

## The Legal Problems of the Child Trafficking Crime in Indonesia in the View of Human Rights

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### Abstract

Human rights are basic rights that are inherent in every human being that cannot be reduced at all. This right can only be taken away through legitimate state institutions and with legitimate legal reasons as well, but the increasingly globalized economic flow, and an increasingly advanced social order and leads to industrialization in all fields, creating many new crime models with an increasing trend, one of them is the crime of human trafficking. They are not only adults who are vulnerable to this crime, but it turns out that children are the most vulnerable to this crime, so that their human rights are threatened in all aspects. This study uses a normative juridical method with only the study of laws and literature. The result of the research is that the laws and regulations protecting the human rights of children from human trafficking crimes are inadequate and tend not to be in sync with one another so that they have not been maximized in realizing protection for child victims of human trafficking.

**Keywords:** Legal Problems, Child Trafficking, Human Rights

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## INTRODUCTION

The Declaration of the Rights of Man and the Citizens, which was an important result of the French Revolution in 1789, became a momentum for International Human Rights in the formulation and institutionalization of human rights as an international socio-political practice. This declaration includes an equal position before the law, namely freedom from arbitrary arrest, presumption of innocence, freedom of expression, freedom to embrace religion, security, public freedom to do everything that does not harm others and property rights. Freedom and egalitarianism (equality) are the breath that animates this declaration (Gunakarya, 2017). The attention of the state to improve human rights protection in general shows progress since 1998, by incorporating the basis of human rights protection into the constitution, as well as by ratifying international conventions. In the framework of amending the Constitution of the Republic of Indonesia year 1945 (Indonesia Constitution), the concept of a rule of law or *Rechtsstaat* as contained in Article 1 paragraph (3) of the Indonesia Constitution, states "The State of Indonesia is a State of Law". In the concept of rule of law, it is ideal that what must be made commander in the dynamics of state life is law, not politics or economy (Asshiddiqie, 2019). As a rule of law, law enforcement must comply with applicable regulations and also be based on Pancasila and Indonesia Constitution, which uphold human rights and must guarantee equal position for citizens in law and government.

Nowadays, the attention of the world community on the importance of child protection in all situations is increasing. Since the adoption of the Convention on the Rights of the Child (CRC) on November 20<sup>th</sup> 1989 through Resolution No. 44/25 of 1989, child protection efforts have become the main concern of the majority of countries in the world. Almost all countries, except the United States and Somalia, have ratified the CRC and integrated it into legal strategies and policies in their respective countries. The urgency of child protection is partly driven by the understanding that children are inherently relatively vulnerable during their growth and development (Smith et al., 2010). In fact, seen from the viewpoint of victimology, David Finkelhor in his book entitled "Childhood Victimology", states that children are the most victims of crimes in society, apart from conventional crimes that befall adults, as well as crimes that specifically occur to children ( Finkelhor, 2008). In addition, children are the best and irreplaceable investment of a nation and country. Javier Perez De Cuellar in his speech delivered at the discussion of the Convention on the Rights of the Child in September 1987, argued that "The way a society treats children reflect not only the qualities of compassion and protective caring but also its sense of justice, its commitment to the future and its urge to enhance the human condition for coming generations "(Cuellar, 1989). It means that society in protecting children does not only reflect the quality of love and a form of protective protection, but also reflects a sense of justice, community commitment to the future, the urgency to improve the human condition for future generations. These two conditions then make child protection not just a state obligation, but rather a need that is significant and reciprocal in nature. It means the efforts of the family, society, nation and state in the future (Gosita, 1996), by protecting children from an early age, the future of the country is also guaranteed.

One aspect of law enforcement includes protection for everyone, including a child. Legal protection is especially for children who have become victims of a crime. Article 28B of the 1945 Constitution in this case children are protected and given the opportunity for their rights to survive, grow and develop and are entitled to get protection from violence and discrimination, meaning that children are given optimal rights both physically, mentally and socially. Children are creations of God Almighty, have the right to be protected by their rights, their growth and development, their love and affection, and their dignity. All actions or treatment that damage and interfere with their rights and exploit all children that are inhumane must be stopped without exception. Trafficking against children is a serious violation of human rights, because victims are treated inhumanely like merchandise, which are bought, sold, transferred, then deprived of all their rights even at the risk of death. It is slavery and servitude.

For this reason, significant, systematic, and strategic efforts are needed, especially by policy makers and all components of the nation in a comprehensive and integrated manner. Various efforts have so far been felt to be ineffective and fundamental, so that the steps and decisions taken are still partial and sectoral. For this reason, it is necessary to carry out various stimulant and integrated activities, including through:

- a. Formulation of clear, firm, and enforceable laws and regulations regarding the protection of women and children in various aspects;
- b. Effective and responsive institutional arrangements to deal specifically with women and children;
- c. Development of the capacity of human resources for management that is more trusted and reliable;
- d. Strengthening community empowerment, through economic activities based on a people's economy, providing affordable education and developing harmonious social relationships.

- e. Building a more authentic community participation and awareness of the problem of trafficking in women and children (Abdussalam, 2016).

According to Article 2 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (Human Trafficking Law) states, in essence Human Trafficking is an act of recruiting, transporting, holding, sending, transferring, or receiving someone with threats of violence, the use of force, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or payment or benefits, so as to obtain the consent of the person who has control over the other person, whether done domestically or between countries, for the purpose of exploitation or causing a person exploited. The number of human trafficking crimes is often not revealed, a large number has resulted in an iceberg phenomenon, namely human trafficking which appears to be known is only the tip of the iceberg floating on the surface of sea water, actually under the surface is very big.

Law enforcement also needs to be done not only to examine the crime of human trafficking, but especially to provide protection to children as victims of this crime. Protection that the child needs in facing the fact that he has become a victim. Not only physical protection, but also mental also spiritual protection and social recovery. As stated in Article 59A of Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection (Child Protection Law) which states, Special protection for children as referred to in Article 59 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2003 concerning Child Protection, is carried out through the following efforts:

- a. Prompt handling, including physical, psychological and social treatment and / or rehabilitation, and prevention of diseases and other health problems;
- b. Psychological assistance during treatment until recovery;
- c. Providing social assistance for children who come from poor families; and
- d. Providing protection and assistance in every judicial process.

The state has the responsibility to provide protection to child victims of human trafficking. The state as a policy maker that can protect all its citizens. The problem of child trafficking has developed in various countries, such as; Saudi Arabia, Japan, Malaysia, Hong Kong, Taiwan, Singapore and including Indonesia. No country is immune to trafficking, each year an estimated 600,000-800,000 children are trafficked across international borders (Lipi, 2019). The United States government reports an estimate that more than half of victims trafficked internationally are trafficked for sexual exploitation. This trafficking in persons according to UN data is the third largest criminal company in the world, generating US \$ 9.5 million in annual taxes according to US intelligence. Trafficking in persons is also one of the most lucrative criminal enterprises and is closely linked to money laundering, drug trafficking, document falsification and people smuggling. This is a reality that cannot be denied and this trafficking is no longer limited to national borders but takes place across borders. The trading pattern has also changed, not only by individuals but by organized syndicates that are suspected of having other illegal activities, such as selling addictive drugs and weapons.

Based on what is stated above, the writer in this case is interested in making a study with the title " The Legal Problems of the Child Trafficking Crime in Indonesia in the View of Human Rights "

## **MATERIALS AND METHODS**

This research is based on normative research that takes a juridical approach where the problems under study will be discussed and the answers are sought in existing laws and regulations or the opinions of experts who have become doctrines in legal science.

Secondary data is taken from library data which includes legal books and legal literature as well as applicable laws and regulations as well as supporting official documents and the results of previous research that have been there before, including other articles that can be used as valid references.

## **RESULTS AND DISCUSSION**

Children are the next generation of the Indonesian national government, thus they need to be well nurtured so that they do not go wrong in their lives. All components of the nation are obliged to seriously provide legal protection, attention to the growth and development of children. Talking about child trafficking, always raises a sad feeling, because we can pay attention to child trafficking present in our society without any definite response from the government. Including other criminal acts related to children as victims. The suitability of implementing legal protection for children as victims, especially trafficking, is the homework of policy makers.

### **Compliance with the Principles and Regulations for the Protection of Children from the Crime of Child Trafficking**

Protection of children is an effort that creates conditions in which every child can obtain their rights. Protecting children is also protecting humans, in other words protecting humans as a whole. Article 1 Paragraph (2) of the Child Protection Law stipulates that the definition of Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and poverty.

Cases of employing minors also occurred in the Ponorogo area. Zamil Mukti, the manager of a karaoke place on Jendral Soedirman Street of Ponorogo, was detained by the Ponorogo Police, because he decided to accept the Song Guide who was still a minor, EA, aged 15 (fifteen) years. Employed as a Song Guide with working hours between 20.00 and 02.00. Zamil was declared a suspect charged under Article 76 paragraph (1) in conjunction with Article 88 of the Child Protection Law (Jawa Pos, 2016).

The Kalabahi District Prosecutor's Office In 2011 there was also a case of human trafficking which was held by Junior Attorney Sudarto, S.H, as Head of Special Crimes for the Kalabahi Prosecutor's Office as General Prosecutor based on the Kalabahi District Attorney's Order No. Print: 582/P/3.21/Euh.3/10/2011, dated October 24<sup>th</sup> 2011 has implemented the District Court's decision dated 13 October 2011 No. 66 / Pid.Sus / 2011 / PN KLB with the verdict: Defendant I Arsad Tey and Defendant II Nurwaty Puling have been found guilty of committing the crime of human trafficking. Sentenced them to 3 years each and a fine of Rp. 120,000,000; (one hundred and twenty million rupiah) provided that if the fine is not paid, it is replaced by imprisonment for 3 (three) months. Both violate Article 2 paragraph (1, 2) of Law no. 21 of 2007 concerning human trafficking in conjunction with Article 55 paragraph (1e) in conjunction with Article 64 of the Criminal Code. In 2012 at the same place and handled by the same prosecutor based on the letter of the Head of the Kalabahi District Prosecutor's Office No. Print: 431/P.3.21/Euh.3/08/2012, dated August 2<sup>th</sup> 2012 has implemented the District Court's decision dated August 6<sup>th</sup> 2012, No. 71 / Pid.Sus / 2012 / PN KLB with the verdict: the defendant Suriya Mau has been found guilty of committing the crime of human trafficking. Sentenced the defendant to 3 (three) years and a fine of Rp. 120,000,000; (one hundred and twenty million rupiah) provided that if the fine is not paid, it is replaced by imprisonment for 3 (three) months. Violating the first Article 2 paragraph (1) of Law no. 21 of 2007 concerning human trafficking in conjunction with Article 53 of the Criminal Code in conjunction with Article 55 paragraph (1e) of the Criminal Code, both Article 10 of Law no. 21 of 2007 concerning human trafficking in conjunction with Article 2 paragraph (1) of Law no. 21 of 2007 concerning human

trafficking in conjunction with Article 55 paragraph (1) to 1e of the Criminal Code. This case puts forward the punishment for the defendant (Kalabahi District Court, 2011).

The cases above show that children are an easy tool to vent injustices. In small cities such as Madiun and Karanganyar, the crime of human trafficking may already exist, but there are hidden cases that can cover up trafficking, such as the case in Ponorogo and the police may not have detected it. Another factor came from the victim who was reluctant to report his case. However, crimes related to children as victims have become common cases, such as sexual immorality and violence. This means that these cases often occur even in small cities. However, such violent crime is the initial trigger for a major crime.

A city that is classified as large, such as Surakarta, in several cases shows children as victims of criminal acts. Besides that there has been a criminal act of human trafficking. According to the prosecutor who has been involved in this case, the human trafficking crimes that occur are new cases that have never been handled by the Surakarta District Attorney. Human trafficking case with Case Registration Number: PDM-86/SKRTA/Euh.2/06/2016 and Agus Suciptoroso, S.H as Public Prosecutor of the case. Based on the facts revealed in the court, it was proven by the elements of the criminal acts that were charged against the defendants, because the form of the indictment was an alternative indictment, the indictment was proven, namely the first alternative charge, Article 83 jo Article 76F of the Child Protection Law: 1) Each person. The element of each person referred is by showing a person as a legal subject or perpetrator of a criminal act who is capable of being responsible and accountable for his actions. 2). It is prohibited to place, allow, commit, order to do, or participate in kidnapping, selling and / or trafficking children. Whereas in this element there is an alternative form of criminal act, namely placing, permitting, committing, ordering or taking part in kidnapping, selling and / or trafficking children.

This child trafficking case in the city of Surakarta has been sentenced to 6 (six) years in prison from the prosecutor's initial demand of 9 (nine) years. The chronology is as follows, early February 2016 Maryanti and Devaya admitted that the defendant Indah was offered a job as a song guide outside Java, to be precise, Kalimantan. Following up on the defendant's offer, both of them went to the defendant's boarding house in Palur Kulon RT. 02 RW. 03 Palur Subdistrict, Mojolaban, Sukoharjo Regency and accepted the job offer, then the two of them stayed overnight or slept at the defendant's boarding house. The defendant falsified the identity cards of the two victims, because both were underage. In addition to age, her name was changed, namely Maryanti with the age of 15 (fifteen) years old with the name Bela aged 18 (eighteen) years old, while Devaya with the age of 15 (fifteen) years was replaced with the name Sintiya aged 19 (nineteen) years. After faking the identity and without the consent of the parents of the victim, the defendant assisted by her husband flew the two victims to Balikpapan, East Kalimantan on a Lion Air flight through Adi Soemarmo airport in Solo. Arriving in East Kalimantan, it is continued with a road trip to Suwarsih's Idola cafe at Jaras, Barong Tongkok Village, Barong Tongkok District, West Kutai Regency. The defendant got a profit of Rp. 500,000.00 (five hundred thousand rupiah) and then return to Solo with a ticket that has been prepared by Winarsih. The two victims were not only song guides who just accompanied guests to sing and drink, but were also told to serve guests who wanted sex after closing music and provide services in rooms near the cafe. Based on this description, the prosecutor charged the two defendants with criminal sanctions under Article 83 in conjunction with Article 76F of the Child Protection Law. Providing criminal sanctions against each defendant in the form of imprisonment for 9 (nine) years with a deduction for the period the defendant is arrested and temporarily detained, plus a fine of Rp. 60,000,000.00 (sixty million rupiah) subsidies for 6 (six) months imprisonment with orders for the defendants to remain detained (Case of trafficking in persons with Case Registration Number: PDM-86/SKRTA/Euh.2/06/2016 and Agus Suciptoroso, SH as Public Prosecutor.

From some of the cases above, we can see that our laws and regulations are more focused on the perpetrators of crimes than on victims, especially children. There are also corporations that still use children as workers. Protection at work has also not become a concern for several corporations, because it is proven that they still use child labor. The Ministry of Manpower and Transmigration noted that 2.3 million children worked out of a total of 8.4 million children. According to the Commissioner for Trafficking and Child Exploitation, the Indonesian Child Protection Commission (KPAI), Ai Maryati Sholihah, this figure shows that many children are trapped by workers (KPAI, 2019). The obligation to protect child labor must not only be carried out by employers who employ children, but must also be carried out by the Government. The government is obliged to make efforts to overcome children who work outside of work relations. The aim of these countermeasures is to eliminate or reduce children who work outside working relationships. These countermeasures must be carried out in a planned, integrated, and coordinated manner with related agencies.

The handling of children as victims of the criminal act of trafficking in the Satreskrim District / Police has the following methods:

1. Treatment that is right or true (correct), not prejudice, and if necessary personal;
2. Providing information to victims. Information must be provided from an early stage and must be accurate, relevant and clear;
3. Respect / appreciation for the privacy of the victim;
4. Security protection guarantees for the victim's party: the safety of the victim and the victim's family and friends of the victim must be given priority;
5. To provide assistance and help whenever possible, including referral of victims to non-governmental organizations engaged in victim assistance;
6. To make maximum use of all possible assistance available, in the context of criminal investigation, to provide compensation to the victim;
7. There is a need to provide special treatment for children.

The police, especially the district / city police unit, have standard operating procedures in handling cases of children as victims of human trafficking, namely using the human trafficking Law. The form of handling provided by the police to handle cases of children as victims of trafficking in persons. In accordance with the main task of its function, the police, especially the criminal investigation unit, the protection unit for women and children, is to enforce the law relating to children as victims and children as suspects. The services provided are as follows:

1. Receiving every complaint from the public;
2. Investigators in cases involving children, are carried out by special investigators, namely the women and children protection unit;
3. To be given a special room for investigating cases of protection of women and children;
4. Investigators keep the identity of children as victims and children as perpetrators confidential;
5. Providing assistance to children as victims, in this case by Integrated Service Center for the Protection of Women and Children;
6. The Bapas provided assistance to children as perpetrators;
7. Conducting investigations up to Stage P.21 and Stage II of handing over the suspect and evidence to the Public Prosecutor.

Every case handling is carried out in accordance with applicable laws and in accordance with Standard Operating Procedures. The relationship with the victim's parents in the trafficking case according to the district / city police chief of the Criminal Investigation

Unit is the parent in this case, the parents are used as a companion during the investigation process.

According to data, cases of criminal human trafficking, often occur in metropolitan cities and border areas. Such as Jakarta, Surabaya, Banyuwangi and Bali. Children often get injustice, both in social, in emergency situations, family, alternative care, religion, culture, civil rights, participation, health, drugs, education, pornography, cyber crime, children dealing with the law, trafficking, and exploitation (Setyawan, 2019).

*BARESKRIM POLRI* data records that during 2010 to 2013 there were 467 cases of trafficking. The number of children who are victims of trafficking and exploitation is 197 people, mostly girls (Setyawan, 2019). Based on data from *BARESKRIM POLRI* from 2011 to 2013, the largest types of work exploiting children were Commercial Sex Exploitation of Children with 205 cases, Economic Exploitation (Child Labor) as many as 213 cases (Setyawan, 2019). From data in 2017, the National Police's Bareskrim Task Force has arrested 30 suspects in that case and managed to save 1,083 Indonesian citizens who were victims (Okezone.com, 2019). Indonesia's position as a country that has a relatively large population and the availability of minimal employment opportunities coupled with the limited quality of human resources, many victims choose to work abroad which promises to be very high wages by the perpetrators (traffickers) to exploit the victims. The destination countries for victims of trafficking.

From the data above, it is proven that even though there are any regulations, child trafficking is increasingly prevalent. A child must be protected by all people, be it groups or individuals, private or government organizations, either directly or indirectly. Children who become victims of trafficking are used for prostitution to exploitation. What is meant by victims are those who suffer losses physically, mentally and socially. Protection of children as victims of human trafficking, based on the human trafficking Law. Chapter V Article 43 states that the protection of witnesses and victims of criminal acts is carried out based on Law of the Republic of Indonesia No. 13 of 2006 concerning protection of witnesses and victims. The protection model based on the human trafficking Law does not differentiate between children and adults, Article 44 states that victims are given the right to confidentiality of the identity of victims and witnesses, and their families to a second degree. Article 47 assigns the task to the police to provide protection, both before, during and after the case examination process.

As explained in the background, the implementation of victim protection in the legal process of the criminal justice system is still sad and not optimal. Even according to Arif Gosita, the detention of the suffering of victims, especially those who experienced sexual violence, can be divided into three stages, namely (Gosita, 1987):

1. Before the Court Session

Child victims who experience sexual violence in particular suffer mentally, physically and socially because they try to report to the police, are sick and psychologically disturbed. Furthermore, in order to collect data as evidence that a criminal act has been committed, the victim must meet face to face with the police to tell the incident that the victim has experienced, and never realized that all legal officers will cause trauma to the victim. In addition, the victim also felt fear with the threat of the perpetrator as a result of reporting so that there would be retaliation against him.

2. During the Court Session

A witness in the court, the victim must attend at his own expense. Children as victims of sexual exploitation must repeat stories about their own bitter experiences and reconstruct events they have experienced. The victim is confronted with the perpetrators she hates. As well as the victim must face the defendant or lawyer on the part of the perpetrator who tries to eliminate the wrongdoing of the perpetrator. Prosecutors in criminal justice, represent the

victims. But it can happen that his representation does not benefit the victim. It is not uncommon for victims to face offenders who are more capable mentally, physically and socially than the victims.

### 3. After the Court Session

After the court hearing, the problem has not stopped. Victims still have to face all kinds of difficulties, especially not getting compensation from anyone. Health maintenance remains his responsibility. Victims still have fear of the perpetrator's threat. There is a possibility that the victim is not accepted into the family and environment as before, because the victim is considered to have a disability. His mental suffering will increase, if the perpetrator is released or lightly punished (Gosita, 1987).

Most of the Indonesian people do not realize that the cultural and social values prevailing in Indonesia today, have marginalized Indonesian children specifically in the context of human rights and discriminated against children. There are many products of legislation on child protection, it is appropriate for the government to start placing children as the top priority to obtain protection. Protection is both a juridical and normative juridical perspective. Especially protection for victims of human trafficking.

Emphasis on protection of victims becomes urgent, by knowing, understanding who the victim is. Article 1 Paragraph (3) of the Witness and Victim Protection Law is regulated by stating that the victim is someone who has suffered physical, mental and / or economic loss as a result of a crime (Setyowati, 2016).

The victim of a criminal act who is sexually exploited not only experiences physical suffering but also experiences psychological suffering. Providing a protection for victims of human trafficking is a state obligation, as stated in the Law on Protection of Witnesses and Victims in Article 1 paragraph (8) that "All efforts to fulfill rights and provide assistance are to provide a sense of security to Witnesses and / or Victims carried out by the Witness and Victim Protection Agency or other institutions in accordance with the provisions of this law. "In addition, it also explains the forms of protection as in Article 5 paragraph (1a)" The victim has the right to obtain protection for the safety of his personal, family and property, and is free from threats regarding the testimony he will, is being, or has given."

As has been regulated in Article 8 of the Witness and Victim Protection Law, there are forms of protection that can be proposed by victims, starting from the first stage of the investigation starting and ending in accordance with the provisions of the law. If there is no request from the victim, then the victim and her family will do it by themselves with the initiative to assist the victim and her family.

The absence of protection for victims of sexual exploitation we often encounter when there are judicial proceedings in criminal cases, legal officers do not provide protection for victims, it is proven that when a case is tried, the victim always tries to cover his face with cloth, clothes, headscarves, or his hand. Because the aggressive mass media crew wanted to see the victim's face in detail. In addition, several media clearly explain the initials of the victim's name, so it is easy for the public to know the identity of the victim (Setyowati, 2016).

Every child needs legal protection from various parties. Basically, children cannot protect themselves from various threats that can cause harm physically, mentally and socially. Children must be assisted so that they do not suffer physical, mental and social harm. Protection of child trafficking victims is very important for victims and their families as well as for perpetrators of child trafficking crimes.

Knowing from the data obtained by the author, the suitability of the application of legal protection in order to protect children as victims of crime is still not effective. Lack of specificity of regulations that lead to the success or failure of implementing legal protection for child victims of trafficking. Legal protection efforts for children as victims of human



trafficking that can be implemented are preventive measures. One of the prevention efforts, measures to prevent the practice of trafficking in persons against children. Through preventive measures, the hope is that there will be no more child victims involved in trafficking cases. The government should conduct regular outreach, especially in areas prone to child trafficking to the community so that they are sensitive to the environment, so that they are stimulated to create a community that cares about children and strives for protection of children.

## **CONCLUSION**

Legal protection for child victims of human trafficking is inadequate in accordance with statutory regulations and human rights. Taking into account the appropriateness of the application of legal protection in order to protect children as victims of crime is still ineffective, it is necessary to make adjustments to the principles and regulations of children in the perspective of restitution, compensation and rehabilitation as well as the perspective of regional regulations

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pribadi atau kolektif, telah menderita kerugian, termasuk luka fisik atau mental, penderitaan emosional, kerugian ekonomi atau kerusakan cukup besar atas hak-hak dasarnya, lewat tindakan atau penghapusan yang bertentangan dengan hukum pidana yang berlaku di Negara-negara Anggota, termasuk hukum yang melarang penyalahgunaan kekuasaan yang bisa dikenai pidana.

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