

## APPLICATION OF HYBRID CONTRACTS CONCEPT IN ISLAMIC CREDIT CARD PRODUCTS AND MURABAHAH FINANCING

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### Abstract

*Contracts are a fundamental element in modern contract and business law. A contract is usually a written agreement between two or more parties that stipulates the rights, obligations and responsibilities of each party regarding a particular transaction or agreement. However, in the ever-evolving business world, there are situations where the needs and objectives of the parties cannot always be accommodated by traditional contract models. Including innovation and business development in the Sharia Card concept and Murabahah bil Wakalah financing are examples of Hybrid Contracts. This research uses a descriptive qualitative methodology to describe and analyze in depth based on the data obtained. The view of fiqh experts regarding hybrid contracts is an important issue in the context of Sharia business. The majority of ulama tend to view hybrid contracts as permissible in Sharia principles, referring to the rule of al-istishab al-ashliyah, which states that everything is considered halal as long as there are no arguments indicating its haraam. However, debate has arisen regarding the hadith which prohibits two buying and selling in one contract. Although there are different views among schools of fiqh, the hybrid contract concept is considered to be applicable in Sharia economic transactions by paying attention to the underlying principles of Islamic law, including the application of the contract concept used in Sharia Cards and murabah bil wakalah contract financing.*

**Keywords:** Double Contract, Sharia Card, Murabahah and Wakalah

### 1. INTRODUCTION

Contracts are a fundamental element in modern contract and business law. A contract is usually a written agreement between two or more parties that sets out the rights, obligations, and responsibilities of each party in connection with a particular transaction or agreement. However, in the ever-evolving business world, there are situations where the needs and objectives of the parties cannot always be accommodated with the traditional contract model.

One solution that emerges from this dynamic is the concept of hybrid contracts. This concept refers to the combination of elements of different types of contracts or forms of legal transactions, with the aim of creating agreements that are more flexible and can adapt to the specific needs of the parties involved.

Hybrid contracts often combine the characteristics of different types of contracts such as service contracts, sales contracts, or partnership contracts. This allows the parties to combine the aspects that are most relevant and important to them, creating a legal framework that is unique and appropriate to the specific needs of the transaction or agreement in question.

The uniqueness of the hybrid contract concept lies in its flexibility. The parties can tailor the main components of the contract according to their individual contexts and objectives, thus creating an agreement that is more responsive to changing business and legal dynamics.

Sharia cards are financial instruments designed to meet the daily transaction needs of customers who want to comply with sharia principles. This is where the concept of hybrid contracts finds its place. In the design of the sharia card, elements of various types of contracts such as wakalah (agent), ujarah (service fee), and musharakah (cooperation) can be intelligently combined. It aims to create products that combine operational effectiveness with adherence to sharia values.

Meanwhile, in financing with murabahah contracts, the concept of hybrid contracts also plays an important role. Akad murabahah itself is a form of buying and selling transactions with a clear price markup. However, in the context of more complex financial products, elements of different types of contracts such as wakalah, ijara (lease), and musharakah can be integrated into the financing structure. Thus, the parties can leverage the advantages of each type of contract to achieve their financial goals in a sharia manner.

## **2. IMPLEMENTATION METHODS**

This research uses descriptive qualitative methodology, which seeks to describe and analyze in depth based on the data obtained (Eka, 2018). The preparation of this paper is specifically about the concept of hybrid contract in Islamic Financial Institution products. Based on this method, data collection uses documentation methods. The data obtained is then processed by editing and organizing data methods, then analyzed by deduction methods, the aim is to get a complete description of the concept of hybrid contract contracts in Islamic Financial Institution products.

## **3. RESULT AND DISCUSSION**

### **Fiqh Experts' Views on Hybrid Contracts**

In general, the term Hybrid Contract defined as the set of several material contracts conceived by a good contract. *jam'î* (collect) or by *taqâbulî* (reciprocity), so that all rights and obligations arising from it are seen as legal consequences of one contract. (Wahid, 2019, p. 87) The use of the concept of hybrid contracts in Islamic economic transactions is widely discussed by scholars and related fiqh experts about the validity of the multi-contract. The discussion and debate about the validity of these multi-contracts arose because of a number of hadiths of the Holy Prophet(sa), which outwardly indicate the prohibition of the use of multi-contracts. In fact, the progress of the contemporary shari'ah economy requires unlimited contract innovations with old contracts that have been known, including in the form of multi-contracts. The prohibition, among others, appears in the following outward hadith.

Abû Hurayrah narrated from Na-bi (peace be upon him) that he forbade two trades in one trade. (Narrated by al-Tirmidzî, al-Nasâ'î, Abû Dawûd, and Mâlik)

The majority of scholars argue that the law of agreement containing two or more contracts is essentially permissible shari'i and that the redaction of hadiths prohibiting the gathering of two or more contracts in one agreement is an exception to the permissibility. Some scholars consider that the prohibition of two buying and selling in one trade is interpreted as two prices, so the price becomes unclear. Therefore, in another hadith the Holy Prophetsa. Emphasizing that if such an event, then the option is the cheapest price, if not, then it includes usury.

From Abû Hurayrah said: "The Prophet (peace be upon him) said: 'He who sells two trades in one sale will have for him the lowest price or usury'." (HR. Abû Dawûd, al-Tirmidzî, Ahmad, and al-Nasâ'î) .

The view of the majority of scholars above adheres to the rule *Al-Istishâb al-Ashfîyah*, which states that the original law of all things is lawful or permissible as long as there is no evidence to indicate its unlawful law. Based on this rule, al-Shafi'î made a general rule in buying and selling, namely the original law of buying and selling everything is changed if done with the pleasure of the seller and the buyer, except what is forbidden by the Holy Prophetsa.

Ibn Taymîyah states the ability Hybrid Contract This is more clearly and at length, saying

that Sharia law originally stipulated the validity of the gathering of more than one contract in one agreement, as long as there was no specific prohibition of Shar'i in that regard. Because the law of origin is based on postulates Nash is the freedom of contract and the obligation to fulfill everything agreed by both parties as long as there is nothing Nash or Qiyâs Shahîh which forbids it. If any Nash or Qiyâs Shahîh who forbade it. Therefore, the gathering of some of these contracts is specifically prohibited and transacting with these contracts is considered damaged.(Ar Rahman, 2019).

Similarly, Ibn al-Qayyim argued that the original law of contracts and conditions is valid, except those that are nullified or prohibited by religion. Since the original law was permissible, any contract and condition that has not been explained as haram by Allah cannot be declared haram. Allah has explained what is haram in detail, therefore every contract that is declared haram has a clear what kind of haram and how. It is not permissible to forbid what has been sanctioned by Allah or forgiven. Similarly, it cannot justify what has been forbidden by Him.(Al-Qayyim, 1991).

Hybrid contracts that exist in business and financial transactions have many forms and varieties. In general, hybrid contracts are divided into the following forms:

First, Hybrid Contract in the form of a mixture of two or more contracts that give rise to a new name. Hybrid Contract This is for example buying and selling Tawarruq,(Ahmadzain.Com, n.d.) Bay' al-Wafâ',(Wahbah Az Zuhaili, 2002,) and so on. Selling Tawarruq is a mixture of two buying and selling contracts, buying and selling with the first party and buying and selling with the third party.

Second, Hybrid Contract that Mujta-Mi'ah/Mukhtalithah Under the name of BA-Contract ID, whose contracts do not mix and do not give birth to new contract names, but the two or more contracts become a package of agreements with the name of the basic contract remaining. Hybrid contract Here's an example of this murâbahah wa wâkalah on financing Murâbahah in sha-ri'ah banking; Kafâlah wa ijârah on credit card, Letter of Credit, bank guarantee, multi-service financing, and credit card; Qardl, Rahn and Ijârah on pawn products and so on.(Wahid, 2019).

### Allowed Hybrid Contracts

Ability Hybrid Contract What is based on the original legal principle of the contract is permissible and qiyaskan with the law of the contract that builds it, taking into account the religious provisions that limit it. That is, even though Hybrid Contract Allowed, there are boundaries that must not be violated, because those limits become signposts for Hybrid Contract so as not to fall into practice mu'âmalah which is forbidden. In his book Nazih Hybrid Contract to be allowed shari'i. The criteria are as follows:(Wahid, 2019).

1. The hybrid contract is not prohibited in the nash.

Hybrid contract What is forbidden in the text of the hadith is twofold, namely the gathering of buying and selling with accounts receivable,(Dawud Abu, 1992) and the gathering of two trades in one contract. The jurists agreed on the fact of gathering debts by buying and selling in one agreement. This law also covers the collection of debts by contract greeting, Sharfand Ijârah (rent), because all three are included in the bay' (buying and selling).(Rusyd Ibn, 1993).

In the matter of the gathering of two trades in one agreement, jurists differ in interpreting the object and form of the prohibition. Priest Mâlik, Abû Hanîfah, and the Shafi'î school in one QaulHe said that the form of the gathering of two forbidden trades is if the seller tells the buyer: "I sell you this shirt for 10 dirhams in cash or 20 dirhams in a year", and the purchaser accepts it without specifying which of the two prices is chosen. Illat of these prohibitions according to al-Shafi'î and Abû Hanîfah is not clearly priced, so it is included in buying and selling Gharar which is forbidden by shara'. According to Imâm Mâlik, illatHis is Sadd al-Dzarî'ah, that is, to be a means to the forbidden usury.(et al, 2014).

While the school Hanbalî, Hanafî, and Syâfi'î in one Qaul He said that the form of gathering of two forbidden trades exists if the seller says to the buyer, "I sell you this garden of mine for 100 dinars on condition that you sell me your house for 70 dinars. Illat From this form of haram is separation at the time of buying and selling at an unknown price. That is, the price on each trade is unknown, because if each object of sale is sold separately, they both do not agree on the price as the price at the time of being put together. (Rusyd Ibn, 1993).

Ibn Taymîyah and Ibn Qayyim argue that the form of two trades in one trade that is forbidden is nothing but buying and selling 'Inah, (Hammad Nazih, 1995) that is, the seller said, "I sell this item to you for 100 dirhams within one year on condition that I buy it from you for 80 dirhams in cash". According to Ibn Qayyim, only this interpretation is in accordance with the text of the second hadith, "then for him the lowest price or usury". The seller has two options of taking the additional price, until he consumes usury or takes the lowest first price. (Azzam, 2022).

2. The hybrid contract is not a means to something that is forbidden.

In the explanation of the first criterion above, it is explained that fuqaha' in responding to the hadith that prohibits two buying and selling in one contract states that the illat of the prohibition is the existence of gharar (obscurity) or means (dzarî'ah) leading to usury. Therefore, the law of validity can be applied to other forms of hybrid contracts that have the same illat based on qiyâs, or on the basis of the postulate sadd al-dzarî'ah.

3. The hybrid contract is not used as a hîlah (ploy) to take usury by other means

Al-hîlah itself linguistically means ingenuity of thought, shrewdness of interaction, and activity and turning over thinking in order to reach the goal. In terms of terms, some scholars define al-hîlah specifically as something that is forbidden. Al-Shathibî, for example, defines al-hîlah as reversing a law that has been established shari'i to another law by doing actions that are shahîh (right) outwardly, but in fact only a game. However, some other scholars define al-hîlah in general terms as the hidden path used to achieve the goal, which path is unknown except with certain intelligence and intelligence. If the goal is good, then it belongs to hîlah hasanah (good strategy) and if the goal is bad, then it belongs to hîlah qabîhah (bad strategy). (Al-Qayyim, 1991).

4. Hybrid contracts that are used as a strategy

To usury is haram, even if the form of birth is permissible. The prohibition of this contract is not because of its meaning as hybrid contract, But because it is used as a stratagem to obtain the benefits of usury in other ways. Ibn Qayyim asserts that the goal is spirit rather than contract. He made the contract Shahîh or void. Retrieval i'tibâr Based on the goals in the contract, it is mainly compared to i'tibâr Based on pronunciation, because the pronunciation may be intended for other than the pronunciation, while the purpose of the contract is what is desired from the contract.

A single contract that belongs to this type, according to scholars, an example is nikah muhallil. While one example of a hybrid contract that is used as hîlah ribawi is buying and selling 'inah. This buying and selling is illustrated that a person sells his goods by suspending, then he buys back the goods from people who have bought the goods at a price less than he sold, but he pays the price in cash according to the agreement. In this 'inah sale and purchase two trades are collected in one agreement, and are carried out as a stratagem to usury, where the seller and buyer do not aim to transfer ownership of the goods sold in essence.

5. Hybrid contracts are not included in mutanâqidlah (the contracts are opposite).

This limitation is according to the Mâlikî school only and is not used by a number of jurists. They reason that the contract is the cause, because it is the means to achieve the wisdom of the contract in its object. An object cannot be caused by two opposing or opposing things, so any two opposing contracts cannot be collected in one agreement or agreement. (Hammad Nazih, 1995) Examples of contracts that are tenuous are buying and selling and accounts payable or accounts receivable with Ijârah (rent or wages). Trading and buying and selling Ijârah built on business and profit-seeking. Whereas debts are built on help and worship.

### Sharia Credit Card Concept

Shari'ah Card is a card that functions like a credit card whose legal relationship (based on the existing system) between the parties is based on the principles of shari'ah as stipulated in this fatwa (DSN-MUI, 2006: 9). Shari'ah card in muamalah fiqh is called *Bithaqah I'timan* which gives rights to others to their property with a bond of trust, so that the person is not responsible unless he commits negligence or violation. (Hengki, 2014)

According to the language of credit cards are divided into two words namely *bithaqah* (card) used for small pieces of paper or of other materials, on which is written an explanation related to the piece of paper. While the word *I'timan* means a condition of security and mutual trust. In the habit of the business world, it means a kind of loan to be paid on a delayed basis. While terminologically defined by cards issued by banks and the like that can be used by the bearer to buy all needs and certain goods and services in debt. (Abdullah Al-Mushlihdan & Abdullah, 2004).

The Arabic Economic Dictionary defines a shari'ah card as a special type of card issued by a bank (as a card issuer), then the amount will be paid later. The bank will give its customers a monthly account globally to pay, or to be debited directly from a functioning account. (Ahmad Zaki Badwi, 1984).

The calculation between conventional credit cards and shari'ah cards is that conventional credit cards are determined by interest costs and other costs (such as late fees) incurred in that month, will be accumulated with the remaining principal debt that has not been paid after the due date, to calculate interest costs in the following month, so it is known as the interest interest system.

In addition, the calculation of interest is also starting to be seen based on the initial value of the debt at the time of the transaction and also looking at the number of days the debt is running. It is based on the average daily debt balance, calculated from the transaction date. Meanwhile, the Shari'ah card uses the Monthly Fee fee calculation system (debt management fee – *ujrah* equivalent 2.95%) calculated based on the remaining net principal debt after the maturity date, so costs incurred in the previous month are not accumulated with the remaining principal debt to calculate costs in the following month. (Hengki, 2014).

### The Concept of Akad (Ushul Fiqh) on Sharia Credit Cards

#### Akad Kafalah

Kafalah is basically a *tabarru'* (voluntary) contract that has the value of worship for the guarantor because it includes cooperation in virtue (*ta'awun 'alal birri*), and the guarantor has the right to ask for reimbursement back to the debtor, as he should not ask for remuneration for his services, so as to be safe / away from *syubhat*. However, it is legitimate if the debtor himself gives him as a gift or grant as an expression of his gratitude. However, if the guarantor himself requires the basic compensation (such as credit card administration fees and so on) and does not want to guarantee voluntarily, then it is permissible for users of guarantee services to meet these demands if necessary such as needs that are common in the course of studies, business transactions, social activities, personal affairs and so on. The determination of kafalah service money must not be too expensive so that it burdens the debtor or exceeds the rational limit, in order to maintain the original purpose of the kafalah, namely relief services in the form of debt guarantees to merchants, sellers of goods or services that accept payment with certain credit cards. (Wahbah Az Zuhaili, 2002).

According to the Indonesian Bankers Institute, the kafalah contract referred to here is a

guarantee agreement given by the guarantor (kafil) to a third party in order to fulfill the obligations borne if the insured defaults. (Banker Institute of Indonesia, 2002)

However, Rafiq Yunus al-Misry does not agree if the credit card issuer is considered a kafil (guarantor) to the cardholder. Such an assumption would make this contract a kafalah bi ujr (guarantee with payment) through membership fees (which are paid in the form of annual dues. Such payment is not permissible in Islam because kafalah is equal to debt with the principle of tabarru' (please help). Misry concluded that aqad like this belongs to the type of hawalah (transferring debt). (Wardani, 2016).

### **Akad Qardh**

Al-Qard is a loan agreement to certain customers with the condition that customers are required to return the funds they receive to Islamic financial institutions at the time agreed by LKS and the Customer. In the dictionary of Islamic Financial and Banking Terms, Bank Indonesia explains Qard as follows, Qard (Loan) is an agreement that guarantees the provisions of the party receiving the loan must return the funds received.

Furthermore, a Qard contract can also be called a contract that provides loans to others without any hope of getting a reward from the loan. (Mustofa, 2015).

In addition, there are also those who define that Qardh according to the term gives property to someone on the basis of mercy and he will return it in return after using it. (Al-Subaily, 2017: 47). According to hanafiyah, qardh is a special contract to give mistli property to others with the obligation to return such a thing. So Al-qardh is the provision of funds or bills that can be likened to it based on an agreement or agreement between the borrower and the party providing the loan that obliges the borrower to pay off the debt after a certain period of time. (Dimyauddin Djuwaini, 2008).

### **Akad hiwalah**

When this credit card is used to buy goods from merchants, the relationship that occurs is between three parties: the card issuer, the holder, and the merchant who owns the goods. In fiqh review the contract that occurs is called hiwalah, so the cardholder is muhil (the person who owes the debt) and the merchant is the muhal (who gives the loan) and the card issuer or bank is muhal 'alaih (the person who is obliged to pay the debt).

The picture is that the bank as the card issuer tells the cardholder: "Use this card for you to use to buy goods from merchants and don't pay the price, let us pay it for you". And the card issuer says to the merchant: "Sell your item to the cardholder and we will pay you the price". And the cardholder tells the merchant: "I transfer the responsibility of the payment to the Bank/card issuer". If this transaction occurs, then we clearly call this transaction hiwalah which has fulfilled the pillars and conditions and pleasure of the three parties. And this contract is a contract that is allowed by Shari'a.

The word hiwalah is taken from the word tahwil which means intiqal (displacement). What is meant here is to transfer the debt from the dependents of the debtor (muhil) to the dependents of the person who is obliged to pay the debt (muhal alaih). (Sayyid Sabiq, 1998) (In the concept of civil law, hiwalah is similar to a debt transfer agency or debt release or debt sale agency or creditor replacement agency (Sudarsono Heri, 2007). Eve was decreed to make it easier for His servants in the life of muamalah. Through the contract of hawalah, it allows someone who has difficulty to transfer something that is still his responsibility (debt) to another party.

### **Akad Murabah Bil Wakalah Financing Concept**

#### **Murabahah**

Murabahah is linguistically derived from the word Robaha which means profit, (Syauqoti,

2018) Meanwhile, according to the term murabahah is buying and selling at the cost price with additional profits. (Wahbah Az Zuhaili, 2002, p. 132) In another sense, murabahah is a contract of buying and selling goods at a selling price equal to the cost of acquisition plus an agreed profit in which the seller must disclose the cost of acquiring goods to the buyer. (Analysis of the Application of Murabahah Financing Based on Order and Without Order and Compliance with PSAK 102 | Binus Business Review, n.d.).

Murabahah is one of the schemes in Islamic banking that is most in demand by the public. In murabahah financing, banks set the selling price of goods, namely the cost of goods acquired goods plus a certain amount of the bank's profit margin. The selling price agreed at the beginning of the contract must not change during the financing period. (Analysis of the Application of Murabahah Financing Based on Order and Without Order and Compliance with PSAK 102 | Binus Business Review, n.d.)

### **Wakalah**

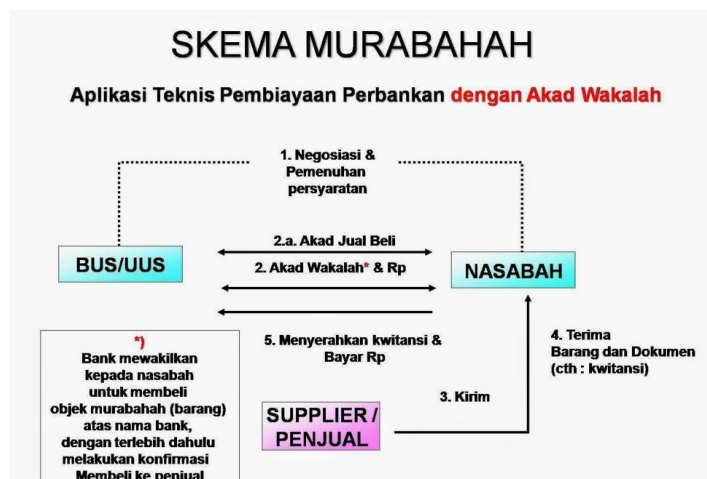
Al-wakalah (الوكالة) or al-wikalah (الوكالة) linguistically means at-tafwidh which means submission, delegation, and giving of mandates. Etymologically, wakalah means surrender (at-tafwidh). In terminology, wakalah has two meanings, according to the Hanafi school which defines wakalah as the delegation of a legal action to another person who acts as a representative. Meanwhile, according to the Maliki, Shafi'i, and Hambali schools define wakalah as the delegation of rights to someone in matters that can be represented to others while that person is still alive. (Multi Akad in Islamic Financial Institutions - Google Books, N.D., p. 92).

Al-wakalah is an agreement between two parties in which one party submits, delegates, delegates or gives a mandate to the other party, and the other party carries out the mandate in accordance with the representing party. Al-wakalah can be interpreted as the delegation of one's power to another person in carrying out a certain mandate.

Based on the above definition, it can be understood that what is meant by al-wakalah is the submission from one person to another person to do something, where the representative is valid as long as the representative is still alive. In Islamic law, al-wakalah or representation arises when one person empowers another to take his place in obtaining his civil rights. The person who represents this is called a deputy. It is necessary for the representative to obey the instructions given by the representative.

### **Murabahah Bil Wakalah**

Murabahah bil wakalah is buying and selling with a representative system (wakalah). Where buying and selling with this system the financial institution represents its purchase to the customer, thus the first contract is a wakalah contract after the wakalah contract ends which is marked by the delivery of goods from the customer to the Islamic financial institution then the institution gives a murabahah contract. (Anshori, 2018, p. 192) Akad murabahah bil wakalah is also a sale and purchase agreement where Islamic financial institutions represent the purchase of products to customers then after the product is obtained by the customer then the customer gives it to the Islamic financial institution. After the goods are owned by the institution and the price of the goods is clear, the institution determines the margin obtained and the return period that will be agreed upon by the Islamic financial institution and the customer. This form of contract is prohibited in sharia. For example, combining a sale and purchase contract and a loan (bai wal salaf). Another example is combining qardh wal ijarah in one contract. Both examples are prohibited by the nash (postulates) of sharia, qardh with the promise of gifts (grants), the contract of salaf with buying and selling.



The scheme of Akad Murabahah Bil Wakalah can be described as follows:

**Information:**

1. Islamic banks and customers negotiate on the plan for sale and purchase transactions to be carried out.
  - a. Islamic banks enter into sales and purchase agreements with customers where Islamic banks are sellers and customers are buyers.
  - b. Islamic banks represent customers to buy murabahah objects (goods) on behalf of the bank, by first confirming the purchase to the seller.
2. Suppliers send goods to customers at the behest of Islamic banks.
3. The customer receives the goods from the supplier and receives ownership documents of the goods.
4. The customer submits proof of purchase of goods to the bank and makes payments both in cash and installments.

**CONCLUSION**

The fiqh expert's view of hybrid contracts is an important issue in the context of Islamic business. Hybrid contract refers to the concept of a double contract or contract consisting of several



material transactions that are considered as a legal entity. Related terms such as multi-type contracts or repetitive contracts have also been used. The majority of scholars tend to view hybrid contracts as permissible in the principles of Shari'ah, with reference to the rule of al-istishab al-ashliyah, which states that everything is considered halal as long as there is no evidence that shows its haram. However, a debate arose regarding the hadith that prohibits two buying and selling in one contract. Although there are differing views among schools of fiqh, the concept of hybrid contract is considered applicable in Islamic economic transactions by taking into account the underlying principles of Islamic law. Finally, important criteria in considering the permissibility of hybrid contracts include ensuring that there is no violation of sharia teachings, not being a means for things that are forbidden, not being used as a strategy to obtain usury benefits, and not involving contradictory or contradictory contracts. including the application of the concept of contract used in the Sharia Card and Financing of the murabah bil wakalah contract.

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