

CONCEPTION OF A SYSTEM FOR CHARGING REVERSE EVIDENCE AGAINST DEFENDANTS OF THE CRIME OF MONEY LAUNDERING

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Abstract

This research is motivated by the difficulty of the evidentiary process in the crime of money laundering with the formulation of the problem including how to conceptualize the reverse burden of proof system for defendants in money laundering crimes and what are the obstacles to implementing the reverse burden of proof in money laundering acts. The research method used in this research is a type of normative research which refers to legal norms in statutory regulations relating to balanced and limited reverse evidence. The data collection technique uses the documentation method with the source of the data obtained coming from secondary data. The results of this research show that reverse proof is applied to the defendant's assets for both active and passive money laundering crimes by proving that the assets were obtained legally, but the concept is regulated in Articles 77 and 78 of Law Number 8 of 2010 concerning Prevention and Eradication. The crime of money laundering is not explained clearly, causing obstacles in its implementation. Obstacles in implementing reverse evidence are found in terms of substance, structure and legal culture in law enforcement.

Keywords: Reverse Evidence, Criminal Offences, Money Laundering

Abstrak

Penelitian ini dilatarbelakangi oleh sulitnya proses pembuktian pada tindak pidana pencucian uang dengan rumusan masalah yang diantaranya adalah bagaimana konsepsi sistem pembebanan pembuktian terbalik terhadap terdakwa tindak pidana pencucian uang dan bagaimana kendala penerapan pembebanan pembuktian terbalik dalam tindak pencucian uang. Metode penelitian yang digunakan di dalam penelitian ini yakni dengan jenis penelitian normatif yang mengacu pada norma hukum dalam peraturan perundang-undangan yang berkaitan dengan pembuktian terbalik berimbang dan terbatas. Teknik pengumpulan data menggunakan metode dokumentasi dengan sumber data yang diperoleh berasal dari data sekunder. Hasil penelitian ini menunjukkan bahwa pembuktian terbalik diterapkan atas harta kekayaan terdakwa baik untuk tindak pidana pencucian uang aktif dan pasif dengan cara membuktikannya bahwa harta kekayaan diperoleh secara sah namun konsep yang diatur dalam Pasal 77 dan 78 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang tidak dijelaskan secara jelas sehingga menimbulkan kendala dalam pelaksanaannya. Kendala dalam penerapan pembuktian terbalik ini ditemukan dalam segi substansi, struktur dan budaya hukum dalam penegakan hukumnya.

Kata kunci : Pembuktian Terbalik, Tindak Pidana, Pencucian Uang

A. Introduction

The development of criminal cases of money laundering in Indonesia is still being carried out by both individuals and companies or corporations. Because with the large number of money laundering cases in a country, that country's budget will also decrease.¹ The impact of this criminal act of money laundering raises concerns because it can disrupt the stability of the economy in Indonesia because the circulation of large amounts of funds occurs quickly from one place to another and this act of money laundering is also often carried out from one or more countries to another. The factor in the rapid progress of technology that is driving the rise of money laundering is technology in the information sector, namely the emergence of the internet which has shown extraordinary progress.²

The crime of money laundering in Indonesia is one of the nation's unresolved problems. Money laundering can be interpreted as money laundering, money bleaching, or cleaning money from the proceeds of illicit (dirty) transactions. The aim is to hide or obscure the origin of the illicit money so that it can be used as if it were legitimate money.

The phenomenon of the crime of money laundering is carried out by using all means so that the mistake is not traced. Wealth resulting from corruption is often misused by various parties, such as channeling funds to other people in the name of family or other relatives' accounts, so that the flow of funds entering personal

accounts does not increase or become suspicious.³

Perpetrators of criminal acts of money laundering will always make various efforts so that the profits or funds obtained from the proceeds of criminal acts can be declared to have come from legal activities, for example purchasing assets (property), storing them in the financial system, or even establishing a business venture so that it can have a foundation in enjoy the profits from his criminal activities.⁴

The establishment of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, which is a form of the Indonesian State's commitment to eradicate the problem of money laundering. In this regulation, it is explained that every person who places, transfers, diverts, spends, entrusts, takes abroad, changes the form or other actions on assets which he knows is suspected to be the result of a criminal act with the aim of concealing the origin of the assets is subject to imprisonment for a maximum of 20 (twenty years).

One way to strengthen the law to eradicate money laundering is to implement a reverse burden of proof system on defendants regarding their assets. In article 77 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering, the crime of money laundering regulates reverse evidence with the formulation that in a court trial, the defendant is obliged to prove that his assets did not come from a criminal act.⁵

The reason for applying the reverse burden of proof for the crime of money laundering is in accordance with the provisions in Article 77 of Law Number 8 of 2010, the crime of money laundering because money laundering is

¹ Ridwan Arifin and Shafa Amalia Choirinnisa, 'Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Dalam Prinsip Hukum Pidana Indonesia (Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle)', *Jurnal Mercatoria*, 12.1 (2019), 43–53.

² Pathorang Halim, 'Penegakan Hukum Terhadap Kejahatan Pencucian Uang Di Era Globalisasi' (Jakarta: Pusat Pengkajian dan Pengembangan Ilmu Hukum Fakultas Hukum Universitas Muhammadiyah Jakarta), 2013, hlm.34.

³ Nawawi Pomilango, 'Penerapan Beban Pembuktian Terbalik Tindak Pidana Pencucian Uang Pada Pengadilan Tindak Pidana Korupsi', *Magister Ilmu Hukum Universitas Pasundan Bandung*, 9.2 (2019), 4.

⁴ Mochammad Fahd Akbar and Ahmad Faruq, 'Sistem Pembalikan Beban Pembuktian Tindak Pidana Pencucian Uang Ditinjau Dari Asas Hukum Pidana Di Indonesia', *IRTIFAQ Jurnal Ilmu-Ilmu Syariah*, 6.2 (2019), 2.

⁵ Lydia Anatheressa Lumenta, 'Pelaksanaan Pembalikan Beban Pembuktian Tindak Pidana Pencucian Uang', *Jurnal Hukum Adigama*, 3.1 (2020), 3–4.

considered a crime which has a distinctive characteristic, namely that this crime is not a single crime but multiple crimes, This is characterized by a form of money laundering as a continuing crime, while the original crime is the production of money which is then carried out in the laundering process⁶and involves perpetrators who have organized crime networks so that in the process of proving in court sometimes public prosecutors have difficulty in proving money laundering cases in court, plus the existence of information technology in the financial and banking sector makes it difficult to ensnare perpetrators of money laundering crimes.⁷

The concept of reverse burden of proof in money laundering offences is that the judge gives an order for the defendant to prove the origin of his assets by providing sufficient evidence in accordance with Article 78 Paragraph (2) of Law No. 8/2010. The defendant's obligation to prove related to the element of ‘known’ or ‘reasonably suspected’ is an additional requirement for the judge in imposing a verdict. Law enforcement officials, especially judges, must be firm and able to distinguish which actions lead to the criminal offence of money laundering and which should be subject to criminal offences of origin.⁸

The problem arises when the regulation regarding the burden of proof in the crime of money laundering is different from the burden of proof as regulated by KUHAP. The burden of proof in Article 66 of the Criminal Procedure Code is ‘The suspect or defendant is not burdened with the obligation of proof’ in this article it can be ascertained that the suspect or defendant does not have the burden of proving his/her guilt or

innocence of the acts committed.

The provisions of Article 66 of KUHAP are in line with the presumption of innocence. This principle states that a person is considered innocent until proven guilty in court. The implementation of the presumption of innocence is found in the general explanation of KUHAP point 3 letter c, namely ‘Every person who is suspected, arrested, detained, prosecuted and or brought before a court session, shall be presumed innocent until a court decision declares his guilt and obtains permanent legal force’.⁹

The application of reversed burden of proof in money laundering cases in Indonesia is still rare. Indonesia itself has only once applied reverse proof, namely in the Bahasyim Assifie case. In that case, the defendant was a tax official who was charged with corruption of Rp. 1,000,000,000 (one billion) and money laundering of Rp. 64,000,000,000 (sixty-four billion). The judge of the South Jakarta District Court asked the defendant to prove that the origin of his wealth was legally obtained. However, the prosecutor was not convinced by the defendant's alibi.¹⁰

In this research, the author hopes to find out how the conception of the system of applying the reverse burden of proof and the obstacles to the application of Articles 77 and 78 of Law Number 8 Year 2010 which are still rarely used in the settlement of money laundering crimes and how the obstacles to the application of the reverse burden of proof in the act of money laundering.

B. Research Methods

According to Soerjono Soekanto, legal research is a scientific activity based on certain methods, systematics and thinking, which aims to

⁶ Suparji Suparji and Ridha Fauzy, ‘Analisis Tindak Pidana Pencucian Uang Pada Kasus Suap Proyek Jalan Di Maluku Yang Dilakukan Oleh Pejabat Kementerian Pekerjaan Umum Dan Perumahan Rakyat’, *Jurnal Magister Ilmu Hukum, Pascasarjana Universitas Al Azhar Indonesia*, 3.1 (2023), 1–6.

⁷ Sahuri Lasmadi and Elly Sudarti, ‘Pembuktian Terbalik Pada Tindak Pidana Pencucian Uang’, *REFLEKSI HUKUM Jurnal Ilmu Hukum*, 5.2 (2021), 201.

⁸ Hari Soeskandi and Setia Sekarwati, ‘Pembuktian Terbalik Dalam Tindak Pidana Korupsi’, *Jurnal Indonesia Sosial Teknologi*, 2.11 (2021), 7.

⁹ Muhammad Reza Adiwijana, ‘Pembebanan Pembuktian Dalam Tindak Pidana Pencucian Uang’, *Media Iuris*, 3.1 (2020), 75–88.

¹⁰ News detik, ‘Kasus Bahasyim Dapat Jadi Contoh Pembuktian Terbalik Dalam Kasus Gayus’, 2011 <<https://news.detik.com/berita/d-1553702/kasus-bahasyim-dapat-jadi-contoh-pembuktian-terbalik-dalam-kasus-gayus>> [accessed 6 April 2024].

study one or several general phenomena of certain laws by analyzing them. Apart from that, an in-depth examination of the legal facts is also carried out and then attempts to find a solution to the problems.¹¹ Peter Mahmud said that legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced.¹²

The type of research used in this writing is normative legal research (library research), namely legal research carried out by examining library materials or secondary data as a basis for research by conducting searches of regulations and literature relating to the problem at hand. Researched.¹³

C. Results and Discussion

1. Conception of the reverse burden of proof system for defendants of money laundering offences

In Law No. 8/2010 on the Eradication and Prevention of Money Laundering, reverse proof is regulated in Article 77 ‘for the purpose of examination in court, the defendant is obliged to prove that his assets are not the proceeds of a criminal offence’ by submitting sufficient evidence as stated in Article 78 paragraph 2. In the Law, it is not clearly explained about the consequences for the defendant when the defendant can prove that the assets or assets are not from crime, then the assets or assets remain in the control of the defendant and his heirs. But in fact, the assets are always in the power of confiscation, so that in the application of reverse evidence this raises various interpretations that will have an impact on legal uncertainty.¹⁴

¹¹ Zaenudin Ali, *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, (2010). 18.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Prenada Media Group, (2019). 35.

¹³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, (2015). 2-6 and 13-14.

¹⁴ Yosep Rusdiawan, ‘*Harmonisasi Pembuktian Terbalik Dan Pembuktian Menurut Kuhp Sebagai Upaya Pencegahan Dan Pemberantasan Tindak Pidana*

In practice in court, in the event that the Panel of Judges applies reverse proof, the defendant must present witnesses to submit supporting facts and evidence that his ownership of assets suspected of money laundering as alleged against the defendant. The practice of reverse evidence is still relatively new, so there are still not many money laundering cases that apply reverse evidence because the activation of reverse evidence is the authority of the judge, if the judge feels that reverse evidence is not needed then reverse evidence will not be used as an evidentiary system.

Akil Mochtar quoted the opinion of Paul C. Giannelli, regarding the burden of proof that in the event of a very urgent speciality, the burden of proof can be placed no longer on the Public Prosecutor, but on the defendant, and this burden of proof is allocated on the basis of policy, control of evidence and probability.¹⁵

Theoretically, the application of reverse proof provides convenience to the public prosecutor in terms of the origin of the defendant's wealth even though the provision in Article 68 that ‘to prove the crime of money laundering does not have to be proven first the original crime’ because in principle the crime of money laundering is an attempt to hide or disguise the origin of property obtained from various criminal acts.

The application of reverse proof was applied in case number 115/Pid.Sus/2020/PN.Ptk for the crime of money laundering with the crime of Narcotics origin, that the defendant Sahabudin was proven to have conducted a sale and purchase transaction of Narcotics with Witness Fadli from Malaysia to be brought into Indonesia through the Entikong border in West Kalimantan. The profits obtained by the defendant from the sale and purchase of Narcotics were used by the defendant to place, transfer, divert, spend with the aim of disguising the origin of the assets.

In this case, reverse proof was applied to the assets owned by the defendant, namely a plot of

Pencucian Uang Menurut Undang-Undang No 8 Tahun 2010 (Universitas Pasundan, 2023).

¹⁵ Letezia Tobing, ‘*Sistem Pembalikan Beban Pembuktian*’, *Hukum Online.Com*, 2013.

land and building measuring 75 square metres and a house measuring 350 square metres. According to the defendant's statement, the assets were obtained long before the narcotics transaction occurred, namely in 2008 and are still in the installment process. The trial presented Witness Hartati as well as evidence in the form of KPR Mandiri house ownership agreement No: CLBOPNK/KPR/024/XI/2008 and the 350 square metre house that the defendant purchased in 2015 from the sale of 1 (one) Pajero car. Based on the reverse proof that has been carried out by the defendant, the defendant has high hopes for the assets to be returned to his wife, namely Witness Hartati.

Related to the reversed evidence carried out by the defendant and to encourage a fair and targeted reversed evidence burden process, both investigators and prosecutors must coordinate with the Financial Transaction Reports and Analysis Centre (PPATK) to conduct a comprehensive tracking of the assets owned by the defendant. This process is carried out to prevent ‘blind confiscation’, namely asset confiscation of all assets owned by the defendant, because not all assets owned by the defendant come from criminal offences, so that in the process of fair and precise law enforcement, investigators and related agencies must be careful to separate assets originating from criminal offences and assets that do not originate from criminal offences.¹⁶

The legal consequences of the defendant's assets in reverse proof are that if the defendant succeeds in proving that the assets are not from a criminal offence, the assets remain in the control of the defendant and his heirs. However, if the defendant is unable to prove that the property is not from a criminal offence then in the judge's decision it will be confiscated to the State because this money laundering act has an impact on the State's economy.

¹⁶ Rizal Ramdhani, ‘Penegakan Hukum Tindak Pidana Pencucian Uang Yang Tindak Pidana Asalnya Dari Tindak Pidana Korupsi Dengan Sistem Pembuktian Terbalik’, *Magister Hukum Pascasarjana Universitas Pasundan*, 2023, 9.

This criminal case of money laundering is very complicated to uncover because in general it involves a very wide network and occurs quickly and money launderers often use more sophisticated modes with mastery of banking and financial information technology. So the Panel of Judges in imposing a sentence must be based on valid evidence and the belief that the defendant really committed a criminal offence in accordance with the theory that the author uses, namely the theory of negative evidence according to the Law as in Article 183 of the Criminal Procedure Code ‘The judge may not impose a sentence on a person, unless with at least two valid evidence, he is convinced that a criminal offence has actually occurred and that the defendant is guilty of committing it’.

The theory of law enforcement according to Satjipto Rahardjo, in law enforcement efforts to realise the concept of justice, truth, social benefits must pay attention to aspects:

- a) Legal material (regulations / legislation)
- b) Law enforcement apparatus
- c) Legal facilities and infrastructure
- d) Legal culture

In relation to the application of reverse proof, the rules regarding reverse proof that already exist in Law Number 8 of 2010 concerning the prevention and eradication of money laundering must be supported by legal facilities and infrastructure so that reverse proof can run well as well as legal culture, namely the attitude of law enforcement officials towards law and the legal system.

2. Obstacles to the application of reverse burden of proof in money laundering offences

The crime of money laundering is categorised as a crime that is not only committed by a single perpetrator, but is committed by several perpetrators and in a very fast time can produce assets originating from the original criminal act and then the process of transferring, transferring, spending, entrusting with the aim of hiding the origin of the assets.

In an effort to apply reverse evidence, there are obstacles in terms of legal structure, namely judges have an active role in whether reverse evidence needs to be applied in court hearings or not, because if the judge feels that reverse evidence is not needed then reverse evidence will not be used as an evidentiary system.

The other obstacle in the application of reverse proof is the lack of facilities, infrastructure and budget for the needs of investigators in the examination of money laundering crimes. The statutory obstacle is the disclosure of money laundering crimes whose original corruption that applies reverse evidence takes a long time in the trial, causing difficulties in collecting and obtaining evidence, while the actions committed by the defendant when he was still in office.

Substance and law enforcement apparatus are not enough to run a legal system, so there needs to be a legal culture. A legal system that is not supported by a legal culture will make the law not run effectively. As well as understanding the law to the public is also very important in contributing to the eradication of corruption and money laundering.¹⁷

Factors that hinder the application of reverse proof in money laundering offences whose original crime is corruption, among others,

- a) The reverse proof system has not been clearly regulated in the Law on money laundering,
- b) There is a legal paradigm that proof is always given to the public prosecutor.

And the weakness of this reverse proof system is the potential for denial from the defendant, especially for assets originating from corruption crimes, this makes reverse proof unable to run effectively because the defendant's statement is only evasive rather than proving himself for the assets obtained.

¹⁷ Hanifah Azizah and others, 'Analisis Pembuktian Terbalik Pada Tindak Pidana Pencucian Uang (Studi Putusan MA No. 1454 K/PID. SUS/2011; Putusan MA No. 537 K/PID. SUS/2014; Putusan MA No. 336 K/PID. SUS/2015)', *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4.1 (2021), 85.

There are three obstacles in the application of reverse proof¹⁸

- a) Cultural aspects in society, The culture of reciprocity that has been attached, this is sometimes given to State officials, who should not receive anything other than gifts that have been determined by the State. This is related to the theory of law enforcement, namely in law enforcement must pay attention to aspects to realise the concept of justice, truth, social benefit, supported by aspects of legal culture, namely the attitude of law enforcement officials towards law and the legal system.
- b) Inconsistency between law enforcement agencies that make the judiciary weak.
- c) Juridical contradictions for various reasons, such as reverse proof is contrary to human rights when associated with the principle of presumption of innocence, has the potential for Judicial Crime.

The main purpose of the reverse proof activity is to prove the object of property that has not been charged with its source. For this object, reverse proof is not used directly to prove the occurrence of a crime, but for the defendant it is used so that the judge imposes a criminal forfeiture of property that has not been charged.¹⁹

According to Lawrence M. Friedman, the success or failure of law enforcement depends on:²⁰

- a) Legal Substance

A substantial system that determines whether or not the law can be implemented. This reversal of the burden of proof can be carried out on assets

¹⁸ Rivo Ezra Wiliam Mait, 'Sistem Pembuktian Terbalik Yang Dilakukan Terdakwa Dalam Tindak Pidana Korupsi Berdasarkan Undang-Undang No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi', *Lex Crimen*, 9.2 (2020), 6–7.

¹⁹ Achmad Syauki, Hambali Thalib, and Kamri Ahmad, 'Efektivitas Pembuktian Terbalik Dalam Tindak Pidana Korupsi: Studi Di Pengadilan Negeri Makassar', *Journal of Lex Theory (JLT)*, 5.2 (2024), 10–12.

²⁰ Achmad Syauki, Hambali Thalib, and Kamri Ahmad, 'Efektivitas Pembuktian Terbalik Dalam Tindak Pidana Korupsi: Studi Di Pengadilan Negeri Makassar', *Journal of Lex Theory (JLT)*, 5.2 (2024), 10–12.

derived from corruption offences with an emphasis on returning State assets that have been corrupted and have gone through the money laundering process.

The burden of proof is reversed according to the obligation of the public prosecutor to prove negatively according to the law, about aspects that are related to the social status of the defendant, if this can be proven, then the defendant's obligation to prove and explain that he is able to live with the existing wealth or how the wealth is under his control, so that basically reverse proof can be done.

b) Legal Structure

The structural system that determines whether or not the law can be implemented properly. That reverse proof is one of the alternatives that can be used by the legal structure in Indonesia in terms of uncovering and eradicating corruption and money laundering cases.

c) Legal Culture

Legal culture is closely related to public legal awareness. Legal culture itself is the habits, opinions, ways of thinking and ways of acting both from law enforcers and from the community. An effective legal system requires a balance between substance and legal culture.

From some of the obstacles in the application that have been explained previously, quoting Lilik Mulyadi's opinion, which states that limited and balanced reverse evidence does not rub against the principle of presumption of innocence. In an effort to return assets derived from criminal offences with reverse evidence does not violate human rights because it is based on the theory of Balance Probability Principle. This theory separates between criminal assets and their owners, protects the defendant's right not to be presumed guilty and must be balanced with the defendant's obligation to prove the origin of the assets he owns.²¹

²¹ Bayu Dwi Putra and Muhammad Hendri Yanova, 'Pembuktian Terbalik Dalam Perkara Tindak Pidana Korupsi Ditinjau Dari Asas Praduga Tidak Bersalah (Presumption of Innocence)', *Jurnal Penegakan Hukum Indonesia*, 3.2 (2022), 14.

The case of money laundering that experienced obstacles in the application of reverse evidence was verdict number 83/Pid.B/2018/PN.Dpk of the First Travel case involving Andika Surachman and Anniesa Hasibuan who were proven to have committed the crime of 'Jointly committing fraud and money laundering as a continuing act' by promising cheap Umrah packages to thousands of prospective pilgrims, but most of the prospective pilgrims were not dispatched and the money paid was used for personal purposes by Andika Surachman and Anniesa Hasibuan. The obstacle in the application of reverse proof is due to limited initial evidence, although many victims have reported, law enforcers have difficulty collecting strong enough initial evidence because many transactions are carried out in cash, making it difficult to trace the origin of the flow of funds. Other obstacles include the complexity of the financial structure, complicated legal processes and defence arguments.

A case of money laundering committed by Indra Kenz whose original criminal offence was spreading false and misleading news that caused consumer losses in electronic transactions. From the results of becoming an affiliator of the trading application, as many as 144 are victims of trading. The obstacles in the application of reverse proof are the difficulty in proving the origin of wealth, the complexity of financial transactions, the lack of international cooperation, the legal protection of the defendant and the long and complicated investigation process.

D. Conclusion

Reverse proof is applied to the defendant's assets, both for active money laundering offences and passive money laundering offences. However, the concept of reverse proof as stipulated in Article 77 and Article 78 of Law No. 8/2010 on the Prevention and Eradication of Money Laundering is not clearly and explicitly explained in the Law on the Prevention and Eradication of Money Laundering, resulting in uncertainty and obstacles in its implementation. Another reason is

that reverse proof is considered contrary to the principle of presumption of innocence and violates human rights. If it is to be developed as a legal reform of reverse proof, it must be harmonised and synchronised first with the balanced method of proof (Balance Probability of principles).

Efforts to implement balanced and limited reverse proof have obstacles in terms of substance, structure and legal culture. The legal substance of the provisions of the legal principle of ‘lex superior derogate legi inferiori’ lower level legal regulations must be subject to higher legal regulations. The legal structure in the form of the application of reverse evidence is the authority of the judge if the judge feels that reverse evidence is not needed then reverse evidence will not be used. Legal culture, that the balanced and limited reverse evidence system is not known in the Criminal Procedure Code so that judges are more likely to use the evidence regulated in the Criminal Procedure Code, namely evidence by the Public Prosecutor.

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