

PROCEEDING



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Legal Protection for Creditors in the Sale of Debtor-Owned Assets Experiencing Bankruptcy According to Indonesian Bankruptcy Law

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Keywords: Bankruptcy, Investment, Action Pauliana

In the process of a business, entrepreneurs can fail. The risk of this failure can occur in the case of a business that is not smooth and not as expected. Failure in business activities or investments that are quite high risk is when it is unable to pay the debt. This inability to pay debts can cause employers as debtors to be bankrupt by creditors. In the event of bankruptcy, the creditor is very eager that the debts be paid by the debtor. One of the things that can pay debts from creditors to debtors is the assets of the remaining debtors. The assets of the remaining debtors can be used as a guide by creditors to calm down because the debt can be paid. Law of the Republic of Indonesia No. 37 of 2004 concerning Bankruptcy provides legal protection for creditors, namely the existence of the principle of actio paulina. In this principle the debtor cannot sell his assets arbitrarily. Sales made without permission from the curator can result in the sale being canceled by the creditor through the actio pauliana principle.

Legal Protection for the Creditor In the Debtors owned Assets Sales Experienced Bankruptcy

According to the Bankruptcy Law Indonesia

Daniel Hendrawan

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In the process of a business, entrepreneurs can experience failure. This risk of failure can occur in the event of a business that is not as smooth as expected. Failure in high-risk business or investment activities is when you are unable to pay debts. The inability to pay this debt can cause entrepreneurs as debtors to be filed for bankruptcy by creditors. In the event of bankruptcy, creditors are eager that debts be paid by the debtor. One of the things that can pay debts from creditors to debtors is the debtor's remaining assets. The remaining debtor assets can be used as a reference for creditors to calm down because the debt can be paid. Law of the Republic of Indonesia No. 37 of 2004 concerning Bankruptcy provides legal protection for creditors, namely the existence of the actio paulina principle. Under this principle, the debtor cannot sell his assets carelessly. Sales made without the permission of the curator may result in the sale being canceled by the creditor through the actio pauliana principle.

Key words: bankruptcy, investment, actio pauliana

A. Introduction

In legal traffic (especially in contract law) there are at least two parties bound by the legal relationship, namely the creditor and the debtor.^[1] Bankruptcy itself is everything related to the bankruptcy event, which is a condition when the debtor stops paying (his debts) but not in the sense that the debtor stops completely to pay his debts, but the debtor at the time the application for bankruptcy is filed. are in a state of not paying the debt. ^[2]

Debtors who are unable to pay their debts that have matured are called insolvents. The debtor can only be declared bankrupt (bankrupt) by the court if the Debtor is insolvent.^[3]

Bankruptcy causes the Bankrupt Debtor to lose all his rights to take legal actions against his assets, namely to control, manage, and transfer his assets. After the bankruptcy decision was passed, a curator and supervisory judge were appointed by the Commercial Court.[\[4\]](#)

In addition to preventing debtors from escaping from their obligations to pay off their debts, the Indonesian bankruptcy law was created with the aim of providing fair legal protection to all parties, both creditors, debtors and the public. In paying off debts, sometimes there are creditors who are selfish and demand that their rights take precedence regardless of the interests of other creditors or the debtor itself. In addition, it is also to avoid fraud committed by one of the creditors with the debtor.[\[5\]](#)

One of the obstacles in the practice of implementing bankruptcy regulations comes from debtors who have bad intentions or who do not have the desire to pay off their debts, for example by running away all their assets with the intention of releasing their responsibilities to creditors.[\[6\]](#) With these obstacles, the purpose of the regulation in the bankruptcy sector itself is not fully achieved, especially the objectives of the modern bankruptcy regulations or laws which provide more protection to concurrent creditors in obtaining their rights in accordance with the principles that guarantee rights. -creditor's rights with the debtor's assets, namely *pari passu pro rata parte*. [\[7\]](#)

The obstacles that come from the debtor have basically been anticipated by the current and previous bankruptcy regulations. One of them is by providing an instrument called *actio pauliana*. Theoretically, the *Actio Pauliana* institution in bankruptcy exists to protect creditors from bankrupt debtors who have bad intentions and prevent arbitrary actions from bankrupt debtors.

Actio Pauliana is the cancellation of all legal acts of the Bankrupt Debtor which harmed Creditors which were carried out one year before the bankruptcy decision was still pronounced.[\[8\]](#)

The application of the *Actio Pauliana* institution can only be carried out and implemented based on a court judge's decision. This means that any cancellation of the agreement, whatever the reason, the party or the submitting it remains the authority of the court. Through a decision canceling an agreement or an action that is detrimental to the creditor's interests (particularly the debtor's assets), all persons and their assets are returned to their original state. [\[9\]](#)

B. Review of Bankruptcy Law in Indonesia

Bankruptcy is a condition in which the debtor is unable to make payments on debts from his creditors. The condition of being unable to pay (*insolvent*) is due to difficulties in the financial condition (*financial distress*) of the debtor's business which has experienced a setback. Bankruptcy is a court decision that resulted in a general confiscation of all wealth debtor, whether existing or that will exist in future days. The management and settlement of bankruptcy is carried out by the curator under the supervision of the supervisory judge with the main objective of using the proceeds from the sale of the assets to pay all debts of the bankrupt debtor proportionally and in accordance with the creditor structure. [\[10\]](#)

Bernadette Waluyo argues that bankruptcy is a mass execution stipulated by a judge's decision, which applies immediately by general confiscation of all assets of the person declared bankrupt, both those at the time of the bankruptcy statement or those obtained during the bankruptcy for the benefit of all creditors, which is carried out under the supervision of the authorities. [\[11\]](#)

In general, the legal basis for bankruptcy in Indonesia is seen from the Civil Code (KUHPerdata), namely:

1. Article 1131 of the Civil Code provides that:

All debts, both movable and immovable, both existing and new ones will exist at a later date, shall be borne by all individual engagements .

2. Article 1132 of the Civil Code provides that:

This material becomes a joint guarantee for all those who credit it, the income from the sale of the object is divided according to the balance, that is, according to the size of the respective receivables , except if there are valid reasons for prioritization among the debtors .

3. Article 1133 of the Civil Code provides that:

Priority among debtors comes from privileges, from pawns and mortgages. The subject of pawning and mortgages is regulated in chapters twenty and twenty-one of the Civil Code .

The objective of Bankruptcy is basically to provide a solution to the parties if the debtor is in a state of stopping paying or is unable to pay his debts. Bankruptcy prevents or avoids actions that are unfair and can harm all parties, namely avoiding execution by creditors and preventing fraud by the debtor himself. [\[12\]](#)

"Collection" here means a notification by the creditor that the creditor wants the debtor to carry out his promise, that is , immediately or at a time mentioned in the notification. The "timing" factor is important when it comes to agreements, especially with businesses. In general, it is said that in an agreement the two parties have a desire so that the objective of the agreement is carried out as soon as possible, namely the creditor so that he immediately feels

the enjoyment that lies in the implementation of the promise, while the debtor is to be quickly released from a bond, which will slightly suppress his soul. . [\[13\]](#)

The requirement for at least two creditors is in accordance with the provisions in Article 1132 of the Civil Code, which stipulates that basically the sharing of debtor assets between creditors must be carried out on a *pari passu prorata parte* basis . If there is only one creditor, even though there are many claims, it is not the bankruptcy process against the debtor that must be followed, but an ordinary lawsuit , with or without confiscation and specific ordinary execution of the debtor. So what is emphasized in bankruptcy is not how many receivables or claims one creditor has against one debtor, but how many creditors are from the debtor concerned. [\[14\]](#)

The most important consequence of a bankruptcy declaration is that by law the debtor loses his right to act freely on his assets, as well as the right to administer it. After the bankruptcy declaration, all management of his assets, both those that existed at the time of the bankruptcy statement and those obtained during the bankruptcy, were submitted to the curator under the supervision of the Judge Commissioner. [\[15\]](#) As for the consequences of being declared bankrupt, namely: [\[16\]](#)

- a. The debtor loses all his rights to control and manage the assets of his property (assets), whether selling, pawning, etc., as well as everything obtained during the bankruptcy since the date of the pronouncement of the bankruptcy declaration.
- b. New debts were no longer guaranteed by his wealth.
- c. In order to protect the interests of creditors, as long as the decision on the application for a bankruptcy statement has not been pronounced, the creditor may submit an application to the court to:

- 1) Placing collateral for part or all of the debtor's assets
 - 2) Appoint a temporary curator to supervise the management of the debtor's business, receive payments to the debtor, and transfer or pledge the debtor's assets (Article 10).
- d. Must be announced in 2 (two) newspapers Article 15 paragraph (4)

C. Actio Pauliana

Actio Pauliana is the creditor's right to cancel legal acts committed by the Debtor with third parties. Where the creditor is not a party to the legal action, but the creditor has an interest in the debtor's legal action if the action is detrimental to his interests. To apply for a cancellation of the Debtor's legal action, the creditor must be able to prove that when the act was committed, either the Debtor or the person with or for whom the Debtor acted, knowing that the act resulted in losses to the creditor.[\[17\]](#)

The cancellation of a bankruptcy debtor's legal action which is detrimental to creditors can be submitted by creditors and curators. The curator who is appointed in a bankruptcy case if he finds evidence of a Bankrupt Debtor's legal action which is detrimental to the Bankruptcy Property, can submit the legal action to the Chairman of the Commercial Court by first obtaining permission from the Supervisory Judge.[\[18\]](#)

In essence, *actio paulina* is closely related to accounts payable. Referring to Article 1131 of the Civil Code, all debtor items are borne by all individual engagements. This means that the debtor is free to determine how he uses all his assets, but must not harm the creditor.[\[19\]](#)

According to Article 1341 of the Civil Code, in an effort to save the bankruptcy boedel from the bad faith of the Bankrupt Debtor, the creditor has the right to file a lawsuit *actio pauliana* to cancel all legal actions of the Bankrupt Debtor who wants to escape his bankruptcy property. This means that the creditor has the right to file a cancellation of all legal actions taken by the debtor against his bankruptcy assets that could harm the creditors. To file a cancellation of the action taken by the debtor, it is sufficient that the creditor proves that at the time of carrying out the action the Debtor knew that his action was detrimental to the creditors, regardless of whether the beneficiary also knew about it or not.[\[20\]](#)

Actio pauliana is a means provided to creditors by law to each creditor to file a cancellation for all non-obligatory legal actions that have been committed by the debtor where the act results in losses to the creditor.[\[21\]](#) *Actio Pauliana* is a *legal resource* given to the Curator to cancel legal actions taken by the Bankrupt Debtor before the bankruptcy declaration is pronounced which results in losses for its Creditors. [\[22\]](#)

In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, *actio pauliana* is regulated in Article 41 to Article 49 of the PKPU UUK concerning the cancellation of a Debtor's legal action that was carried out before the pronouncement of the bankruptcy declaration and Article 50 of the PKPU UUK regarding the cancellation of the Debtor's legal action after the decision to declare bankruptcy was pronounced. [\[23\]](#) The regulation of *actio pauliana* in Article 41 UUK PKPU is as follows:

1. For the interest of bankruptcy assets, the Court may ask for the cancellation of all legal acts of the Debtor that have been declared bankrupt which are detrimental to the

- interests of the Creditors, which were carried out before the decision to declare bankruptcy was pronounced.
2. Cancellation can only be carried out if it can be proven that at the time the legal action was committed, the Debtor and the party with whom the legal action was carried out knew or had the right to know that the legal action would result in losses for the Creditors.
 3. Exempted from the provisions are legal acts by the Debtor which are required to be carried out based on an agreement and / or because of the law.

Curator represent creditors in order of importance Pailtit treasure has the duty and authority filed *actio pauliana* against a debtor who has been taking legal action against treasure bankruptcy as their right to move a portion of the wealth that can harm creditors made before the declaration of bankruptcy verdict is pronounced. Since the date of decision on the declaration of bankruptcy, the Bankrupt Debtor loses his right to administer and manage the assets of the Debtor which are included in the bankruptcy bill. This task must be submitted to the Curator, who manages and resolves the bankruptcy assets .[\[24\]](#)

D. Creditor legal protection for bankrupt debtors

By carrying out general confiscation of all the assets of the Bankrupt Debtor, whether existing at the time of the bankruptcy declaration, or those obtained during the bankruptcy, for the benefit of all creditors, which is carried out under the supervision of the competent authority, so that the actual bankruptcy is aimed at:[\[25\]](#)

1. Prevent confiscation and execution requested by creditors individually;
2. Addressed only regarding the debtor's property, not his person. Thus, the debtor is still capable of taking legal actions outside of the law of wealth.

In essence, the purpose of this guarantee confiscation is a preventive and temporary safeguard in order to prevent the Debtor from taking action against his assets so as to harm the interests of the creditors in the framework of repaying their debts. In addition to protecting the rights of Creditors from Debtors, the guarantee seizure also aims to end the confiscation and execution by Creditors individually so that Creditors must submit jointly (*concursum creditorum*). The purpose of this foreclosure was so that all creditors would receive a balanced payment from the proceeds from the management of the confiscated assets [\[26\]](#)

From the provisions of Article 10 of the PKPU UUK, it can be concluded that there are 3 (three) things that the Judge must pay attention to in providing legal protection to creditors in the form of collateral confiscation in bankruptcy, namely:[\[27\]](#)

1. The application can only be granted, if this is necessary to protect the Creditors.
2. This is a safeguard, namely as a preventive and temporary measure, and prevents the possibility of the debtor taking action against his assets, so that it may harm the interests of creditors in the context of repaying their debts.
3. If the request is granted, the Court may stipulate a condition for the applicant's creditors to provide a guarantee of an amount which the Court deems reasonable

Apart from confiscation of guarantees, *actio pauliana* is also one of the legal protection measures provided to creditors as regulated in Article 1341 of the Civil Code and Articles 41 to Article 50 of the PKPU UUK. *Actio Pauliana* is a right granted by law

to a creditor submitting a request to the court to cancel all actions that the debtor is not obliged to do and the act causes losses to the creditor.[\[28\]](#)

In the process of resolving bankruptcy assets, it is not uncommon for the Debtor to attempt to transfer his assets to a third party, so that when the bankruptcy decision is determined by the Judge, the bankruptcy assets are gone. This caused losses for creditors and the Balai Harta Peninggalan experienced difficulties in tracing the bankruptcy estate[\[29\]](#)

Actio Pauliana gives the creditor the right to file a cancellation to the Court against a legal action committed by the Debtor within one year before being declared bankrupt which results in losses to the creditor .[\[30\]](#)

E. Conclusion

Bankruptcy true is to protect creditors in cases where the debtor had been doing failed to pay when the debt matures. Often there are parties who commit bad faith at the time of the bankruptcy. This is done to secure assets by debtors even though these assets should be used to make debt payments where the debt is due and can be collected so that bankruptcy is filed. In the event that the debtor did bad faith by way of diverting his property so that it can potentially harm the creditor then the creditor can apply paulina action. This action was taken to secure the assets so that these assets could become an advantage for the bankruptcy boedel so that debtor debts that should have been paid were due and could be collected from the creditors.

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A. Introduction

In legal traffic (especially in contract law) there are at least two parties bound by the legal relationship, namely the creditor and the debtor.^[1] Bankruptcy itself is everything related to the bankruptcy event, which is a condition when the debtor stops paying (his debts) but not in the sense that the debtor stops completely to pay his debts, but the debtor at the time the application for bankruptcy is filed. are in a state of not paying the debt. ^[2]

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The objective of Bankruptcy is basically to provide a solution to the parties if the debtor is in a state of stopping paying or is unable to pay his debts. Bankruptcy prevents or avoids actions that are unfair and can harm all parties, namely avoiding execution by creditors and preventing fraud by the debtor himself. [\[12\]](#)

"Collection" here means a notification by the creditor that the creditor wants the debtor to carry out his promise, that is , immediately or at a time mentioned in the notification. The “timing” factor is important when it comes to agreements, especially with businesses. In general, it is said that in an agreement the two parties have a desire so that the objective of the agreement is carried out as soon as possible, namely the creditor so that he immediately feels

the enjoyment that lies in the implementation of the promise, while the debtor is to be quickly released from a bond, which will slightly suppress his soul. . [\[13\]](#)

The requirement for at least two creditors is in accordance with the provisions in Article 1132 of the Civil Code, which stipulates that basically the sharing of debtor assets between creditors must be carried out on a *pari passu prorata parte* basis . If there is only one creditor, even though there are many claims, it is not the bankruptcy process against the debtor that must be followed, but an ordinary lawsuit , with or without confiscation and specific ordinary execution of the debtor. So what is emphasized in bankruptcy is not how many receivables or claims one creditor has against one debtor, but how many creditors are from the debtor concerned. [\[14\]](#)

The most important consequence of a bankruptcy declaration is that by law the debtor loses his right to act freely on his assets, as well as the right to administer it. After the bankruptcy declaration, all management of his assets, both those that existed at the time of the bankruptcy statement and those obtained during the bankruptcy, were submitted to the curator under the supervision of the Judge Commissioner. [\[15\]](#) As for the consequences of being declared bankrupt, namely: [\[16\]](#)

- a. The debtor loses all his rights to control and manage the assets of his property (assets), whether selling, pawning, etc., as well as everything obtained during the bankruptcy since the date of the pronouncement of the bankruptcy declaration.
- b. New debts were no longer guaranteed by his wealth.
- c. In order to protect the interests of creditors, as long as the decision on the application for a bankruptcy statement has not been pronounced, the creditor may submit an application to the court to:

- 1) Placing collateral for part or all of the debtor's assets
 - 2) Appoint a temporary curator to supervise the management of the debtor's business, receive payments to the debtor, and transfer or pledge the debtor's assets (Article 10).
- d. Must be announced in 2 (two) newspapers Article 15 paragraph (4)

C. Actio Pauliana

Actio Pauliana is the creditor's right to cancel legal acts committed by the Debtor with third parties. Where the creditor is not a party to the legal action, but the creditor has an interest in the debtor's legal action if the action is detrimental to his interests. To apply for a cancellation of the Debtor's legal action, the creditor must be able to prove that when the act was committed, either the Debtor or the person with or for whom the Debtor acted, knowing that the act resulted in losses to the creditor.[\[17\]](#)

The cancellation of a bankruptcy debtor's legal action which is detrimental to creditors can be submitted by creditors and curators. The curator who is appointed in a bankruptcy case if he finds evidence of a Bankrupt Debtor's legal action which is detrimental to the Bankruptcy Property, can submit the legal action to the Chairman of the Commercial Court by first obtaining permission from the Supervisory Judge.[\[18\]](#)

In essence, *actio paulina* is closely related to accounts payable. Referring to Article 1131 of the Civil Code, all debtor items are borne by all individual engagements. This means that the debtor is free to determine how he uses all his assets, but must not harm the creditor.[\[19\]](#)

According to Article 1341 of the Civil Code, in an effort to save the bankruptcy boedel from the bad faith of the Bankrupt Debtor, the creditor has the right to file a lawsuit *actio pauliana* to cancel all legal actions of the Bankrupt Debtor who wants to escape his bankruptcy property. This means that the creditor has the right to file a cancellation of all legal actions taken by the debtor against his bankruptcy assets that could harm the creditors. To file a cancellation of the action taken by the debtor, it is sufficient that the creditor proves that at the time of carrying out the action the Debtor knew that his action was detrimental to the creditors, regardless of whether the beneficiary also knew about it or not.[\[20\]](#)

Actio pauliana is a means provided to creditors by law to each creditor to file a cancellation for all non-obligatory legal actions that have been committed by the debtor where the act results in losses to the creditor.[\[21\]](#) *Actio Pauliana* is a legal resource given to the Curator to cancel legal actions taken by the Bankrupt Debtor before the bankruptcy declaration is pronounced which results in losses for its Creditors. [\[22\]](#)

In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, *actio pauliana* is regulated in Article 41 to Article 49 of the PKPU UUK concerning the cancellation of a Debtor's legal action that was carried out before the pronouncement of the bankruptcy declaration and Article 50 of the PKPU UUK regarding the cancellation of the Debtor's legal action after the decision to declare bankruptcy was pronounced. [\[23\]](#) The regulation of *actio pauliana* in Article 41 UUK PKPU is as follows:

1. For the interest of bankruptcy assets, the Court may ask for the cancellation of all legal acts of the Debtor that have been declared bankrupt which are detrimental to the

- interests of the Creditors, which were carried out before the decision to declare bankruptcy was pronounced.
2. Cancellation can only be carried out if it can be proven that at the time the legal action was committed, the Debtor and the party with whom the legal action was carried out knew or had the right to know that the legal action would result in losses for the Creditors.
 3. Exempted from the provisions are legal acts by the Debtor which are required to be carried out based on an agreement and / or because of the law.

Curator represent creditors in order of importance Pailtit treasure has the duty and authority filed *actio pauliana* against a debtor who has been taking legal action against treasure bankruptcy as their right to move a portion of the wealth that can harm creditors made before the declaration of bankruptcy verdict is pronounced. Since the date of decision on the declaration of bankruptcy, the Bankrupt Debtor loses his right to administer and manage the assets of the Debtor which are included in the bankruptcy bill. This task must be submitted to the Curator, who manages and resolves the bankruptcy assets .[\[24\]](#)

D. Creditor legal protection for bankrupt debtors

By carrying out general confiscation of all the assets of the Bankrupt Debtor, whether existing at the time of the bankruptcy declaration, or those obtained during the bankruptcy, for the benefit of all creditors, which is carried out under the supervision of the competent authority, so that the actual bankruptcy is aimed at:[\[25\]](#)

1. Prevent confiscation and execution requested by creditors individually;
2. Addressed only regarding the debtor's property, not his person. Thus, the debtor is still capable of taking legal actions outside of the law of wealth.

In essence, the purpose of this guarantee confiscation is a preventive and temporary safeguard in order to prevent the Debtor from taking action against his assets so as to harm the interests of the creditors in the framework of repaying their debts. In addition to protecting the rights of Creditors from Debtors, the guarantee seizure also aims to end the confiscation and execution by Creditors individually so that Creditors must submit jointly (*concursum creditorum*). The purpose of this foreclosure was so that all creditors would receive a balanced payment from the proceeds from the management of the confiscated assets [\[26\]](#)

From the provisions of Article 10 of the PKPU UUK, it can be concluded that there are 3 (three) things that the Judge must pay attention to in providing legal protection to creditors in the form of collateral confiscation in bankruptcy, namely:[\[27\]](#)

1. The application can only be granted, if this is necessary to protect the Creditors.
2. This is a safeguard, namely as a preventive and temporary measure, and prevents the possibility of the debtor taking action against his assets, so that it may harm the interests of creditors in the context of repaying their debts.
3. If the request is granted, the Court may stipulate a condition for the applicant's creditors to provide a guarantee of an amount which the Court deems reasonable

Apart from confiscation of guarantees, *actio pauliana* is also one of the legal protection measures provided to creditors as regulated in Article 1341 of the Civil Code and Articles 41 to Article 50 of the PKPU UUK. *Actio Pauliana* is a right granted by law

to a creditor submitting a request to the court to cancel all actions that the debtor is not obliged to do and the act causes losses to the creditor.[\[28\]](#)

In the process of resolving bankruptcy assets, it is not uncommon for the Debtor to attempt to transfer his assets to a third party, so that when the bankruptcy decision is determined by the Judge, the bankruptcy assets are gone. This caused losses for creditors and the Balai Harta Peninggalan experienced difficulties in tracing the bankruptcy estate[\[29\]](#)

Actio Pauliana gives the creditor the right to file a cancellation to the Court against a legal action committed by the Debtor within one year before being declared bankrupt which results in losses to the creditor .[\[30\]](#)

E. Conclusion

Bankruptcy true is to protect creditors in cases where the debtor had been doing failed to pay when the debt matures. Often there are parties who commit bad faith at the time of the bankruptcy. This is done to secure assets by debtors even though these assets should be used to make debt payments where the debt is due and can be collected so that bankruptcy is filed. In the event that the debtor did bad faith by way of diverting his property so that it can potentially harm the creditor then the creditor can apply paulina action. This action was taken to secure the assets so that these assets could become an advantage for the bankruptcy boedel so that debtor debts that should have been paid were due and could be collected from the creditors.

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