

Land Acquisition by the Government and the Impact for the Community

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Abstract: Land acquisition, unlike the purchase of land, is the forcible take-over of privately owned land by the government known as the process by which the government acquires private property for public purposes. Sociologically, land acquisition is more detrimental to the community because damage sometimes does not meet the needs of the community thus the community clearly denies and rejects to the land ownership even though in the end the Government or the State has the power to possess land by expropriating land rights. The purpose of the recent formulated writing is to find out how the impact of the exemption of land rights carried out by the government towards the community. With regard to this issue, this study uses normative method where this study only uses legal research conducted by examining library material resources, afterwards discussion and seeking the findings are carried out hence it can be concluded that the takeover of land rights carried out by the government is liberation through land rights, reforms of land rights by firstly conducting deliberations with appropriate and fair compensation, however in its factual implementation the land acquisition does not proceed smoothly due to the compensation value process was immeasurably far away from what is expected by the community thus the community intends to be disadvantaged in this position. On the other hand, in concerned with preserving land, the level of people's understanding on property rights as well as the orientation of the public purposes is still very degraded.

Keywords: Land Acquisition; Government; Impact on Society

INTRODUCTION

Land has important and strategic meaning in human life. Besides being a place to live and act, land encompasses the fundamental source of life. Since ancient times human

beings have used it for versatile kinds of businesses such as plantation agriculture and for the purposes of building settlements. Because of the importance of that land has high economic value. Land for human life,

contains a multidimensional meaning. First, from the economic side, land is a means of production that can bring prosperity. Second, politically, the land can determine a person's position in community decision-making. Third, as a cultural capital, can determine the high level of social status of the owner. Fourth, the land is sacred, because at the end of life everyone will return to the land¹. For indigenous peoples and local communities, in addition to having social and economic functions, land also has religious value and is not just a matter of an immovable object, it is a noble value for the community, and furthermore there are differences in the meaning of the function of the land and raises contradictions and claims on it.

The current land tenure reform in Indonesia is still considered similar with the land tenure in the past several decades, especially in the Dutch colonial era. Although Indonesia has Law No. 5 of 1960 concerning Basic Agrarian Basic Regulations (UUPA) which has a

popular vision, the current land tenure policy is more pro-capital and does not benefit the lower middle class.

As well, land acquisition developments often forgets the equity factor in land control. Many parties include the government has violated its social function, not respected the customary rights of indigenous people, as well as desecrated the maximum limit of land ownership, provided rights to community land, and surrendered land. Land conflicts usually arise from differences in perspectives, differences in claims, and interests among the majority of people who need land as their main source of life and others who need land for large-scale economic activities.²

Land acquisition is quite complicated in Indonesia, vertical conflicts among involved communities and government interests are are not uncommon premises, a struggle between the government on public purposes reasons and community ownership of land and discrepancies in some matters such as change problems

¹ Yuldiana Zesa Azis (2017) *The Essence of Indigenous Land Release for Investment Interests*. **Papua Law Journal**. Vol. 2 Issue 1, November. p. 85

²YLBHI & USTRALIAN AID. 2014. *Panduan Bantuan Hukum di Indonesia*. Jakarta: Yayasan Obor Indonesia. p. 111.

losses and allotments of land acquisition or revocation are inevitable while the rules sometimes do not explain the solution in a clear and detailed manner.

In 1960 the birth of basic agrarian law (UUPA) was not explicitly regulated regarding land acquisition. In Article 18 of the UUPA, it is stated that in the public interest, including the interests of the nation and the state and the common interests of the people, land rights can be revoked through providing appropriate compensation and according to the manner stipulated under the Act. From the provisions of Article 18 of the UUPA it can be demonstrated that the land acquisition can be carried out as long as the land is intended for public purposes.

Countries with involved public interest reasons have the authority to carry out land acquisition mandated by law and other regulations, on the other hand the implementation of the authority to take land rights by the government to the public is not immediately carried out without considering social, economic and psychological from society, because most cases when the government is

willing to do the Liberation and Revocation of land rights, the society regarded as victims of land owners who will be released or revoked ownership of their land, and the problem of Replacing damages is a fairly fundamental problem emerging during the land acquisition process. Implementation of Exemption of land rights is highly demanded to guarantee the fulfillment of benefits and fulfill a sense of justice from the community, given that the sense of justice is abstract, therefore the law is presented to complement the sense of justice of the community, and continue to consider the principles of justice where the simple fairness prioritizes the principles of concrete life, such as the principle of equality, principle of equality, principle of qualification, objective principles (for instance figuring out from someone's achievement) and subjective principles,³ Therefore, the discussion to be carried out in this paper is to figure out the impact of the Exemption of Land Rights carried out

³ Sabian Utsman. (2017). *Dasar-Dasar Sosiologi Hukum Makna Dialog antara Hukum dan Masyarakat*. Collection of Reading Materials from the Faculty of Law of Unhas. Collected by Irwansyah. p. 190.

by the government towards the community.

From such observations, the main problem that can be discussed and analyzed in the current paper is; How does Legal Sociology figure out the Liberation through Land Rights carried out by the government and its impact to the community?

And therefore, under the current formulated paper, the approach method used is normative legal research, which is a library research through examining secondary data in the primary form, secondary and tertiary legal materials relating to legal regulations regardless with land acquisition.

The research specifications used are analytical descriptive, specifically to completely describe, thoroughly analyze the problems of land acquisition by the government and its matters.

DISCUSSION

An approach within legal studies or under a field of legal sociology, each legal phenomenon will be highlighted as a subsystem that is mutually enclosed to one another, phenomena or legal occurrences that issue in the midst of society will be

seen as symptoms in the form of reasons, functions and benefits to the impact caused to the community.

This area does, however, take an interdisciplinary as opposed to dual approach in analysing and understanding the relationship between law and society. Therefore the legal sociology is the science that considers law not only the normative side but is a set of empirical facts, something that is real in society, which is viewed from various sides until there is a balance of information about social phenomena about law.

With this line of premises, in turns, dealing with legal cases as a phenomenon conveys a change in our perspective in perceiving the law, not only in the world of articles contained in legislation, abstract world, aspired world, a real world but the whole world telling the story of legal struggles in the wild world, a world where there is no starting point.

Furthermore, stated number of fundamental object matters of legal sociology as follows:⁴

- a. According to Donald Black in reviewing law as Government

⁴ Achmad Ali. (2012). *Menjelajahi Kajian Empiris Terhadap Hukum*. Kencana Prenada Media Grup. Jakarta p.19

Social Control, much attention has been devoted to the legal sociology to examine law as a special set of rules that apply and are necessary to enforce correct conduct in social life. Law is seen as a reference that will be used by the government in terms of controlling the behavior of citizens and those relationships between individuals which are of direct concern to society.

- b. The issue of social control by legal sociology is examined in relation to socialization, such as the process of forming society. As social beings who realize existence as a social principle that exists in their society, which includes moral, religious and other social rules. With such notable awareness expected by the community to obey it, related to that, it appears that legal sociology tends to view socialization as a process that precedes and becomes a pre-condition so as to enable

social control to be carried out effectively.

- c. The other main object of legal sociology is stratification. Stratification as an object that discusses legal sociology is not legal stratification as stated by Hnas Kelsen with Groudnom his theory, but stratification expressed in a social system. In this case, it can be discussed how the impact of social stratification on law and legal implementation.
- d. Another considerable object of legal sociology is a discussion of change, in this case including changes in law and changes in society and the reciprocal relationship between the two. One of the important perceptions in the study of legal sociology is that changes that occur in society can be assessed, in the sense that they are planned in advance by the government by using legal instruments as tools.

Legal sociology as a science that is theoretically analytical and

empirical highlights the influence of other social symptoms on the law and vice versa. Regarding the perspective of legal sociology there are two main perspectives,

Perspectives state that legal sociology must be disposed a global function, this indicates that legal sociology must produce a synthesis between laws as a means of both social organization and justice. In its function, the law can obtain assistance that is not small from the sociology of law, in identifying the social context in which the law is expected to function.

Other perspectives state that the advantage of legal sociology is precisely in the field of information and explanation. Regarding the rules process, the legal sociology can reveal data about the consistency within the community that leads to the formation of law (both through the decision of the ruler and through joint provisions of the citizens, especially those concerning facultative law).⁵ In dealing with legal cases as a phenomenon brings changes to our perspective in figuring

out the law, not only in the world of articles contained in legislation, abstract world, the fiction of a thinkable world, the real world but the complete world is the world which tells about legal struggles in the wild world, a world where there is no starting point. Quoting Duverger, Schuyt's Law is "*een neerslag van politieke machtsverhoudingen*" (a deposit of exchange between political forces in society).⁶ In this obvious issue, it is therefore argued that the law reflects the deliberation of the reality on certain communities. The conflicts are to be resolved by law by giving a juridical structure so that it becomes clear where each party is in the conflict and what they can and can do. As an institution for resolving conflicts, the law can be successful or not, between success and failure, there are gradations. We are not allowed to absolutely demonstrate that the law has succeeded or failed. It is feasible that the structuring and resolution of the laws can lead to new conflicts.

⁵ Soerjono Soekanto. (2016). *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Pres. p. 25.

⁶ Satjipto Rahardjo, (2017). *Sosiologi Hukum*. Collection of Reading Materials from the Faculty of Law of Unhas. Collected by Irwansyah. p. 140

The Meaning of Land Acquisition Rights

Land Acquisition is enteigning, revocation of rights to land and objects above it by the government to be employed as a means of public interest; the implementation of the revocation of the right is accompanied by compensation for the person or party who has the right to and the object beforehand, in a manner regulated by law.

Some textual meanings of land acquisition described as follows:

1. Presidential Decree No. 55 of 1993 stated Article 1 paragraph (1) states that procurement is any activity to obtain land by providing compensation to those entitled to the land. Article 1 paragraph (2) the release or surrender of land rights is the activity of releasing legal relations between holders of land rights controlled by giving compensation on the basis of consensus agreement.
2. Presidential Regulation Number 36 of 2005 states: Article 1 paragraph (3) land acquisition is any activity to obtain land by providing

compensation to those who release or surrender land, buildings, plants and objects - objects related to land or by revoking land rights.

3. Presidential Regulation Number 65 of 2006 stated Article 1:

“Land acquisition is every activity to obtain land by providing compensation to those who release or surrender land, buildings, plants, and objects related to land.”

Article 2 (1) The procurement of land for the implementation of development for public affairs by the Government or the Regional Government shall be carried out by means of the release or surrender of land rights. (2) Land management other than for the implementation of the development of public interests by the Government or the Regional Government is carried out by buying and selling, exchanging, or other means agreed on voluntarily by the parties concerned.

4. Law No. 2 of 2012 in Article 1 number 2:

Land acquisition is an activity of providing land by giving proper and fair compensation to the rightful party.

5. Presidential Regulation Number 71 of 2012 is explained in Article 1 number 2:

Land acquisition is an activity of providing land by giving proper and fair compensation to the rightful party.

Land acquisition broadly contains three elements, cited as follows:

1. Activities to get land, in order to fulfill land needs for the development of public interests.
2. Provision of compensation to those affected by the activity.
3. Release of legal relations from landowners to other parties.

Procedure or Process for the Exemption of Land Rights

This goes for improved, land as space, is basically neglected to increase. Additions are only possible on a limited scale due to certain natural events or due to technological

interference. On the other hand, naturally, the need for land use always get increased. Facing the possibility of these gaps, land shall be used as efficiently and effectively as possible. For such obvious reason, there must be a good management and management system for the land.

In 1960 the birth of the UUPA was not explicitly governed in regard to land acquisition. Whereas the revocation of land rights is strictly regulated in the UUPA. In Article 18 of the UUPA it is stated that for the public interest, including the interests of the nation and the state and the common interests of the people, land rights can be revoked, by substituting appropriate losses and according to the manner stipulated in the Law. From the provisions of Article 18 of the UUPA, it can be said that the revocation of rights to land can be carried out as long as the land is intended for public interest.

State authority in taking over land rights in the public interest in Indonesia is described by the right to control the state by having the authority to regulate and administer the State and in the exception of the importance of the new public can take

over rights to the people's land. on condition the state does not possess all the land, the State must pay compensation if the State is necessary to own land for people under the public interest.

The Government in this case is the Land Acquisition implementer in carrying out its duties to carry out the land acquisition process for the first time after a location agreement and subsequently conducts socialization and data collection of the owners of land acquired by liberation which is used for public interest development projects. This data collection includes types of ownership, ownership status, and other administrative data such as area, land boundaries and so forth.⁷ In addition, the government as the executor of land acquisition in the task of carrying out the process of land acquisition according to the acquisition of land must be grounded on democratic principles and uphold human rights by taking into the following accounts⁸:

1. Land acquisition is a legal act that results in the loss of one's physical and non-physical rights and the loss of property either temporarily or permanently;
2. Compensation provided must take into following account: 1) loss of rights to land, buildings, plants, 2) loss of income and other sources of life, 3) assistance to move to another location by providing new alternative locations equipped with appropriate facilities, 4) assistance recovery of income in order to achieve a condition equal to the situation before the takeover;
3. Those who are evicted because land acquisition must be taken into account in the awarding of compensation must be extended;
4. To obtain accurate data about those affected by evictions and the amount of absolute compensation carried out basic & socio-economic surveys;
5. It is obviously necessary to implement an agency responsible for carrying out takeovers and resettlement;
6. Ways of deliberation to reach agreement must be developed;
7. It is necessary to seek means of accommodating complaints and resolving disputes arising in the process of land acquisition.⁹

⁷ Mudakir Iskandar Syah. (2015). *Pembebasan Tanah Untuk Pembangunan Kepentingan Umum*, Jakarta: Permata Akasara. p. 37.

⁸ Maria S. W. Sumardjono. (2001). *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Jakarta: Penerbit Buku Kompas. p. 62.

⁹ Imam Koeswahyono in Paper Kelembagaan PTUP, Puslitbang BPN Des 2013. p. 11. Downloaded on Thursday Desember 26, 2018.

Current land acquisition problems can be found in various regulations, circulars or instructions issued by the Ministry of Home Affairs. Some notable points are as follows:

- 1) Minister of Home Affairs Regulation (PMDN) No. 15 of 1975 (December 13, 1975) concerning provisions concerning procedures for land acquisition for the benefit of the government.
- 2) Minister of Home Affairs Regulation No. 2 of 1976 concerning the use of land acquisition events for the private sector.
- 3) Circular letter of the Directorate General of Agrarian Affairs dated February 28, 1978 No. BTU 2/268/1979 concerning PMDN No. 15 of 1975 concerning provisions concerning procedures for land acquisition.

In practice now it turns out that Law No. 20 of 1961 was rarely used, meaning for land regulation in the framework of development and public interest procedures that were carried

out more by land acquisition procedures (PMDN No. 15 of 1975). This is because the revocation process (Law No. 20 of 1961) will take a relatively longer time and be more coercive to landowners; while the release procedure (PMDN No. 15 of 1975) is faster and is felt to guarantee that there will be no public unrest because the release is required to have deliberation hence there is an agreement.

Even so, PMDN No. 15 of 1975 provided a way out when we agreed (which was needed) could not be achieved by deliberation. This fact gives the impression that PMDN No. 15 of 1975 is mere simplification of forced revocation of other issues not only concerned with the amount of compensation in the deliberation, it is further concerned with the issue of settlements and livelihoods especially for land owners who live from farming.

According to PMDN No. 15 of 1975 the land acquisition can only be done if an agreement has been reached between the holder of the agreement concerning both the technical and implementation and regarding the size and form of

compensation. The agreement was carried out on a voluntary basis by means of deliberation. If efforts to release land according to the procedure are not achieved, the revocation procedure can be carried out as stipulated in Law No. 20 of 1961 provided that the land use or use was very urgent.

Land acquisition can not only be carried out for the benefit of government agencies, but also private institutions, namely in the case of projects that support the public interest or in the field of development interests in general as regulated in PMDN No. 15 of 1975 and PMDN No. 2 of 1976.

And if the meeting was not met with an agreement in the UPDN No. 15 of 1975 it was also not explained how if no agreement was reached in the deliberation for land acquisition, then the "revocation" procedure could be taken in accordance with Law No. 20 of 1961 consequently that the process will run longer.

For government purposes, land acquisition must be carried out by the Land Acquisition Committee formed by the Governor or the attorney of regional level I governors, by the

Regent / Mayor of the Level II Region for each Regency or Municipality consisting of:

- a. Head of the Regency / Municipality Agrarian Sub-Directorate as chairman concurrently member.
- b. An official from a Level II Regional Government office appointed by the Regent / Mayor of the Regional Head concerned as a member
- c. Head of the IPEDA / IREDA Office or appointed official.
- d. Head of Level II Public Works Service or appointed official, if concerning building land and or Head of Agriculture Service of Level II Region or appointed official if dealing with agriculture / plantation as a member.
- e. An official appointed by the agency that requires the land as a member.
- f. The head of the district concerned is a member.
- g. The Village Head or the equivalent as a member.
- h. An official from the office of the Regency / Municipality Agrarian Sub-Directorate who

is appointed as a secretary not a member.

Land Acquisition based on the criteria of existing public interest must continue to pay attention to aspects of justice in the provision of compensation to the rightful party. In the explanation of Article 2 letter b of Law Number 2 Year 2012, it states that what is meant by Justice is meant to "guarantee a reasonable replacement to the rightful parties in the process of land acquisition so that they have the opportunity to lead a better life". Fair terms in land acquisition for public interests are: 1. Can improve the socio-economic conditions of landowners who receive compensation, and at least be equal to the conditions before revocation or release of their rights; 2. Parties who need land can also obtain land according to their plans and designations and obtain legal protection; and 3. Justice formulated by law in the form of rights and obligations must reflect the justice received and felt by the parties.¹⁰

¹⁰ Sahnun, M. Yazid Fathoni, Musakir Salat. (2015). *Jurnal Penerapan Prinsip Keadilan Dalam Pembebasan Tanah Bagi Pembangunan Untuk Kepentingan Umum*. p.

In the context of land acquisition, if an agreement has been reached regarding the form / amount of compensation, payments must be made directly by the agency concerned with the surrender / release of land rights witnessed by at least four members of the land acquisition committee, including the District Head and the Village Head concerned.¹¹

Compensation System Exemption from Land Rights

Basically, land acquisition for public interest is carried out by providing proper and fair compensation. An assessment of the value of compensation for land affected by land acquisition for the public interest is determined by the Appraiser. To see the magnitude of the value of the loss to be determined, the Chairperson of the Land Procurement Executor will refer to the results of the assessment of the services of a public appraiser or appraiser.

After issuing the amount of the value of the loss, the party who

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¹¹ Soedharyo Soimin. (2004). *Status hak Dan Pembebasan Tanah* (Cetakan ke II). Jakarta: Sinar Grafika. p. 74.

controls the land object (in this case is the villager who owns the land) will be brought together in a meeting with the land agency to determine the size and form of compensation to be given to the residents. If the discussion for 30 days does not find an agreement, the party entitled to take the objection to the local District Court.

According to Florenshia, the compensation substance must be based on the following premises:

- a. Based on the product of a regulating legal decision.
- b. New compensation can be paid after the final decision is reached.
- c. Covers the fields of land, buildings and plants that are calculated based on agreed benchmarks.
- d. Compensation form: money and/or replacement land and / or resettlement, combination or other forms agreed by the parties.¹²

Based on Article 5 of Law 2/2012, landowners are mandated to release their land at the time of land acquisition for the public purposes after giving compensation or based on court decisions that have acquired

¹² Florenshia. *Dalam Jurnal Tinjauan Yuridis Ganti Kerugian Atas Hak Milik Dalam Pengadaan Tanah Untuk Kepentingan Umum Di Kecamatan Medang Deras*(Fakultas hukum Universitas Sumatera Utara.2016)h.7. Downloaded on Thursday, Desember 26, 2018.

permanent legal force. This is conducted once a mutual agreement has taken place.¹³

Social Impact on Exemption of Land Rights

Generally figuring out, one basic concept of the study of social impact originates from the fundamental premise that this society is seen as a part of the ecosystem. Change from one subsystem to another. The impacted area is demonstrated as an ecosystem with various interconnected components. Much attention has been devoted to how the ecosystem functions, how it interrelates between subsystems, and the impact of what will happen and how long the impact will last. From such observations, there are three inter-interactive subsystems in society, social systems, economic systems, and physical systems or physical environments.

There are still few people in Indonesia who consider that ownership of land is an absolute ownership, meaning that it cannot be contested by anyone including the government or state. On such obvious

¹³ <http://blog.urbanindo.com/2015/10/tata-cara-ganti-rugi-lahan-atau-tanah/>. Downloaded on Thursday, Desember 26, 2018.

basis, landowners are not easy to give up their rights even though the land is highly necessary by the State for the public purposes.

Basically, the general public resisted not because they did not support government programs, only that the compensation process, if only using the standards contained in the NJOP, of course was completely inadequate from what the people expected, when compared to land that could support them from the beginning until for years by using it as agricultural land or utilizing functions that can produce, another proposition is that land for traditional communities is their “ancestors” when ownership has been passed away from generation to generation.

The land acquisition policy acquired in the laws and regulations as a *Das Sollen* (which is ideal according to the law), does not necessarily materialize as a *Das Sein* (in reality), the situation occurs in the community, where the process of compensation has not been effective as clarification to agree that the acquisition of land rights because compensation is sometimes much far

from the standard price of the land market.

The issue of land acquisition is very vulnerable in its handling, because it involves many people life. Because of the Government’s need for land for various types of development, it is notably understandable that the available state land is very limited. Moreover the only way that can be taken is to free land owned by the people, both those controlled by customary law and other rights attached to it.¹⁴

As a result of the procurement of land for the public interest, it affects landowners in this case the community or farmers who will lose their land, which must be turned into non-farmers, farm laborers, factory workers, rickshaw pullers, construction workers who had not previously imagined them. Land acquisition policy seems to deliberately ignore the calculation of losses due to land acquisition against changes in land use, how much does the government have to pay to change the national spatial map as a result of land acquisition, or vice versa, how

¹⁴ Soedaryo Soimin, *Op cit.* h, 7

much the party needs land for security of infrastructure that will be built by security apparatus due to getting resistance or rejection of citizens for certain formulated reasons.

It indicates the existence dichotomy between between the community and the government because it is very clear that no one may be arbitrarily deprived of their own property, property rights have a social function, revocation of property rights on an object in the public interest, is only permitted by reasonable compensation, in accordance with the provisions of the legislation. Every person has the right to defend their own rights as well as with others for their own development, family, nation and society in ways that does not violate the law.

Differences in views between land owners and the government who want to take land rights are classic problems that are prevalent in Indonesia, but until now the problem of land acquisition is still experiencing obstacles from various angles because on the other hand people have begun to think critically and dynamically so that a paradigm

shift occurs by the community. Geographically, especially in urban areas or accessible areas to public roads, they are experiencing renewal thus changes in the existing order in the community will directly affect the processes of land acquisition for the development of public purposes.

Basically, related to such obvious issues, the main task of the government is to protect, secure and prosper the community as a whole including the victims of land acquisition. The communities affected by land acquisition seek the right place for complaints, which sometimes find a place of complaint that is not found anymore, and finally changed their attitude into anarchist.

Even if the community persists in the process of land acquisition not to give it to the government or State, the State as the ruler still has tactical steps to do so through the revocation of Land Rights which is the mandate of the law. Hence, by using their rights, the State has the power to take over by force even by first holding negotiations and mediation through land acquisition. Therefore, it can be put into words that the community will be at the point of social

submission when the State has used its right to take over community land under the pretext of public interest.

CONCLUSION

Based on results obtained in this line of research, returning briefly to the conclusion as follows: the land rights transform carried out by the government to the community is through the land acquisition process, such as the revocation of land rights is firstly conducted deliberations with appropriate and fair compensation. In other words, in its factual implementation, land acquisition issues still seem to make up the bulk of problems and the land acquisition denies in making good progress because the compensation value process was immeasurably far away from what is expected by the community thus the community intends to be disadvantaged in this position. On the other hand, in concerned with preserving land, the level of people's understanding on property rights as well as the orientation of the public purposes is still very degraded.

The complexity of land acquisition conflicts that seem to cause two political interests between

the government and the community should be resolved as fairly as possible, such as through conducting a meeting between the government as land users and the community as owners who will sacrifice their land in this cited case. Moreover, it should be closer to each other's interests in order to get a meeting point, this draws attention to the government that will use appropriate land to return compensation, and on the other hand the community if the land is to be used by the government must be willing to sacrifice their land by not demanding excessive compensation.

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