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Mutanaqishah Musyarakah Contract: A Solution To Infrastructure Investment Syndication Financing

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Abstract

This study aims to find an alternative in business activities in Islamic financial institutions, especially in Islamic banking, where when the use of a single contract in a business contract occurs, it still creates weaknesses in the process of cooperation between the customer and the bank. So that it needs to be analyzed further the use of a single contract in a business contract for long-term financing is still relevant for business purposes. This single contract in financing is in great demand by Islamic financial institutions because it is simple and simple in business activities, and of course, it can provide certainty of future income, what we often know is natural certainty contracts. However, along the way, cooperation in natural certainty contracts is not always suitable for long-term financing and the needs of large projects. This research also looks at the phenomenon of problems that occur in the cooperation of a single contract, one of which is the Murabaha contract. Due to this problem, Islamic banks have started to implement the use of multiple contracts or hybrid contracts in long-term investment financing cooperation, especially in the infrastructure sector, because the nature of business contracts is more flexible, can be reviewed, and provides the principle of fairness.

Keywords: *Hybrid Contract, Musyarakah Mutanaqishah, Syndication, Investment*

Abstrak

Penelitian ini bertujuan mencari sebuah alternatif dalam kegiatan bisnis pada lembaga keuangan syariah, khususnya pada perbankan syariah, dimana pada saat penggunaan akad tunggal dalam kontrak bisnis yang terjadi, masih menimbulkan kelemahan-kelemahan dalam proses kerjasama antara pihak nasabah dan bank. Sehingga perlu dianalisa lebih jauh penggunaan akad tunggal dalam kontrak bisnis untuk pembiayaan yang sifatnya jangka panjang masihkan relevan dalam tujuan bisnis. Akad tunggal dalam pembiayaan ini sangat diminati oleh lembaga keuangan syariah karena sifatnya sederhana dan simple dalam kegiatan bisnis, dan tentunya dapat memberikan kepastian pendapatan kedepannya, yang sering kita kenal yaitu natural certainty contracts. Namun dalam perjalanannya bahwa tidak selamanya kerjasama dalam natural certainty contracts ini sesuai untuk pembiayaan yang sifatnya jangka panjang dan untuk kebutuhan proyek proyek besar. Penilitian ini juga melihat fenomena permasalahan yang terjadi dalam kerjasama akad tunggal tersebut salah satunya adalah akad murabahah. Atas permasalah tersebut maka bank syariah sudah mulai mengimplementasikan penggunaan multi akad atau hybrid contracts dalam kerjasama pembiayaan investasi yang sifatnya jangka panjang khusus di sektor infrastruktur, karena sifat kontrak bisnis yang lebih fleksibel, dapat direview dan memberikan prinsip keadilan.

Kata kunci: Hybrid Contract, Musyarakah Mutanaqishah, Sindikasi, Investasi

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INTRODUCTION

Islamic Financial Institutions (LKS) in Indonesia continue to show significant growth and development. This can be seen from the variety and product innovation developed by LKS to increase revenue. The development of these products is directly proportional to the diversity of contracts used. So that makes LKS not only have income from one source but from various sources of income following the contract. Such as income derived from the margin of sale and purchase contracts, *ujrah ijarah* contracts, and profit sharing from partnership or cooperation contracts (*musyarakah* and *mudharabah*). The various contracts or contracts are one of the differences between LKS and Conventional Financial Institutions (Dolgun et al., 2019)

The main concern in LKS is developments in the Islamic banking sector. It is undeniable that the Islamic banking industry in Indonesia is encouraging news, especially for the Muslim community in the country, but at the same time, it demands complex regulations and rules of law (Sharia). The current Sharia-based financial model has become a positive rule that all ethnic groups, regardless of religion, can apply this concept. Of course, with the principle of Islamic personality protecting the implementation of sharia principles is growing rapidly in Indonesia (Iswanaji et al., 2022).

In general, the banking industry is an institution that has an important role as a financial intermediary in the economy of a country. To be able to compete with conventional banking, Islamic banking must be able to meet modern business needs by presenting innovative and more varied products that can meet the needs of the community to be able to compete with conventional banking. built-in Sharia financial product transactions. In contrast to the conventional paradigm of Islamic banking, the relationship that is built is a partnership, participatory, and sharing of risks and profits in the form of a buying and selling relationship *(ba'i)*, leasing *(ijarah)* or leasing, business partnerships, or providing services in the form of guarantees *(kafala)*, representatives *(wakalah)* and others. All of these transactions require an exchange of money and goods or services, equity, rights, and obligations. By carrying out this paradigm, the relationship between banks and customers is mutually beneficial for the sake of mutual prosperity. There is no exchange of money for cash with additional interest (Anggraini et al., 2021).

Along with the increasing interest and number of Islamic banking customers, it is necessary to develop and innovate products offered by Islamic financial institutions but still ensure that the products offered are following Sharia principles (Abdul Jabar et al., 2018). This product innovation is carried out to meet current customer needs. This is so that it attracts customers to transact in Islamic banks. This is also the main attraction of Islamic banking and the main thing that distinguishes it from conventional banking. Law Number 21 of 2008 concerning Sharia Banking, hereinafter referred to as Law No.21/2008 concerning Islamic Banking, is one of the positive legal regulations stipulated in Indonesia which takes the concept of Sharia economics in Islam, where Sharia Bank is a bank that operates based on sharia principles, namely prioritizing justice, partnership, openness, benefit. It turns out that Islamic Banking is a very promising business institution in practice, products, and services, Islamic Banks are also following the Islamic concept which is Rahmatan Lil Alamin. (Muhamad, 2005)

One of the products offered by Islamic banks today is cooperation products with profit-sharing systems such as musyarakah. However, Sharia banking products with musyarakah contracts have not experienced growth when compared to other Sharia bank products. The lack of product development based on profit-sharing cooperation in Islamic financial institutions that have a flexible tenor, especially long-term financing causes more Islamic banking products to be based on fixed-income financing which is similar to the system implemented by conventional banks which use a higher income structure fixed income and tends to be short and medium-term to minimize risk (Nurjaman, 2021).

To increase the competitiveness of Islamic financial institutions, it is necessary to develop and innovate diverse products and of course answer all the needs of today's society while ensuring that their products comply with sharia principles. One example of contract innovation in Islamic financial institution products is a derivative product of a *musyarakah* contract, namely a *musyarakah* mutanaqishah contract (Nurjaman et al., 2022) A *musyarakah mutanaqishah* contract is a cooperation agreement between the bank and the customer in which both parties each contribute funds for the procurement of an item where at the end of the contract the ownership of the item passes to one of the parties in its entirety. The *musyarakah mutanaqqishah* contract is following the

Fatwa of the National Sharia Council No: 73/DSN-MUI/XI/2008.

Musyarakah financing, including *musyarakah mutanaqishah* (MMQ), was recorded based on the latest OJK data in February 2023, if you look at the distribution of financing based on the type of contract, then musyarakah contract financing has a portion of 44.75% in February 2023 position of the total distribution of financing to sharia banking (Sharia Commercial Banks and Sharia Business Units), although murabahah contracts still dominate the distribution of financing in Islamic financial institutions. This means that the need for *musyarakah* contracts continues to grow and MMQ should be a superior product because it is a product with distinctive characteristics (OJK, 2023).

Along with its journey, natural certainty contracts are widely used by LKS, especially in the mechanism of channeling funds through financing products. This is none other than because natural certainty contracts are contracts that provide certainty in terms of income, both in terms of amount and timeframe. Included in this contract are buying and selling and ijarah contracts. So that products that use *murabahah* sale and purchase agreements become the dominant contracts used by LKS in the mechanism of channeling funds through financing products (Karim, 2017).

The consideration of LKS using these contracts is that apart from being able to apply the precautionary principle, the risk of loss incurred is relatively small compared to using other contracts. Seeing these facts, there has been a shift in the profit-sharing system. Because what distinguishes LKS from LKK apart from the contract used is also the income operational system. LKS uses a profit-sharing system while LKK uses an interest system. The profit-sharing system comes from cooperation contracts, namely *mudharabah* and *musyarakah* contracts. So that these two contracts should dominate the contracts used by LKS (Lung, 2013). The existence of this shift is caused by the position of the nature of the contract which does not provide certainty of income (return) or what is called a natural uncertainty contract. *mudharabah* contract. So that when an LKS uses third-party funds through a fund distribution mechanism, the LKS must bear the risk of business failures carried out by customers who use the facility without any negligence. But in its development, when LKS was incessantly developing products. There is one product that uses hybrid contracts multi contracts, namely the *musyarakah mutanaqishah* contract (Hasbi & Widayanti, 2021).

This contract is interpreted as a fund-mixing contract between contracted partners banks and customers to purchase assets in the form of goods. Then these goods are used as business capital for both parties to get profits that can be shared along with the purchase of capital goods owned by one of the partner's banks in installments. This causes the ownership of capital goods by one of the partners to decrease and become the property of one of the partner's customers as a whole (Ashsiddiqqy et al., 2020). One of the important pillars for creating Islamic Banking and Finance products in facing the demands of modern society is contract development, a single contract form is no longer able to answer the needs of contemporary financial transactions, so the hybrid contract concept is a breakthrough in product development, combining several contracts. This is very likely to occur due to demands for transaction progress and can be considered normal. However, the problem is whether this hybrid contract or hybrid contract in meeting the demands for developing Islamic financial products is free from the prohibitions of tahini and wadh'i laws or free from the potential for 2 contracts to occur. in one agreement (Karim, 2017).

In practice, many hybrid contracts occur in one form of a *musyarakah mutanaqishah* contract, namely when the capital goods used as business capital are leased to customers or third parties. Then the customer pays ujrah which can be shared with the bank accompanied by the purchase of the bank's capital portion of the goods assets which are used as joint venture capital between the bank and the customer. So, there is a hybrid contract between musyarakah, ijarah, and buying and selling contracts. Along with its journey, natural certainty contracts are widely used by LKS, especially in the mechanism of channeling funds through financing products. This is none other because natural certainty contracts are contracts that provide certainty in terms of income, both in terms of amount and timeframe included in this contract are buying and selling and ijarah contracts. So that products that use murabahah sale and purchase agreements become the dominant contracts used by LKS in the mechanism of channeling funds through financing products. The consideration of LKS using these contracts is that apart from being able to apply the precautionary principle, the risk of loss incurred is relatively small compared to using other contracts (Lung, 2013).

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Public demands for the Islamic banking industry are high enough to innovate and develop products and services to meet their needs and facilitate transactions. This development is an encouraging thing considering that there will be more wide-open opportunities for product development that can meet the various needs of the community, including the development of *musyarakah* contracts and *musyarakah mutanaqishah* (MMQ) financing. The great concern that must be maintained is that the spirit of responding to public demand for this innovation should not diminish the prudence of Islamic banks in maintaining and implementing Shariah compliance provisions and BI rules in carrying out their contracts. Research in Malaysia has concluded that the MMQ contract is considered more syar'i and easier. Scholars tend to prefer MMQ over BBA *(Bai' bi Tsaman Ajil*) or Murabaha it has been practiced by almost all Islamic banks in Malaysia (Osmani & Abdullah, 2010). To further refine the business process in providing syndicated financing, innovation is needed besides the use of a single contract, so this research will focus on the implementation of the contract *musyarakah mutanaqishah* (MMQ) the contract used in Syndicated Financing specifically aimed at infrastructure development, as the solution for the development of Islamic financial institutions and Islamic banking which will simultaneously increase the market share of the sharia economy.

RESEARCH METHOD

This research uses a descriptive qualitative method. Sugiyono explained that descriptive qualitative research is a series of information extracted from research results that are still verbal facts, or in the form of statements only. The method used examines and collects facts on the topic or problem being studied and then provides an overview to become an overall analysis that can be clearly understood and has strong substance and a library research approach, in which the source of the data is taken based on a review of the literature reviews following the problems that occur. To obtain new information related to the problem, the researcher seeks and selects relevant and up-to-date literature (Sugiyono, 2020).

The way of working in this research is by taking clear references by reading books that have been recognized and referring to relevant journals. The data collection carried out in this research is by collecting relevant and up-to-date references. and the analysis of the data used is a library research approach where when analyzing the researcher prioritizes taking recognized references.

RESULTS AND DISCUSSION

Musyarakah Contract

Musyarakah is a cooperation contract between two or more parties to finance a particular business in which each party includes capital or charity with an agreement that profits and losses are shared. Musyarakah is also commonly referred to as syrah which in the language means *al-ikhtilath* (mixing or merging) and fellowship. The meaning of the word mixing is mixing the assets of several parties so that they cannot be distinguished anymore and of course, each has rights to these goods (Basyariah, 2018).

In general, syirkah is divided into two, namely *syirkah amlak* (ownership), and *syirkah uqud* (contract). *Syirkah amlak* consists of *amlak ikhtiari* (optional) and *amlak ijbari* (automatic/absolute) while syirkah uqud consists of *syirkah amwal* (property/assets), *syirkah abdan* (skills) and *syirkah wujuh* (reputation/good will). Apart from the type of syrah, it is also divided based on the portion of capital participation, namely in the form of syrah inan if the capital portion of the partnering parties is not the same, while if each partnering party includes the same amount of capital, it is called *syirkah mufawadhah*.

The following is an explanation regarding the types of syrah as explained by Sayyid Sabiq in the book Fiqh Al Sunnah:

a. *Shirkah Amlak*

Shirkah amlak is *syirkah* that occurs not because of a contract, but occurs because of a certain effort (*ikhtiari*) or occurs naturally (ijbariyah). Therefore, *syirkah amlak* is further divided into two types, namely. (1) *syirkah amlak ikhtiari*, for example, terms of grant contracts, wills, and purchases. So, *syirkah amlak ikhtiari* does not contain wakalah agreements and territorial contracts mastery from one *syirkah* to another syirkah, and (2) *syirkah amlak ijbari,* namely *syirkah* between two or more *syirkah* which occurs automatically due to natural events such as death. This *syirkah amlak* is called *ijbari* forced absolute because there is no effort from the syirkah to realize the events or factors that are the cause of shared ownership. For example, the death of a father is a factor that causes the distribution of property among the heirs (Nurbayani & Rasma, 2021).

b. *Syirkah Uqud*

Syirkah Uqud is two or more parties who agree to combine assets to conduct business/business activities, and the results are shared between the parties in the form of profit or loss. In the book of Fiqh, syirkah uqud is classified into four types *syirkah amwal inan* and *syirkah amwal mufawadhah*, *syirkah abdan*, and 4 *syirkah wujuh*. The terms of the syirkah uqud are first, habilitate al-waka lah, namely that the syirkah uqud contains a waka lah contract because the syirkah uqud aims to business (*mu'awadhat*) which is impossible to do unless there is a power contract from each *syirkah* party. Second, the profit earned in the *syirkah* must be determined by the ratio for each *syirkah*. Third, the share of profits for each shark may not be stated in a certain amount (such as one hundred million or one billion), but stated in a ratio, for example, 60:40, or 55:45 (OJK, 2016).

The application of the *musyarakah* system of business capital cooperation in Islamic banking can be carried out in two forms. Project Financing, namely customers and Islamic banks both provide funds to finance certain projects. After the project is completed, the customer returns the funds together with the agreed profit sharing. Venture model, namely investing in company ownership. Investments are made for a certain period. After that, Islamic banks divest or sell their shares, either briefly or gradually. One example of Syrah-based contract innovation and development in Islamic financial institutions is the *musyarakah mutanaqishah* contract, which is a derivative contract innovation from the musyarakah contract itself. *Musyarakah* mutanaqishah occurs because two contracts are executed in parallel (Asmuni & Mujiatun, 2022).

Between the customer and the bank that enters into a *musyarakah* contract through capital participation in managing a business that will bring in profits. This is identified as syirkah amwal. Second, the customer does business with joint capital, the results of which are shared according to the agreement between the bank and the customer. In addition, customers buy capital goods belonging to the bank gradually so that the capital owned by the bank in the syirkah gradually decreases reduced bank capital is called (Shahwan et al., 2013). *Musyarakah* means cooperation while mutanaqisah comes from the mutanaqisun which means to reduce gradually. So, if you combine the word *musyarakah mutanaqishah* it can be defined as a cooperation contract between two or more parties who mix their assets in the form of capital to finance an item where each party has ownership rights to the item. Then one of the parties takes the ownership rights of the other party by paying ujrah following the mutual agreement. So that at the end of the contract, one party fully owns the item and the other party has lost ownership of the item. *Musyarakah mutanaqishah* is seen as *syirkah* 'Inan, thanks to the two parts providing the participation of the rasul mal while the Bank entrusts its customers to manage their business. If completed, the entire portion or part is sold by the Bank with separate contract rules from the syirkah contract (Az-Zuhaili, 2011).

Musyarakah Mutanaqishah (MMQ) Contract

Musyarakah mutanaqishah contract or abbreviated as MMQ is the development of Islamic bank financing products based on *musyarakah*. *Musyarakah mutanaqishah* is a Sharia banking financing product based on the syirkah 'in principle, in which the share of the capital of one of the partners, namely the Bank, decreases gradually due to gradual purchases or commercial transfers.

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اَوْفُوْا بِالْعُقُوْد

"O you who believe! Fulfill the contracts…."

The verse above clearly guides us that Allah tells us to finish the contract agreement that we make. To be clear, a contract or agreement must be implemented if the contract is proven to have no elements that can deny its implementation elements that are prohibited by the Shari'ah. Even though this verse refers to the law of fulfilling promises in general, indirectly it is also evidence of the necessity of the *musyarakah mutanaqisah* contract itself. This is because the *musyarakah mutanaqisah* agreement is a contract that has sufficient elements of the contract to be authentic from the shari'ah side. A valid contract is a perfect or complete contract, the basic elements of which are the presence of a sigh ah offer and acceptance, two contractual persons, contract items, contract principal, and perfect shari'a conditions (Shuib et al., 2011).

MMQ Contract of Sharia Syndicated Financing

In the MUI National Syari'ah Council (DSN) Fatwa No.91/DSN-MUI/IV/2014 dated 02 April 2014 concerning Syndicated Financing the definition of Syndicated Financing is an agreement between several Financial Institutions, both between fellow Islamic Financial Institutions and between Institutions and Conventional Financial Institutions, to jointly finance certain projects (MUI, 2014). The legal basis for establishing Sharia Syndicated financing, namely based on investigations regarding partnerships, can be found in several taquerias approvals of the Prophet Muhammad regarding *syirkah* activities that took place during the time of the Prophet Muhammad. SWT will accompany anyone who is doing syirkah as long as that person does not betray one another.

This is for includes understanding Mukhalafah in QS. Shad: 24 which prohibits doing injustice to other parties who are both in the musyarakah agreement contract. Including the prohibition of forbidding what is halal and justifying what is unlawful. Thus the form of cooperation that is permissible in Sharia is a form of cooperation that does not have an element of tyranny, justifies what is unlawful or forbids what is lawful, nor is it damaged by treachery between the parties in the contract. Regarding syndicated financing, Ibnu Qudamah mentioned the permissibility of this model of transaction provided that it does not contain usury and avoids false contracts as leaned on the Shafi'i, Maliki, Hambali, and Hanafi schools of thought. AAOFI gave a fatwa regarding the permissibility of syndicated financing between Islamic financial institutions. Likewise, it states that there is no prohibition regarding the participation of conventional financial institutions to be involved in this syndication, provided that it is carried out according to Sharia principles and provisions. There is also no prohibition on providing financing for a portion of a project utilizing conventional financing provided that the accounts and lead managers of the two financing models are carried out separately. As for usury transactions in the financing, it is the responsibility of those who do it (Samudra et al., 2022)

Syndicated financing elements include the involvement of several financial institutions in a syndicated project. In terms of financing, it is based on the principle of equality for all financial institutions participating in the syndicated program and is realized with only one binding agreement between the syndicated participants. Then it confirmed that there was only one financing document which became a reference for all syndicated participants. Then there is an agent/leader whose function is to administer each agreement document representing all syndicated participants.

Implementation of Syndicated Financing MMQ Agreement on LKS

The provision of refinancing financing is implemented in a Sharia Syndication using the MMQ Contract, namely the existence of cooperation between the Toll Road Business Entities (BUJT) and the LKS d for financing facilities. Because investment in the infrastructure sector, especially toll roads, requires a large amount of money, LKS has established a financing pattern through a Sharia Syndication. And in some cases, the Sharia-syndicated financing included in the list above uses the refinancing pattern and the MMQ contract. Several stages must be carried out in the financing method, namely.

a. Prospective Customers who own goods assets in this case toll road entrepreneurs apply for financing from Islamic Financial Institutions in the context of refinancing.
b. The Islamic Financial Institution conducts an appraisal (taqwa al-rush) of the prospective customer's goods or assets to determine a reasonable price, to partially purchase them by the Islamic Financial Institution.
c. The Islamic Financial Institution buys some of the goods from the Customer, resulting in syirkah of the goods in the context of forming *syirkah* business capital; As for the sale and purchase of assets in the form of toll roads, the Al-Bai contract will at least explain a number of things related to the object to be traded:
d. The Customer hereby declares to sell to the Financiers a portion of their ownership portion of the Sale and Purchase Object and the Financing Providers in their position as buyers hereby purchase the ownership portion from the Customer.
e. The portion of ownership that is traded from the Customer to the Financing Providers is 69.97% example of the Value of the Purchased and Purchased Object. However, the value of the portion of ownership may change, with certain conditions as agreed by the Parties.
f. The purchase price of the portion of the Sale and Purchase Object referred to in paragraph (2) above by the Financing Providers to the Customer is Rp.118,274,739,473, an example of an asset after being assessed which is the net

amount paid by the Financing Providers to the Customer. If based on the applicable laws and regulations, the Lenders are required to pay a tax or levy or duty in any form and other costs that may arise in connection with the implementation of this *al ba'i* Contract, then this will be the responsibility of the Customer.

g. Payment of the purchase price of the Sale and Purchase Object by Financiers through Sharia Agents to the Customer is made after the Customer signs the MMQ Agreement and completes the requirements as stated in the MMQ Financing Facility Line Agreement. The customer settles obligations and/or debts for the previous financing if any;

Line Facility according to the Fatwa of the National Syari'ah Council (DSN) MUI Number: 045/DSN-MUI/II/2005 is a form of revolving financing ceiling facility for a certain period that is carried out based on Sharia principles. Line facilities may be made on a wad basis and can be used for certain financing following Sharia principles. Wa'd (الوعد) is an agreement or promise from one party (LKS) to another party (customer) to carry out something as outlined in a Memorandum of Understanding document. The Line Facility Agreement made is an agreement the initial agreement agreed upon by the LKS and the customer made in writing in the Deed/contract agreement. This Line Facility Agreement is the next master contract for the withdrawal of each financing ceiling based on the Al-Ba'i Agreement and the MMQ Agreement which are derivatives of the Line Facility agreement and each Agreement is bound by the agreement.

CONCLUSION

Musyarakah Mutanaqishah (MMQ) is the development of Islamic bank financing products based on Musyarakah contracts. Musyarakah Mutanaqishah is a Sharia banking financing product based on the syirkah 'in principle, in which the share of the capital of one of the *shirkah* partners, namely the Bank, decreases gradually due to gradual purchases or commercial transfers. Based on the case that occurred in the provision of syndicated financing for the Sorang Pasir Koja toll road, it is inseparable from the business contracts that exist between sharik (partners) and the imperfect understanding of business agreements, namely contracts. It is something that we all have to understand that not always natural certainty contracts can have a better impact on LKS and customers. For this reason, innovation is needed in business contracts that are more flexible and can adapt to business needs.

This *musyarakah mutanaqishah* contract has become the choice of LKS to be used in several financing products other than those that are consumptive and have also been used in business contracts that are an investment in nature. Islamic banking, especially with the syndicated cooperation scheme, has started to use a lot of MMQ contracts for investment in infrastructure development, which is currently dominant in toll road construction. The application of the MMQ contract has several advantages as Sharia financing, including (1) The LKS and the customer both own an asset that is the object of the agreement. Because it is a shared asset, Islamic banks, and customers will mutually protect these assets. (2) There is profit sharing received between the two parties on the predetermined rental margin for the asset. (3) Both parties can agree on a change in the rental price according to a predetermined time by following the market price. (4) Can minimize the risk of financial costs in the event of inflation and an increase in market interest rates in conventional banking. (5) Not affected by market interest fluctuations at conventional banks, and/or price fluctuations during inflation.

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