



UDC 34

LEGAL MEASURES IN DETERMINING DEBTOR'S BREACH OF CONTRACT IN FIDUCIARY SECURITY AGREEMENTS: A LEGAL PROTECTION PERSPECTIVE

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ABSTRACT

If no agreement is reached between the debtor and the creditor in resolving a debtor's default, the Constitutional Court, in its Decision No. 18/PUU-XVII/2019, stipulates that's legal remedies must be pursued as a final step to determine such default. This study seeks to review the legal remedies referred to in the decision and compares them with the theory of legal protection. The research employs a normative juridical method using both conceptual and statutory approaches. The results of this study indicate that, based on the theory of legal protection, there are two methods for resolving debtor default in fiduciary security agreements. First, internal protection requires a resolution mechanism as outlined in the mutually agreed-upon contract. Second, external protection involves the role of the judiciary in adjudicating the matter of default. In fiduciary security agreements, resolution may be sought either through a general lawsuit or by opting for a simplified litigation procedure.

KEY WORDS

Legal remedies, legal protection, fiduciary.

A fiduciary security agreement is a type of contract under civil law that is commonly used in financing practices. Fiduciary transfer refers to the transfer of ownership rights over an object from the debtor to the creditor, with the condition that the object remains under the control of the debtor (Wahyu et al., 2024). In Indonesia, fiduciary security is regulated under Law Number 42 of 1999 concerning Fiduciary Security. However, in practice, disputes often arise between debtors and creditors, particularly concerning the issue of default (breach of contract) by the debtor in the execution of the fiduciary agreement.

Debtor default is a critical issue in the legal relationship between creditors and debtors. This is due to differing interpretations between the two parties regarding the boundaries and legally valid criteria for determining a breach of contract (Dwi Prilia et al., 2023). This issue often leads to unilateral actions by creditors, such as the forced repossession of fiduciary collateral without following the proper legal procedures. In fact, in its Decision No. 18/PUU-XVII/2019, the Constitutional Court emphasized that the execution of fiduciary security cannot be carried out unilaterally by the creditor without judicial proceedings.

In the context of legal protection, it is important to examine the legal remedies available to debtors who feel disadvantaged by an unfair declaration of default by creditors. Such legal protection ensures that the rights of debtors are not violated and that there is a balance in the contractual relationship between both parties. The principle of legal protection is a fundamental concept in civil law, aiming to safeguard the rights of parties involved in an agreement (Dewi & Handoko, 2022). In fiduciary security agreements, applying the principle of legal protection is crucial due to the potential imbalance between creditor and debtor. The creditor, as the holder of the security, holds more dominant legal power compared to the debtor, especially in determining a breach of contract. When a creditor unilaterally declares that the debtor has defaulted, the debtor is often placed in a weaker position with limited opportunity to defend themselves (Agustina & Aslamiyah, 2022).

Therefore, the Constitutional Court in Decision No. 18/PUU-XVII/2019 stipulates that there must be a balance of positions between creditors and debtors in determining a breach of contract, by requiring the debtor's agreement to the declaration of default issued by the creditor. This is intended to provide space for the debtor to defend themselves against



allegations of default (Paparang, 2016). If no such agreement is reached, the involvement of the court is necessary as the final forum to resolve the dispute.

This study aims to analyze the principle of balance between parties in resolving issues of default in fiduciary security agreements. This is crucial to elaborate, given that Constitutional Court Decision No. 18/PUU-XVII/2019 emphasizes balance and legal protection—especially for the debtor, who is in a weaker position. Similar studies have previously discussed the issue of resolving debtor defaults in fiduciary agreements. However, there has been no study focusing specifically on legal remedies as the final step in determining debtor default, and comparing these remedies with the theory of legal protection.

This research adopts a normative juridical method. Three approaches are used: the conceptual approach and the statutory approach (Suteki & Taufani, 2020). The legal materials used in this study consist of primary, secondary, and tertiary sources. These materials are analyzed using grammatical interpretation, extensive interpretation, and systematic interpretation (de systematische interpretative).

METHODS OF RESEARCH

This study employs a normative juridical research method, which examines legal issues from the perspective of positive law and legal norms applicable in Indonesia. This method is appropriate for analyzing doctrinal legal problems and for interpreting statutory regulations and legal principles relevant to fiduciary guarantee agreements and breach of contract. Three methodological approaches are adopted in this research:

- **Statutory Approach:** This approach is used to examine the legal norms and legislation governing fiduciary security, particularly Law No. 42 of 1999 on Fiduciary Security, the Indonesian Civil Code (KUHPerdara), Law No. 8 of 2004 on the General Judiciary, and Supreme Court Regulation (PERMA) No. 4 of 2019 on the Procedures for Small Claim Settlement. In addition, Constitutional Court Decision No. 18/PUU-XVII/2019 and Decision No. 2/PUU-XIX/2021 are central to the legal analysis;
- **Conceptual Approach:** This approach examines the legal doctrines and theoretical frameworks, especially the theory of legal protection, both internal and external, as formulated by experts such as Hadjon (1987) and Isnaeni. These concepts are used as analytical tools to assess how legal remedies for debtor default should be designed to provide fairness, balance, and justice;
- **Case Approach:** Relevant judicial decisions, particularly Constitutional Court decisions and rulings from general courts on fiduciary security and breach of contract, are analyzed to understand how the law is interpreted and applied in practice. The study specifically focuses on decisions that interpret the requirement for judicial involvement in determining breach of contract and executing fiduciary guarantees.

The legal materials used in this study consist of:

- **Primary legal materials:** legislation, court decisions, and official regulations;
- **Secondary legal materials:** academic books, journal articles, and legal commentaries that explain and critique the primary sources;
- **Tertiary legal materials:** legal dictionaries, encyclopedias, and indexes that provide additional references and clarification.

The analysis is conducted using grammatical, systematic, and extensive interpretations, enabling a thorough exploration of the normative framework and doctrinal coherence. The focus is on the compatibility between legal remedies in fiduciary law and the principles of legal protection—especially in ensuring procedural fairness, access to justice, and the balance of power between creditors and debtors.

RESULTS AND DISCUSSION

Civil Law, also commonly referred to as *civil law*, is a branch of legal science that governs the resolution of disputes arising from conflicts of private interests, namely between one legal subject and another, whether between individuals, individuals and legal entities, or



between legal entities themselves (Ningsih & Wardhani, 2024). Civil law also serves as a means for legal subjects to claim damages, both material and immaterial, against any legal subject who violates another's private interests. One of the principles in civil procedural law is the principle of simplicity, speed, and low cost (Syarif, 2024). This principle is certainly a hope and aspiration for every individual involved in court proceedings. By applying the principle of a simple, swift, and low-cost judiciary in civil case resolution, it is expected that the settlement process will not be delayed and can be completed within a short period, so that the costs incurred by the parties are not excessive.

A dispute arises when one party expects the other to act or refrain from acting in a certain way, but the other party refuses to do so. The search for various processes and methods to resolve emerging disputes is an urgent matter in society. Many non-legal scholars devote energy and innovation to expressing various dispute resolution models (Sudiarawan et al., 2024). Various dispute resolution models, both formal and informal, can serve as references to address potential conflicts, as long as they bring justice and public benefit. Laura Nader and Herry F. Todd distinguish between conflict and dispute through the *disputing process*, as follows (Ashady, 2022):

- Pre-conflict or grievance stage, which refers to a situation or condition perceived by an individual or group as unjust, along with the reasons or basis for that perception. The violation of this sense of justice may be real or imagined. What matters is that the party feels that their rights have been violated or that they have been wronged;
- Conflict stage, marked by a situation where the party who feels their rights have been violated chooses confrontation, accuses the violator, or informs the opposing party about the grievance. At this stage, both parties are aware of their differing views;
- Dispute stage, which may occur when the conflict escalates and becomes publicly expressed. A dispute only arises when the party with the grievance elevates the disagreement into a public matter. This is done deliberately and actively, with the intention of prompting action on the demands being made.

In the context of resolving cases related to determining breach of contract (*wanprestasi*) in a fiduciary security agreement, it can be pursued by filing a lawsuit in the district court, either through a regular breach of contract lawsuit or via a simplified lawsuit procedure (Toyib & Joesoef, 2020).

Simple lawsuits fall within the authority and jurisdiction of general courts. However, not all cases can be resolved through the simple lawsuit mechanism. Simple lawsuits embody the principle of judiciary that is simple, fast, and low-cost, as stipulated in Supreme Court Regulation (PERMA) No. 2 of 2015, later amended by PERMA No. 4 of 2019 concerning the implementation of simple lawsuits. The criteria for cases that can be resolved through simple lawsuits are regulated in Articles 3 and 4 of PERMA No. 2 of 2015, as amended by PERMA No. 4 of 2019, and include:

- Breach of contract disputes and/or tort claims with material claims not exceeding IDR 500,000,000 (five hundred million rupiah);
- Cases not within the jurisdiction of a Special Court;
- Not related to land rights disputes;
- There is only one plaintiff and one defendant, unless they share the same legal interest;
- The defendant's address must be known;
- Both plaintiff and defendant must reside within the same legal jurisdiction;
- If the plaintiff is outside the legal jurisdiction of the defendant, the plaintiff must appoint a representative, incidental attorney, or agent with an address within the defendant's jurisdiction;
- Both parties must attend each court session in person.

Regarding the value threshold, the original PERMA No. 2 of 2015 limited the material value to IDR 200,000,000 (two hundred million rupiah). This was revised in PERMA No. 4 of 2019, specifically Article 1 point 1, increasing the limit to IDR 500,000,000. Initially, simple lawsuits were filed at the District Court located in the defendant's jurisdiction. However, the Supreme Court revised this in Article 4 paragraph (3a) of PERMA No. 4 of 2019, stating: "in



cases where the plaintiff is outside the jurisdiction of the defendant's residence or domicile, the plaintiff shall appoint a proxy, incidental attorney, or representative with an address in the same jurisdiction as the defendant, with an assignment letter from the institution." This means plaintiffs outside the defendant's area may still file lawsuits through authorized representatives within the appropriate jurisdiction.

Moreover, summons are now issued electronically through the e-summons system, where notices are sent to the plaintiff's email address provided during registration. This digital mechanism allows broader access to justice without the obstacle of domicile.

The simple lawsuit examination is handled by a single judge and must be concluded within 25 working days. The use of a single judge expedites the process, considering the limited time frame and relatively straightforward issues with low monetary value (Harviyani, 2021). A single judge helps avoid delays due to differing opinions among panel members, which often occur in regular proceedings (Tobing, 2021). If disagreements arise in regular trials, verdicts are postponed until all judges reach consensus or record dissenting opinions for submission to the Chief Justice. The stages of handling a simple lawsuit include (Ahmadi, 2023):

- Registration;
- Verification of Simple Lawsuit Requirements;
- Judge Appointment and Clerk Assignment;
- Preliminary Review;
- Hearing Schedule Determination;
- Summoning and Appearance of Parties;
- Trial and Settlement Mediation;
- Evidence Presentation;
- Verdict;
- Objection Filing;
- Objection Review and Verdict;
- Verdict Execution.

Philosophically, as stated in Article 1 point (1) PERMA No. 2 of 2015, evidence in simple lawsuits is presented using a simplified mechanism. Article 18 of the same regulation stipulates:

- If a claim is entirely admitted by the defendant, no further evidence is needed;
- If the claim is contested, the judge reviews it based on prevailing procedural law.

The fundamental purpose of PERMA No. 4 of 2019, which amended PERMA No. 2 of 2015, is to facilitate public access to justice, which is often difficult and costly. This aligns with the principles of simplicity, speed, and low cost in judicial processes. Under existing civil procedural laws (HIR, Staatsblad No. 44 of 1941, and RBg, Staatsblad No. 227 of 1927), cases are handled without regard to claim value, often resulting in protracted proceedings despite minor losses. This has led to public cynicism about the justice system, illustrated by the phrase: "going to court over a lost goat, but having to pay with a buffalo."

However, simple lawsuits are not limited to the general public. They are also applicable to businesses, especially non-bank financing companies, as an alternative to executing fiduciary guarantees in breach of contract or tort disputes (Cumbhadrika, 2021). Following Constitutional Court Decision No. 18/PUU-XVII/2019, all procedures for executing fiduciary certificates must follow the same process as court judgments with permanent legal force (inkracht van gewijsde).

In a simple lawsuit reviewed by a single judge, the process excludes claims for provocation, exceptions, counterclaims, interventions, replies, rejoinders, or conclusions. Appeals to the High Court are not permitted. If either party feels the verdict is unjust, they may submit an objection within 7 days of the verdict being pronounced. Objections are filed at the same District Court, with forms provided by the clerk. No further legal remedies (appeals, cassation, or reconsideration) are available. Objection rulings are final and binding (Zaini et al., 2023). If no objection is filed, the ruling gains legal force. Enforcement can proceed voluntarily or through court order if necessary, with a warning (aanmaning) issued within 7 days, and execution scheduled within 7 days thereafter (Naefi & Latifiani, 2021).



Simple lawsuits are a suitable solution for resolving defaults in fiduciary agreements, as these usually involve smaller assets that remain in the debtor's control. Legal certainty, fairness, and utility in enforcing fiduciary guarantees can be achieved through this mechanism (Jadidah, 2022). Nonetheless, despite its effectiveness, this method is not widely used by creditors, who often rely on debt collectors instead—especially when fiduciary objects are not registered. Yet, Article 11(1) of Law No. 42 of 1999 concerning Fiduciary Security clearly mandates the registration of fiduciary-encumbered assets to ensure creditor protection from potential legal risks. This provision is clearly intended to protect the rights of the creditor, who may otherwise face more legally risky consequences. Understandably so, as the risk associated with the object of fiduciary security—namely movable assets such as motor vehicles—is high, particularly in cases where the fiduciary security agreement is not accompanied by the registration of the secured object. In such circumstances, there is a significant risk of the debtor committing embezzlement.

This lawsuit is based on the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) and civil procedural law, as regulated in Law Number 2 of 1986 concerning the General Judiciary, which was last amended by Law Number 8 of 2004. This legal recourse is also the chosen option when the value of the claim exceeds the limit set for small claims, which is IDR 500,000,000.00. The procedural rules for civil cases in Indonesian district courts are governed by the Indonesian Civil Procedure Code (Hukum Acara Perdata) and various other legal regulations. These rules provide a detailed framework for the steps that the parties involved in a civil dispute must follow, from the submission of the lawsuit to the final court decision.

The first step in the civil procedure is the filing of the lawsuit. The plaintiff must prepare a written complaint containing the identities of the parties involved, the details of the dispute, the legal grounds for the claim, and the relief requested. This complaint must be supported by relevant evidence, such as contracts, agreements, receipts, etc. Once the complaint is prepared, the plaintiff, or their legal representative, submits it to the competent district court, along with the applicable court fees. After registration, the court will schedule the first hearing and issue a summons to the defendant, informing them of the time and place of the trial.

Once the lawsuit has been filed, the court will send a summons to the defendant, which provides details regarding the hearing schedule. The defendant is required to attend the first hearing or respond to the claims. If the defendant fails to appear without a valid excuse, the court may proceed with the trial and make a default judgment (*verstek*) based on the plaintiff's evidence alone. During the first hearing, the plaintiff presents their complaint, followed by the defendant's response, which may include an admission or denial of the allegations. The court also examines the completeness of the documents presented by both parties.

The next stage involves the examination of evidence and witnesses. Both parties are allowed to present supporting evidence and call witnesses who can provide testimony in support of their claims. The court examines the evidence and witnesses, allowing both parties to cross-examine and respond to the presented evidence. After the evidentiary phase, the parties are given the opportunity to make their final submissions: the plaintiff's reply (*replik*) to the defendant's answer, followed by the defendant's rejoinder (*duplik*) to the plaintiff's reply. The judge then reviews all the arguments and evidence presented to make a final judgment.

The court's decision may be one of three outcomes: the claim is accepted (*kabul*), meaning the plaintiff's demands are granted; the claim is rejected (*tolak*) due to insufficient evidence or legal grounds; or a default judgment (*verstek*) is issued if the defendant fails to appear without a valid reason. The judgment is read in court and delivered to both parties. If either party is dissatisfied with the judgment, they may pursue legal remedies. Ordinary legal remedies include opposition (*verzet*), appeal, and cassation, which must be filed within specified time limits and can temporarily suspend the enforcement of the judgment. Extraordinary remedies, such as judicial review (*peninjauan kembali*) or third-party opposition (*derdenverzet*), are available only for final and binding judgments and cannot suspend the execution of the judgment. Once all legal remedies have been exhausted or no remedies are



filed, the court's judgment becomes final and binding (*inkracht van gewijsde*). At this point, the court may proceed with the enforcement of the judgment, which may involve actions such as compensation payments or the fulfillment of other obligations as specified in the court's decision.

From the perspective of legal protection theory, a lawsuit as a means of resolving breach of contract (*wanprestasi*) in a fiduciary guarantee agreement falls into the category of repressive legal protection. Repressive legal protection refers to actions taken after a legal violation or dispute has occurred, aiming to restore violated rights and impose sanctions on the guilty party. This form of protection focuses on corrective measures or resolution after the legal event has taken place (Ariani, 2018), with the goal of providing justice for the aggrieved party and upholding legal order. In this context, it includes restoring the rights of the creditor due to the debtor's breach of contract, while also ensuring that the debtor is given a fair opportunity to defend against allegations of default. Repressive legal protection is intended to fulfill the following principles (Njatrijani & Madjan, 2022):

- **Restoration of Rights:** The goal of repressive legal protection is to restore the injured party to the condition they were in before the violation occurred. For example, in civil cases, the court may order the defendant to pay compensation or fulfill certain obligations to the plaintiff;
- **Law Enforcement:** Through repressive protection, the state or legal institutions impose sanctions on those who break the law. These sanctions may be criminal (e.g., imprisonment, fines) or civil (e.g., compensation, contract annulment). This ensures that violations are not left without consequence;
- **Deterrence:** One function of repressive legal protection is to create a deterrent effect on lawbreakers, preventing similar actions in the future. This also serves to protect society from broader potential violations;
- **Upholding Justice:** Repressive legal protection ensures that individual rights that have been violated can be enforced through legal procedures. In this regard, courts or legal institutions are responsible for delivering fair judgments based on the available facts and evidence.

The theory of legal protection is a legal concept that guarantees individuals or society access to justice and the safeguarding of their rights (Hadjon, 1987). In the context of lawsuits, this theory is used to ensure that the dispute resolution mechanism respects the principles of justice, legal certainty, and rights protection (Hutomo & Santoso, 2022). The application of legal protection theory within lawsuits can be outlined as follows (Mumek et al., 2024):

- **Right to Justice:** Justice here refers to the expectation that litigation processes will offer fairness and balance to the involved parties. Legal protection theory ensures that any injured party may file a claim without facing overly complex procedures. Lawsuits are designed to provide faster and more efficient access to justice, particularly in cases with low dispute values, through the simplified small claim procedure;
- **Legal Certainty:** Both small claim procedures (as regulated under Supreme Court Regulation [PERMA] No. 4 of 2019 on the Procedure for Small Claim Settlement) and breach of contract lawsuits (as regulated under Law No. 8 of 2004 amending Law No. 2 of 1986 on the General Court System) provide clear rules regarding procedures, time limits, and dispute resolution mechanisms. These regulations aim to ensure legal certainty for the parties involved in resolving disputes promptly;
- **Protection of Substantive Rights:** Legal protection theory emphasizes that the litigation mechanism must not sacrifice the substantive rights of the parties involved. These rights must be upheld, even if the legal process is designed to be expedited;
- **Efficiency and Accessibility:** Particularly in small claims lawsuits, the application of legal protection theory includes efforts to save time, cost, and energy for the parties. For instance, the procedure may involve only one evidentiary hearing and the use of electronic tools to support the smooth conduct of the trial;



- **Impartiality and Independence:** Judges in court act as process controllers who ensure that decisions are made fairly, transparently, and without bias. This represents the implementation of legal protection theory in safeguarding each party's rights.

In another perspective, Mochammad Isnaeni classifies legal protection into two forms: internal legal protection, which arises from agreements made between the parties; and external legal protection, which is created by authorities through regulations intended to protect weaker parties. In relation to resolving a breach of contract within a fiduciary guarantee agreement, the explanation may be described as follows:

In a fiduciary guarantee agreement, the form of internal legal protection refers to the agreement made between the debtor and the creditor, encompassing both the principal agreement and the ancillary agreements. Such an agreement serves as a form of mutual protection for both parties against any actions by one party that may harm the other in the implementation of the agreed terms. Therefore, any agreement made should adhere to the legal requirements for a valid contract, including both objective conditions (a definite object and lawful cause) and subjective conditions (mutual consent and legal capacity).

- **Mutual Consent:** Consent refers to the agreement of will between the parties regarding the key elements of the contract. This implies that both parties must agree to the terms, and the agreement must be reached voluntarily;
- **Capacity to Contract:** Article 1329 of the Indonesian Civil Code states that "every person is legally capable of entering into an agreement unless declared otherwise by law." Article 1330 further explains that those who are not legally competent to contract include minors, individuals under guardianship, and women in specific cases stipulated by law, as well as those explicitly prohibited by law from entering into certain agreements;
- **Definite Object:** The object of the agreement must be clearly defined. Article 1332 of the Civil Code provides that "only goods that can be the subject of agreements may be objects of contracts." Article 1333(1) adds that "an agreement must have as its object a good that is at least determined by its kind." Thus, clearly specifying the object of the agreement is crucial in determining the rights and obligations of the parties, especially in the event of future disputes;
- **Lawful Cause:** The cause or purpose of the agreement must be lawful. Article 1337 of the Civil Code stipulates that a cause is unlawful if it is contrary to the law, public order, or morality. Article 1335 states that "an agreement without a cause, or with a false or prohibited cause, is void by law." As a result, an agreement made on an unlawful basis has no legal effect and cannot be enforced;
- A properly drafted agreement should comprehensively cover both the obligations (performance) and the prohibitions (breach) agreed upon by the parties. Additionally, it is important to outline the dispute resolution mechanisms in the event one party fails to fulfill their contractual obligations. This serves to create a balanced legal standing between the creditor and the debtor in a fiduciary guarantee agreement.

Both Constitutional Court Decision No. 18/PUU-XVII/2019 and Constitutional Court Decision No. 2/PUU-XIX/2021 emphasize that a debtor's default must be mutually recognized by both parties. Furthermore, the Court asserts that this mutual agreement must include the debtor's willingness to voluntarily surrender the object of the guarantee. These rulings aim to maintain a balance of power between the creditor and the debtor in fiduciary guarantee agreements.

As described by Mochammad Isnaeni, external legal protection is legal protection created by authorized institutions through regulations intended to safeguard the interests of the weaker party. In essence, regulations should be established in a balanced and proportional manner, without discrimination or favoritism. External legal protection is designed to prevent injustice, arbitrariness against others' interests, and losses to weaker parties. In relation to determining a debtor's default under a fiduciary guarantee agreement, external legal protection is embodied in Constitutional Court Decision No. 18/PUU-XVII/2019, which mandates that in the absence of mutual agreement (i.e., the debtor's unwillingness to voluntarily surrender the object), the determination of default must be established through a



court decision with permanent legal force. The Court emphasizes the importance of judicial involvement in ensuring a balance of power between the parties. If the material claim does not exceed IDR 500,000,000, the dispute may be resolved through a small claim procedure. If the claim exceeds this amount, it must be resolved through a regular breach of contract (wanprestasi) lawsuit. This explanation shows that the small claim procedure offers a means of legal protection that is fast, simple, and efficient, while still upholding the principles of justice and legal certainty. For claims exceeding IDR 500,000,000, the appropriate mechanism is to file a regular breach of contract lawsuit in the District Court, not through the small claim procedure, which follows a shorter and more limited trial agenda.

CONCLUSION

From the perspective of legal protection theory, the mechanism for resolving cases of debtor default in fiduciary security agreements can be pursued through both litigation and non-litigation means. Non-litigation settlement is considered a form of internal legal protection, whereas litigation represents a form of external legal protection. Included within the scope of external protection is the Constitutional Court Decision No. 18/PUU-XVII/2019, which serves as one such example of legal protection provided externally. The non-litigation route is based on the mutual agreement between the parties concerning the debtor's default. Meanwhile, litigation can be pursued by filing a lawsuit, either through an ordinary claim or a small claim lawsuit. The concept behind the establishment of small claim settlement is aimed at providing the public with easier access to justice, which is often costly and difficult to obtain. This aligns with the principles of judiciary administration that emphasize simplicity, expediency, and affordability. This is particularly relevant considering that fiduciary security agreements often involve relatively low-value collateral, with the secured object remaining in the possession of the debtor.

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