



# LEGAL PROTECTION FOR THE WINNER OF AN AUCTION FOR THE EXECUTION OF COLLATERAL RIGHTS DUE TO OPPOSITION FROM THE PREVIOUS DEBTOR (STUDY OF DECISION NUMBER 31/PDT.G/2016/PN PLK)

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## Article Info

### Keywords:

Execution Auction,  
Executorial Force,  
Legal Protection,  
Mortgage

## ABSTRACT

This article evaluates the effectiveness of legal protection for auction winners in executing Mortgage Rights and the practical enforceability of the Mortgage Rights Certificate. While the Mortgage Law provides creditors with privileged authority for parate execution under Articles 6 and 14, execution is often hindered when the debtor or possessor files an objection (*derden verzet*). The research uses a normative legal method, examining the Mortgage Law, Indonesian Civil Procedure Code, Ministry of Finance Regulation 122/2023, and relevant court decisions. The findings suggest that legal protection for auction winners is inadequate due to insufficient preventive measures, such as execution seizure before the auction. This allows objections to delay execution for years. Additionally, Article 195 of the Civil Procedure Code lacks clear time or scope limitations for resistance, enabling its misuse. The research recommends mandatory execution seizure before auction and stricter court standards for accepting execution delay requests, enhancing parate execution effectiveness and auction winner protection.

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## 1. INTRODUCTION

Bank credit, as one of the main activities in the operations of conventional banks, plays a significant role in meeting the financial needs of the community. Banking institutions function as financial intermediaries that collect funds from the public and then channel them back to the community in the form of financing or credit, thus making a significant contribution to national economic growth. Thru this credit distribution mechanism, the economic activities of the community can develop and contribute to improving their living standards. However, in the practice of granting credit, the existence of collateral or security becomes an essential component that serves to ensure the safety and provide legal certainty for the bank as the creditor in the process of disbursing funds.

Collateral serves as an instrument of protection for creditors, in this case the bank, to ensure the debtor's fulfillment of debt payment obligations or the execution of agreed-upon obligations. Thus, collateral can be understood as property or another form of security that can be used as a substitute for repayment if the debtor fails to meet their obligations or defaults. Based on the type of asset used as collateral, guaranties can be divided into two main forms: real guaranties and personal guaranties. Real guaranties are derived from specific assets or

goods owned by the debtor, while personal guaranties involve a third party who voluntarily assumes the debtor's obligations if the debtor is unable to repay their debt. Real guaranties are collateral in the form of movable or immovable property, used as security for a loan and can be executed if the debtor fails to meet their obligations to the creditor (Sukendar & Santoso, 2022).

A mortgage is the result of unifying the system of real property guaranties on land, which is comprehensively regulated within the framework of national land law. After the enactment of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as the Mortgage Law), this institution became the sole mechanism for real property security on land legally recognized by Indonesian law. In Article 1 paragraph (1) of the Mortgage Law, a mortgage is a security right encumbered on land rights as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), including objects attached to it, which gives the holder of the mortgage a preferential position over other creditors.

As an accessory real right, a mortgage gives the holder priority in obtaining debt repayment if the debtor defaults, as stated in Article 6 of the Mortgage Law, which states that in the event of debtor default, the mortgage holder is authorized to sell the collateral object thru public auction and use the proceeds of the sale to repay the debt.

This is also regulated in Article 14 paragraph 2 of the Mortgage Law, which states: "The Certificate of Encumbrance as referred to in paragraph (2) has the same executorial force as a court decision that has obtained permanent legal force and serves as a substitute for the *grosse acte Hypotheek* insofar as it relates to rights over land."

Article 14 of the Mortgage Law states that the Certificate of Encumbrance has the same executorial force as a court decision that has permanent legal force, so it can be the basis for carrying out execution without requiring prior determination from the court. With this executorial title, the holder of the mortgage has the right to *parate executie*, which is to sell the object of the mortgage themselves thru the Auction Office (KPKNL), and to be considered a preferred creditor whose claim must be paid before concurrent creditors. However, in practice, although the mortgagee has the power of *parate executie*, the execution of vacating the object after the auction still needs to involve the court because it relates to the physical possession of the object, which is generally still occupied by the debtor.

After the collateral is sold thru a public auction with a mortgage execution auction, legal ownership of the item transfers to the auction winner. It is at this takeover stage that conflicts often arise, namely when the winner tries to occupy or take possession of the goods they purchased, but the debtor or previous owner refuses to hand over the object. Rejection by the debtor of the auction object handover is generally caused by several factors, including (Tambunan & Winanti, 2024):

- a. The debtor still occupies or uses the auctioned property, making them reluctant or unprepared to vacate it;
- b. There is a lack of intensive and effective communication between the bank (as the creditor) and the debtor regarding the execution mechanism and schedule;
- c. The debtor's lack of cooperation and low awareness in fulfilling their debt repayment obligations;
- d. Uncertainty or delays in the determination of the eviction execution time by the competent court, causing the handover process to be postponed and triggering resistance from the previous owner.

MHB (name disguised), as the winning bidder according to Auction Quotation Number 195/2015, has obtained the right to Certificate of Ownership (SHM) No. 8106/Menteng dated September 22, 2008, along with a residential unit built on it; the property is located at Jalan RT. Milono 6, Graha Kemuning Housing Plot No. 15, Tampung Penyang, Menteng Village, Jekan Raya District, Palangka City, Central Kalimantan Province.

The chronology of the case began with an execution request filed by the auction winner to the Chief of the Palangka Raya District Court for the purpose of clearing and/or handing over the auctioned property, which is recorded in the case file as Execution Request Number 04/Pdt.Eks/2016/PN.PLK. However, this request was subsequently challenged legally by the previous debtor, BW, who filed a third-party lawsuit (*derden verzet*) with case register number 31/Pdt.G/2016/PN.PLK on March 2, 2016.

This matter proceeded to the cassation stage after previously obtaining a decision at the appellate level thru Palangka Raya High Court Decision Number 76/PDT/2016/PT.PLK. Subsequently, the Supreme Court examined and decided this case thru Decision Number 699 K/Pdt/2019. In its decision, the Supreme Court's panel of judges affirmed that BW, as the opposing party, had no legal basis and rejected all the arguments presented in the opposition. The decision became legally binding on April 24, 2019. Nevertheless, as a result of the resistance process, the Chief Judge of the Palangka Raya District Court postponed the execution of the real object of the collateral.

The situation that occurred caused a long delay in the execution of the object encumbered by the mortgage, lasting for approximately four years, thus effectively failing to protect the rights of the auction winner. As a result, the auction winner did not gain physical possession of the auctioned item within a reasonable timeframe. This delay is also inconsistent with the basic goals and principles that the UUHT aims to achieve, namely the principles

of ease and certainty in executing the auction when the debtor defaults, which should ensure a quick resolution and legal certainty for the creditor or auction winner. Based on the above description, the author formulates several problems to be examined, namely: How is legal protection for the winning bidder in the execution of collateral rights due to opposition from the previous debtor, and what is the executorial force of collateral rights in the implementation of execution, both thru parate executie and court rulings?

## 2. RESEARCH METHODS

This research uses the normative legal research method, which focuses on the legal norms found in legislation, court decisions, and legal doctrines prevalent in society (Muhaimin, 2020). This research aims to build new legal, theoretical, and conceptual arguments as a prescription for resolving the legal issues under study.

The approaches used include the statute approach and the case approach. The statute approach is carried out by examining various regulations related to the legal issue being researched to see the consistency and synchronization between the regulations. Meanwhile, the case approach is done by reviewing cases related to the issue being faced that have been court decisions with permanent legal force.

The legal materials used consist of primary legal materials, namely the legislation of the UUHT, HIR, PMK 122/2023, and court decisions such as Decision Number 31/Pdt.G/2016/PN PLK, Decision Number 76/PDT/2019/PT, and Decision Number 699 K/Pdt/2019; secondary legal materials, such as literature and previous research findings; and tertiary legal materials, such as legal dictionaries and legal encyclopedias that support this research analysis.

## 3. RESULT AND ANALYSIS

### Legal Protection for the Winning Bidder in an Auction of Collateral Due to Resistance from the Previous Debtor

Legal protection for the winning bidder facing disputes over the debtor's possession of the auction object is an important issue in the practice of auction law in Indonesia. In principle, according to the provisions of civil procedure law, the auction winner is entitled to obtain possession of the object they have legally won thru an auction process based on the law. However, in practice, disputes often arise when debtors continue to attempt to retain or refuse to surrender the auctioned object. Situations like this confirm that the existence of effective legal protection for auction winners is essential, so that the rights they have acquired thru the auction mechanism can be guarantyd and enforced with legal certainty (Musadad, 2020). Below is presented the legal basis for the rights of the auction winner in executing the mortgage:

- a. Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land  
As stipulated in Article 6, which states:  
"If the debtor is in default, the holder of the first Mortgage Right shall have the right to sell the object of the Mortgage Right on its own authority through a public auction and to obtain repayment of its receivable from the proceeds of such sale."
- b. Supreme Court Circular Letter (SEMA) of 2013 Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the Supreme Court Chamber Plenary Meeting of 2013 as Guidelines for the Performance of Duties for Courts, which states that:  
"With regard to the auction of mortgage rights conducted by the creditor itself through the auction office, if the auctioned party refuses to vacate the auction object, the execution of the auction may be directly submitted to the Head of the District Court without filing a lawsuit."
- c. Herziene Indonesisch Reglement (HIR)  
Article 200 paragraph (11) of the HIR provides:  
"If the person whose property has been sold refuses to vacate the immovable property, the Head of the District Court shall issue an order to the official authorized to execute bailiff orders, so that with the assistance of the court clerk, and if necessary with the help of the police, the immovable property shall be vacated and emptied by the person whose property was sold, as well as by his family members."
- d. Indonesian Civil Code  
The legal basis for the rights of the winner of a mortgage execution auction is found in Article 1457 of the Indonesian Civil Code, which states:  
"A sale and purchase is an agreement by which one party binds itself to deliver an object, and the other party binds itself to pay the agreed price."
- e. Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions  
In the Requirements and Conditions for Auction Implementation Number 19, it is stated that:  
"In the implementation of Mandatory Auctions, if the land and/or building being auctioned is occupied, the vacating of the land and/or building shall be entirely the responsibility of the Buyer. If

the vacating of the land and/or building cannot be carried out voluntarily, the Buyer may request assistance for vacating through the court.”

In this case, the BW debtor is stated to have defaulted on the credit agreement previously agreed upon with PT Bank Mandiri (Persero) Tbk as the creditor. Based on the provisions of Article 6 of the Mortgage Law, Bank Mandiri then exercised its right to execute the collateral object thru a public auction by way of parate execution. The auction execution application was submitted by Bank Mandiri to the State Property and Auction Service Office (KPKNL) Palangka Raya for the collateral object, which was a Certificate of Ownership (SHM) Number 8106/Menteng. The auction resulted in MHB being the winning bidder, which was subsequently recorded in Auction Minutes Number 195/2015 issued by KPKNL Palangka Raya. After that, Bank Mandiri handed over the original SHM document Number 8106/Menteng and other supporting documents to MHB as the winning bidder.

The certificate was then transferred from BW to MHB, making MHB the legal owner of the auctioned property. However, factually, MHB has not yet been able to take possession of the auction object because the previous occupants refused to voluntarily leave or vacate the property. Therefore, MHB filed a request for eviction execution with the Palangka Raya District Court to obtain legal physical possession of the auctioned property. Regarding this execution request, BW, the previous debtor, filed an objection with the Palangka Raya District Court. In principle, filing an objection should not delay the execution, as the auction record already has legal and binding force. However, the Chief Judge of the Palangka Raya District Court at that time ordered the execution to be postponed, citing the principle of caution and humanitarian considerations. This policy has delayed the execution, forcing MHB, as the auction winner, to wait longer to physically take possession of the object that has legally become theirs.

The auction process is generally divided into three main phases: pre-auction, auction execution, and post-auction (Sudiarto, 2021). Each stage essentially complements the others in a procedural sequence that ensures transparency, fairness, and legal certainty for all stakeholders, especially the winning bidder acting in good faith. However, a legal review shows that legal protection is still weak in the pre-auction and post-auction phases, both in terms of regulations and implementation practices.

Philipus M. Hadjon distinguishes legal protection into two categories: preventive legal protection and repressive legal protection (Berkah & Andriyani, 2024). Preventive legal protection is a step taken before a legal violation occurs, with the aim of preventing disputes or arbitrary actions by certain parties. In the context of auction implementation, this can be applied at the pre-auction stage. Meanwhile, repressive legal protection is an effort made after a legal violation or dispute has occurred, with the aim of resolving the issue and restoring the rights of the injured party (Berkah & Andriyani, 2024). In the implementation of the auction, this form of repressive legal protection can be provided at the post-auction stage to ensure the legal fulfillment of the auction winner's rights.

Although the Mortgage Law grants the holder of the collateral right the authority for parate execution to sell the collateral object on their own authority based on the title of the Mortgage Certificate, in practice, this step is often not effectively implementable. Under certain conditions, the bank as the creditor still requires the assistance of the District Court Judge to prevent acts of refusal or resistance from the debtor. If the debtor remains unwilling to execute, the creditor's proper course of action is to file a breach of contract lawsuit first. The decision on the lawsuit then became the legal basis for the creditor to request an execution seizure order against the collateral object.

However, referring to Article 6 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for Auctions, the regulation regarding auction objects is limited only to the general characteristics of auction objects, namely that they can be tangible or intangible goods, movable or immovable, and have economic value. This regulation does not explicitly stipulate that the object of the mortgage to be auctioned must first be under state legal control thru an execution seizure order or a court decision. The absence of such norms indicates that preventive legal protection in the pre-auction stage is still weak.

Meanwhile, legal protection for auction buyers is also accommodated thru repressive mechanisms in the HIR. The provisions of Article 200 paragraph (11) of the HIR stipulate that if the auction winner encounters obstacles in taking possession of the auction object acquired thru a valid public auction, they are entitled to submit a request to the local District Court for execution measures, namely eviction of the object. However, because the bank did not carry out an eviction or execution seizure before the auction, the debtor had room to file an objection, which ultimately delayed the eviction process and created legal uncertainty for the auction winner to be able to enjoy the property that had become their right. This condition occurs because the third party's resistance mechanism is not given a strict time limit, but is only limited until the execution is actually carried out. In this matter, the objections raised as previously described caused the Chief Judge of the Palangka Raya District Court to postpone the execution of the eviction until a final and binding decision is reached.

Based on the analysis results, it can be identified that the legal position of the auction winner in this case indicates weak legal protection, as explained thru the following aspects:

- a. Legal uncertainty regarding the procedure for evicting the object of the auction, particularly in the context of protecting good-faith buyers. In principle, the law recognizes that a good-faith buyer is entitled to legal protection for the ownership rights they acquired legitimately. However, regulations regarding the form of such protection and the resolution mechanisms to ensure buyers can enjoy their rights to the auction object have not been explicitly stipulated in the legislation. The current provisions are solely based on the Supreme Court Circular (SEMA), which is administrative in nature and does not have the binding force of law, and can be changed at any time according to judicial policy, thus creating uncertainty in its law enforcement practice.
- b. Ministry of Finance Regulation Number 122 of 2023 only regulates the general nature of the auction object and does not require that the collateral object must have been previously seized for execution or vacated. This norm vacuum creates the risk that the auction object is still controlled by the debtor or even becomes the subject of dispute when the execution takes place. Thus, preventive legal protection for auction participants and winners is not fulfilled, because the state, thru KPKNL, has not yet ensured that the auction object is in a safe and ready-to-be-handed-over condition.
- c. The provisions of Article 195 paragraph (6) of the Indonesian Civil Procedure Code (HIR) are indeed intended to protect the party who feels aggrieved by the execution process. However, this provision does not specify a time limit for filing an objection and does not provide a mechanism for limiting its use to prevent it from being abused to indefinitely delay the execution. In this matter, the Chief Judge of the Palangka Raya District Court ordered a stay of execution out of caution, so the auction winner must wait until a final and binding decision is issued. This situation creates significant legal uncertainty for the fulfillment of the auction winner's rights.

#### **The Executive Power of Mortgage Rights in Parate Executie Execution and Court Orders**

Execution on mortgage rights is carried out when the debtor is declared in default, where the object encumbered by the mortgage can be sold thru a public auction mechanism in accordance with the procedures stipulated in the laws and regulations. The holder of the collateral rights is entitled to receive all or part of the proceeds from the sale to repay the debtor's debt, with priority over other creditors (Manitik, 2018).

A Certificate of Encumbrance bearing the inscription "For Justice Under the Almighty God" has the same legal status as a court judgment, so in principle, it can be executed directly without requiring a prior lawsuit. This is also explicitly regulated in Article 14 paragraph (3) of the Mortgage Law, which states: "The Certificate of Encumbrance as referred to in paragraph (2) has the same executorial force as a court decision that has obtained permanent legal force and serves as a substitute for the *grosse acte Hypotheek* insofar as it relates to rights over land."

However, in practice, as seen in Decision Number 31/Pdt.G/2016/PN Plk, this executorial force often faces obstacles in the form of debtor resistance, who refuse the auction or eviction after the auction is complete.

Based on Articles 20 to 21 of the Mortgage Law, a number of execution mechanisms are regulated that can be pursued by creditors when a debtor is declared in default, even after the creditor has issued three warnings or summons, including (Hendrik & Zuhir, 2023).

- a. Parate execution, which is the direct sale of the Collateral Object by the creditor holding the right thru public auction;
- b. Execution based on an executorial title, which is the auction of the collateral object carried out by order or determination of the court;
- c. Private sale, which allows the creditor and debtor to sell the collateral object thru mutual agreement to obtain a more favorable price.

In this case, the mechanism used is parate execution, which is the creditor's authority to sell the Collateral Object on their own power thru public auction without requiring a court order (determination) first. The mechanism of immediate execution is considered the simplest and fastest, as the state grants direct authority to the creditor to execute the collateral object when the debtor has breached the promise. However, the implementation of parate executie in reality is often not as simple as its normative concept. The presence of the debtor or other parties still in possession of the object, the objections raised, and the potential for disputes often make the process impossible to proceed without the intervention of the judiciary.

The facts on the ground show that both creditors and auction winners still have to go thru the actual execution process in court to gain physical possession of the land object. Generally, the stages of Application and Implementation of Real Execution are as follows (Palangka Raya District Court, 2025):

- a. At the initial stage, the applicant submits an application for execution to the District Court as the basis for commencing the real (actual) execution process;

- b. After the application is received, the Court Clerk (Registrar) conducts an administrative review and prepares an Execution Review Resume within a maximum period of 17 days;
- c. The results of the review are then notified to the applicant to confirm the completeness and eligibility of the application;
- d. If the application is declared processable, the court issues a Letter of Authority to Pay (Surat Kuasa Untuk Membayar / SKUM) as the basis for payment of execution fees;
- e. The applicant is required to deposit the advance payment for execution costs within a maximum of three days from the issuance of the SKUM;
- f. Once the fees have been paid, the Chief Judge of the District Court issues an *aanmaning* order and instructs the Clerk/Bailiff to summon the execution respondent within seven days after the execution resume has been completed;
  - 1) The *aanmaning* is led directly by the Chief Judge of the District Court through an incidental hearing, which must be conducted within a maximum period of 30 days from the submission of the execution application;
  - 2) If the respondent fails to appear without a justifiable reason, the execution process may proceed immediately without an incidental hearing, unless the Chief Judge deems it necessary to issue a repeated summons;
- g. In the *aanmaning*, the Chief Judge issues a warning to the respondent to voluntarily comply with the contents of the decision within eight days from the delivery of the warning;
  - 1) If the respondent voluntarily complies with the decision within the specified period, the applicant is required to report the implementation to the court so that minutes of execution and handover may be prepared;
  - 2) If the respondent does not voluntarily comply with the decision, and no prior conservatory seizure (*sita jaminan*) has been imposed, the Chief Judge may order an execution seizure (*sita eksekusi*) after first conducting a constatering inspection;
- h. Thereafter, the Chief Judge of the District Court determines the schedule for the vacating execution by first coordinating with security authorities to ensure orderly execution;
- i. The execution action shall be carried out in accordance with the principles of humanity and justice, and on the same day the object of execution shall be handed over to the applicant or their authorized representative after the vacating process has been completed.

In this case, the auction winner has filed an application for Eviction and/or Handover of the Auctioned Object to the Palangka Raya District Court, registered under Case Number 04/Pdt.Eks/2016/PN Plk, based on the legal basis of Auction Minutes Excerpt Number 195/2015 dated July 13, 2015. However, the execution of the order was delayed due to an opposition lawsuit (*verzet*) filed by BW against the execution. BW continued legal efforts up to the appellate level (Case No. 76/PDT/2019/PT Palangka Raya) and cassation to the Supreme Court (Case No. 699 K/Pdt/2019). However, all these legal efforts were rejected by the court, which stated that BW's resistance was unfounded.

In this case, the Palangka Raya District Court postponed the execution based on the authority granted by Article 195 paragraph (6) of the *Herziene Indonesisch Reglement* (HIR) and Article 380 of the *Reglement op de Burgerlijke Rechtsvordering* (Rv), which essentially provides the legal basis for the Chief Justice of the District Court to postpone the execution if an objection is raised against the execution by an interested party. After the resistance process was decided, MHB re-submitted an execution request with the same registration number, as an effort to obtain their rights to the auction object that they legally owned under applicable legal provisions.

The delay in execution in this case was not only triggered by BW's resistance, but also exacerbated by the absence of any execution seizure action from the outset, which should have ensured the object remained in judicial custody. The absence of this step causes the execution process to drag on, and the auction winner has to wait a long time to gain physical possession of the object that legally belongs to them. This condition highlights the importance of executing a seizure before the auction as part of legal protection for the auction winner, ensuring the execution process is effective, fast, and provides legal certainty.

#### 4. CONCLUSION

Legal protection for the winning bidder in an execution auction of collateral rights is still not optimal, both from preventive and repressive aspects. Although normatively the auction winner has acquired full rights to the auctioned object, obstacles often arise because the object is still in the debtor's possession and no preventive measures such as execution seizure or eviction were taken before the auction. Cases that have occurred show that the failure to take preventive measures such as execution seizure or eviction before the auction allows the debtor to remain in possession of the object and file an objection, which delays execution. The absence of clear provisions in PMK 122/2023 or other regulations regarding the requirement for object security before an auction puts the auction winner in a vulnerable position, as the state does not guaranty that the auction object is ready for

handover. Additionally, Article 195 paragraph (6) of the HIR, which regulates resistance to execution, does not provide clear time and scope limitations, thus potentially allowing debtors to indefinitely delay execution. There is a need for mandatory execution seizure before the auction of Collateral Rights in the terms of the auction object in the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, namely the existence of a Court Decision that serves as the basis for Execution Seizure, so that the collateral object is under judicial control from the outset. This step will minimize the potential for debtor resistance, which could lead to delays in execution, while also strengthening legal certainty for creditors and auction winners. Although the Certificate of Encumbrance has the same executorial force as a court judgment and grants the holder of the Encumbrance the authority for parate execution, the execution process in practice does not always run effectively. The main obstacle arises when the debtor or the party still in possession of the object files an objection, which ultimately leads the court to postpone the execution based on Article 195 paragraph (6) HIR. The absence of an execution seizure from the outset also weakens the effectiveness of the execution, as the auction object is not under judicial control, preventing the auction winner from immediately enjoying their ownership rights. As a result, the parate execution mechanism, which is normatively intended as a quick and simple process, has become a lengthy process that still requires court intervention thru real execution. The executorial power of Mortgage Rights in practice has not yet fully provided legal certainty and effectiveness, especially when not accompanied by supporting actions such as execution seizure before the auction. The court needs to impose stricter limitations on applications for a stay of execution due to opposition, especially if the objections are not supported by strong evidence. In addition, the court also needs to strengthen coordination with the police and relevant agencies so that the eviction execution process can be carried out quickly, safely, and in accordance with the principles of justice.

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