan Analisis Kredit* (Bandung: Alfabeta, 2009), hlm. 87.

ability to carry out the process of providing collateral for the credit provided by the bank and includes, among other things, an agreement between the bank and the debtor has been signed, collateral has been given from those who owe the bank as creditors, has been the signing of a power of attorney deed imposing mortgage rights, or a deed granting mortgage rights, all of which are still in process through the Notary-PPAT partner of the bank concerned.[4]

The covernote or statement from the Notary is actually not a requirement for credit disbursement, because to disburse credit there are conditions that must be met first.[5] The bank must ensure the ability of the Notary-PPAT to be able to carry out the contents of the covernote it makes, so that the covernote can provide a preferential position for the bank regarding the credit that has been given to the debtor. From this explanation, it can be ascertained that the presence of covernotes is often expected to fulfill the requirements of credit agreements in banking. However, if we look at the legal system in Indonesia, which requires laws to be made in writing, the position of the covernote in a credit agreement in banking is regulated in the legal system in Indonesia, because there are no explicit rules governing covernotes.

2. Research Method

This research uses normative legal research methods. Normative legal research is research carried out or aimed at written regulations because the research is carried out based on statutory regulations, namely the relationship between one regulation and another and its relation to its application in practice. Ronny Hanitijo Soemitro uses the term normative juridical research, which is also called library legal research. Furthermore, he said that normative juridical research (legal research) is research that examines legal principles and rules.[6] In this research, the approaches used are the conceptual approach and the case approach.[7]

3. Results and Discussion

Covernote As A Condition In Credit Agreements In Banking

Banking institutions as a financial institution have a strategic role in a country's economy. This important role is to support the course of development and maintain economic stability for the country. Banking has the main function as an intermediation institution, namely collecting funds from the public and channeling them effectively and efficiently to real sectors to drive development and stability of the country's economy.

Banking as an institution that collects funds from the public is explained in Article 1 number 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992

[4] I Dewa Made Dwi Sanjaya, "Tanggung Jawab Hukum Notaris Terhadap Penerbitan *Covernote* Dalam Pemberian Kredit", *Riau Law Journal*, Vol. 1, No. 2 (November 2017), hlm. 183.

[5] I Made Pria Dharsana, "Eksistensi Dan Perlindungan Notaris Dalam Pembuatan Akta Perbankan Dan *Covernote*", dalam acara webinar diskusi tentang *covernote*, tanggal 09 Oktober 2022, th.

[6] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990), hlm. 11-12.

[7] Lihat Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif,* Cetakan Keempat (Malang: Bayumedia Publishing, 2011), hlm. 300. Lihat juga Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan keenam (Jakarta: Kencana, 2010), hlm. 93.

concerning Banking (UUP), stating that banks are business entities that collect funds from the public in the form of savings and channeling them to the community in the form of credit and/or other forms in order to improve the standard of living of many people.

The most dominant thing banks do in maintaining economic balance is lending. Providing credit aims to help people obtain additional business capital. Through credit activities and various services provided, banks serve financing needs and streamline payment system mechanisms for all economic sectors.

POJK Regulation Number 32/POJK.03/2018 defines credit as the provision of money or bills that can be equivalent to it, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest.

Credit is a form of trust given by a banking institution as a creditor to provide a loan of a sum of money or goods to be given and handed over to the party who needs the loan (debtor) to help finance the party's business and needs, with the obligation to return the amount of money or bill after agreed period of time by providing compensation in the form of interest or profit sharing.

This attitude of trust is expressed in the form of an agreement between the debtor and the creditor. In an agreement, the parties have their respective rights and obligations that must be fulfilled. An agreement is an event where two people or two parties promise each other to do something.[8] Or it can be said to be an agreement made by two or more parties, each of whom agrees to comply with what is stated in the agreement.

Gatot Supramono explained that a credit agreement is a loan and replacement agreement, but it is also a special agreement, because it contains specificities where the creditor is the bank and the object of the agreement is money which is generally regulated in the Civil Code and specifically regulated in the UUP.[9]

In making a banking credit agreement deed, the role of a Notary Public is very important, where the Notary as a public official is required to act professionally, one of which is bridging the interests of creditors and debtors in making a credit agreement deed. However, in reality this attitude of professionalism is faced with the demands of the banking world, namely the efficiency of banking procedures and security in providing credit, so that in practice banking institutions tend to use standard agreements in their credit agreements.[10]

Herlien Budiono said that bank credit agreements are generally made in written form and in the form of a standard agreement, this agreement can be made using a private deed or an authentic deed. Various steps to facilitate the implementation of making documents related to credit, in this case with an authentic deed, the bank appoints a notary as a

[8] Johannes Ibrahim, *Mengupas Tuntas Kredit Komersial dan Konsumtif dalam Perjanjian Kredit Bank (Perspektif Hukum dan Ekonomi)* (Bandung: Mandar Maju, 2004), hlm. 19.

[9] Priyo Handoko, *Menakar Jaminan Atas Tanah Sebagai Pengaman Kredit* (Jember: *Centre for Society Studies*, 2006), hlm. 106.

[10] Mariah Kamelia dan Anis Mashdurohatun, "Peran Notaris Dalam Pembuatan Akta Perjanjian Kredit Dalam Perspektif Hukum Positif dan Hukum Islam", *Jurnal Akta*, Vol. 4, No. 4 (Desember 2017), hlm. 577.

partner/partner.[11] In today's modern life, parties usually make agreements that are actualized in written form, this is done to make it easier for the parties to know their respective rights and obligations. An agreement in written form can be used as evidence if there is a default by one of the parties.[12]

Law enforcement aims to provide legal certainty and protection for people who carry out legal acts. Satjipto Raharjo stated that legal protection is an effort to organize various interests in society so that there are no clashes between interests and people can enjoy all the rights granted by law. Organizing is done by limiting certain interests and giving power to others in a measurable way.[13] According to Satjipto Raharjo's opinion, if it is related to Hans Kelsen's theory of pure legal theory regarding legal certainty, then covernotes cannot be used as temporary collateral requirements in credit agreements in banking, because covernotes are not yet regulated in law, and covernotes are only temporary because Covernotes are published only for the benefit of the parties, namely creditors and debtors.

However, if it is related to the theory of legal protection as expressed by Lili Rasjidi, legal protection is needed to protect and promote human dignity and to enable humans to live a normal life in accordance with their dignity.[14] So the existence of a covernote is needed to protect human dignity in running a business and position, especially in credit agreements in banking. However, because there are no regulations governing covernotes made by Notaries as a substitute for original letters or original guarantees, there is no legal protection for creditors and debtors, as well as for Notaries in implementing credit agreements in banking.

The Position of Banking Parties in Applying Covernotes as Terms of Credit Agreements in Banking

Banking institutions are the core of the financial system in every country. Banks are financial institutions that are a place for individuals, private business entities, state-owned companies, and even government institutions to store the funds they have. Through credit activities and various services provided, banks serve financing needs and streamline payment system mechanisms for all economic sectors.[15]

Juridically, referring to Article 1 point 2 of the UUP, what is meant by bank is "a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people." Meanwhile, according to Article 1 number 2 UUPS, it is explained that what is meant by bank is; "a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the people's standard of living."

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[11] Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2015). Lihat juga Asuan dan Susi Yanuarsi, "Konstribusi Jabatan Notaris dalam Perjanjian Kredit Bank", *Jurnal Solusi*, Vol. 20, No. 3 (September 2022), hlm. 388-389.

[12] Kartini Muljadi dan Gunawan Widjaja, *Perikatan Pada Umumnya* (Jakarta: Raja Grafindo Persada, 2003), hlm. 13.

[13] Satjipto Raharjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2012), hlm. 53-54.

[14] Lili Rasjidi dan B. Arief Sidharta, *Filsafat Hukum Madzab dan Refleksi* (Bandung: PT. Remaja Rosda Karya, 1994), hlm. 64.

[15] H. Bachtiar Simatupang, "Peranan Perbankan Dalam Meningkatkan Perekonomian Indonesia", *Jurnal Riset Akuntansi Multiparadigma (JRAM)*, Vol. 6, No. 2 (Desember 2019), hlm. 138.

Based on the description above, what is meant by bank is "a business entity in the form of a legal entity or company that carries out activities to collect funds from the public in the form of savings such as demand deposits, savings and deposits, to be distributed to people who need funds to develop business or other interests in the form of credit and/or other forms, the aim of which is to improve the standard of living of many people in order to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia."

The banking business does not merely rotate money to seek company profits, but the law requires that the standard of living of many people can be improved. This is one of the bank's responsibilities in realizing the ideals of the Republic of Indonesia to achieve a just and prosperous society. Therefore, in everyday life banks cannot be separated from development activities. Every bank activity must be successful for the benefit of society.

Laela Wulandari Tatuningtyas revealed that providing credit provides many opportunities for job creation, because credit has provided opportunities for people to develop a business. By distributing funds to the community, the state's main goal, namely improving people's welfare, can begin to be achieved with the presence of many new jobs. All of these activities are carried out as an effort to help accelerate the distribution of economic growth so that it can achieve an increase in the standard of living of many people.[16]

Broadly speaking, the role of banking in the economy is; First, carry out the transmission function. Second, collecting and distributing funds (intermediation function). Third, transforming and distributing risks in an economy (transformation and distribution of risk function). Fourth, instruments to stabilize economic conditions (stabilization function).[17]

Acting as a transmission institution means that banking institutions have the ability to control the amount and traffic of money in circulation. This means that, as an institution capable of creating financial instruments (such as the creation of currency by the Central Bank and demand deposits by Commercial Banks), banking can influence the supply of most of the money in circulation (money supply) which will be used either as a medium of exchange (medium of exchange). exchange) or as a means of payment (unit of account). In short, through the ability to control the amount and traffic of money in circulation, banking institutions have a very important role as a transmission in carrying out monetary policy.

Meanwhile, as an intermediation institution, banking institutions act as a place to mobilize funds from parties who have idle funds or excess funds (surplus units) to then distribute them to parties who need or lack funds (deficit units). Through the intermediation function, banking institutions have the ability to allocate funds more effectively between two parties (surplus and deficit units) who are separate and do not know each other. Therefore, through this intermediation function, banking institutions have a very important position in supporting life and economic progress.

Notaries only side with banks as creditors, and cooperation agreements between banks and notaries can also cause discrimination among notaries, because banks only want

[16] Trisadini P. Usanti dan Abd. Shomad, *Hukum Perbankan* (Depok: Kencana, 2017). Lihat dalam Kurniawan Sugianto dan Mohammad Fajri Mekka Putra, "Tinjauan Mengenai Kedudukan Bank Sebagai Kreditur Pemegang Hak Tanggungan Atas Tanah Yang Musnah Akibat Bencana Alam", *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Vol. 6, No. 3 (Juli 2022), hlm. 10098.

[17] M. Gillis, *Economic of Development* (New York: W.W. Norton and Company, 1966), Lihat dalam H. Bachtiar Simatupang, *loc.cit*.

to provide work to partner notaries. This causes the term notary as a public official appointed by the minister to disappear.

Collaboration that occurs between a Notary and a bank can result in the Notary tying himself to the bank and this causes the Notary to become independent. This means that in carrying out his position as a Notary, financial institutions or banking parties are involved. Even though Notaries in carrying out their positions have been regulated to be independent and independent.

Article 4 point 3 UUJN firmly states that Notaries may not promote themselves, either alone or together, by stating their name and position using print and/or electronic media such as: advertisements, congratulations, condolences, thanks. , marketing activities, sponsorship activities in the social, religious and sports fields.

It is further emphasized in the provisions of Article 4 point 4 UUJN, that Notaries are not permitted to collaborate with bureaus/services/Legal Entities which in principle work as intermediaries to find and get clients.

Realisasi Pembiayaan Oleh Bank Dengan Syarat *Covernote* Notaris-PPAT

Covernotes are made by Notaries as a form of service to the community, especially banking. The position of Notary is held because its presence is required by legal regulations to help and serve people who need authentic written legal instruments regarding situations, events or legal acts.[18]

A Notary in carrying out his duties and authority is always based on the applicable laws and regulations because the function of a Notary is to provide certainty and smoothness of civil law for the community so that the Notary must be reliable, impartial, able to maintain secrets, and provide guarantees or strong evidence..[19]

Making a covernote by the Notary-PPAT in the process of disbursing financing is a form of trust given by the bank to the Notary-PPAT concerned which has become a common practice in the banking business. Even though the covernote does not have legal force, the Notary-PPAT has an obligation to complete the processing which is his duty and responsibility towards banking in a professional manner at the appointed time so as not to cause losses to other parties. The Notary-PPAT must also pay attention to every provision in the applicable legislation when issuing a covernote so as not to cause injustice to other parties.

Financing using a covernote as a condition for credit disbursement (realization of financing) is a custom and general policy of the bank, apart from fulfilling other requirements set by the bank without waiting for the completion of making a copy of the deed, legalization of the deed, or completion of APHT registration at the Land Office. The existence of covernotes is due to practical needs. The existence of a covernote has a positive impact on each party. Customers certainly hope that the financing that has been applied for can be disbursed immediately because they have reached the stage of signing the financing agreement and feel that all the requirements have been met. For banks, by having a covernote, they can immediately disburse financing to prospective customers, because they are worried that if the financing realization process is too complicated and takes a long time, customers will be

[18] Habib Adjie dan Muhammad Hafidh, *Akta Perbankan Syariah yang Selaras Pasal 38 Undang-Undang Jabatan Notaris* (Semarang: Pustaka Zaman, 2011), hlm. 14.

[19] Lilin Royani, Hernawan Hadi, dan M. Hudi Asrori, *op.cit.,* hlm. 194.

disappointed, deterred, and may even look for another bank.

The UUP states that before providing financing, banks must carry out a thorough assessment. This is because the source of financing funds distributed is not funds from the bank itself, but funds originating from the community, so it is necessary to apply prudential banking principles through accurate and in-depth analysis, appropriate distribution, proper supervision and monitoring. good, valid financing agreement that meets legal requirements, strong collateral binding and regular and complete financing documentation. The application of prudential banking principles aims to ensure that the financing disbursed can be returned on time according to the contract which includes the principal loan and margin or profit sharing. If large amounts of financing that the bank has distributed to the public are not paid back to the bank on time in accordance with the contract, then the quality of the financing can be classified as a non-performing loan (NPL).

Rachmadi Usman explained that the precautionary principle is interpreted as a principle or principle which states that banks in carrying out their functions and business activities are obliged to act prudently in order to protect public funds entrusted to them. In general, the precautionary principle is a risk control principle carried out through the consistent application of applicable laws and regulations to maintain the health and stability of national banking.[20]

Juridically, the precautionary principle has been regulated in Article 2 of the UUP which states that: "In carrying out its business, Indonesian banking is based on economic democracy by using the precautionary principle".

When linked to the provisions of Article 1381 of the Civil Code[21] then the credit agreement will not end if the additional agreement ends. The process of registering mortgage rights that cannot be completed according to the covernote statement made by the Notary is not a condition for ending the agreement as regulated under Article 1381 of the Civil Code. This article emphasizes that the process of completing the registration of mortgage rights that cannot be completed as stated in the covernote can be used as a reason for the cancellation of the credit agreement.

Furthermore, if it is linked to the provisions of Article 1266 of the Civil Code[22] So the application of the terms of cancellation in a legal event does not directly result in the agreement ending, however, the cancellation must be requested from the court.[23] Based on

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[20] Rachmadi Usman, *Aspek Hukum Perbankan Syariah di Indonesia,* Cetakan Kedua (Jakarta: Sinar Grafika, 2014), hlm. 18.

[21] Pasal 1381 menyebutkan tentang hapusnya perikatan-perikatan, antara lain: karena pembayaran; karena penawaran pembayaran tunai, diikuti dengan penyimpanan atau penitipan; karena pembaharuan hutang; karena perjumpaan utang atau kompensasi; karena pencampuran utang; karena pembebasan utang; kafrena musnahnya barang yang terutang; karena kebatalan atau pembatalan; karena berlakunya suatu syarat batal yang diatur dalam bab ke satu KUHPerdata; karena lewatnya waktu.

[22] Pasal 1266 KUHPerdata menentukan bahwa (1) syarat batal dianggap selalu dicantumkan dalam persetujuan-persetujuan yang bertimbal balik, manakala salah satu pihak tidak memenuhi kewajibannya; (2) dalam hal yang demikian persetujuan tidak batal demi hukum, tetapi pembatalan harus dimintakan kepada hakim; (3) permintaan tersebut juga harus dilakukan, meskipun syarat batal mengenai tidak dipenuhinya kewajiban dinyatakan di dalam perjanjian; (4) jika syarat batal tidak dinyatakan dalam persetujuan, maka hakim akan leluasa untuk menurut keadaan atas permintaan si tergugat, memberikan jangka waktu untuk dapat memenuhi kewajibannya, dalam jangka waktu tidak boleh lebih dari satu bulan.

[23] Silvia Anggraini Yusmi, "Akibat Hukum Pencairan Kredit yang Didasarkan Pada *Covernote* Notaris", *Jurnal Recital Review*, Vol. 2, No. 2 (Juli 2020), hlm. 133. Lihat juga Nugraha Pratama Septiansyah Gusti,

this, it can be understood that the processing of mortgage rights cannot be completed if it is not in accordance with the cover note made by the Notary. If the bank as the creditor wants to cancel a credit agreement so that the validity of a void condition in the agreement must still be requested for cancellation through a court order.

Based on the explanation of these regulations, there are differences in the purpose and use of Notary covernotes. If you look at the function of a Notary's covernote based on banking regulations and POJK regarding the disbursement (realization) of financing, then if it is linked to the theory of legal responsibility in relation to the Notary who issues the covernote, but fails to carry out the contents of the information on the covernote. The theory of legal responsibility relates to the responsibility of Notaries who have created and issued covernotes for the benefit of banking parties.

However, if it is related to Hans Kelsen's theory which explains legal responsibility, namely "one concept that is related to the concept of legal obligation is legal responsibility". So this theory explains that someone is legally responsible for certain actions or that someone has legal responsibility, this means that someone is responsible for a sanction for an action carried out contrary to the law. Notaries can be held legally responsible for their mistakes or mistakes if in the creation and publication of the covernote there are elements that contain incorrect information.

Even though in the UUJN there is not a single article that regulates the authority and obligations of a Notary to make a covernote, the Notary is obliged to be personally responsible for his actions, because the bank has already disbursed financing to the debtor, but the APHT cannot be registered at the land office.

4. Conclusion

The conclusion from the descriptions explained above is that the position of the covernote made by the Notary-PPAT in relation to the bank credit agreement is only in the form of a certificate stating that a credit agreement has been entered into between the debtor and the creditor by providing a guarantee, which guarantee must still be made. several processes before a Deed of Mortgage Encumbrance (APHT) can be registered and issued in the name of the debtor. The covernote is not a credit guarantee, but the covernote is only a statement made and issued by the Notary-PPAT as an introduction or temporary evidence explaining that the guarantee is still in the process of being registered by APHT. Covernotes do not have legal certainty to provide legal protection to banks as creditors or legal protection to Notaries-PPATs as parties who create and publish covernotes.

AhmadIlham Alhamdha, Muchammad Alfieyan, "Peran *Covernote* Notaris Sebagai Dasar Pencairan Kredit Oleh Bank", *Jurnal Education and Development* Institut Pendidikan Tapanuli Selatan, Vol. 11, No. 1 (Januari 2023), hlm. 91.

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