

PROTECTION OF LAND RIGHTS HOLDERS IN LAND ACQUISITION FOR PUBLIC INTEREST IN NATIONAL DEVELOPMENT

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Abstract

Land acquisition for public needs is an activity to provide land by providing adequate and fair compensation, but in fact in the field there are still many people who do not agree with the nominal compensation for their land to be purchased for development in the public interest. Whereas in land acquisition there is the principle of social function for land rights to be used in accordance with their nature and purpose, it means that they must have benefits for right holders and the community. So that there is a need for a balance between individual interests and public interests for the community. Based on this, this research aims to find out and analyse the mechanism of land acquisition by the Land Bank Agency for land acquisition based on the UUCK and the juridical provisions for holders of land rights transferred for the public interest. This research is a normative juridical research with a statutory approach. The author uses secondary data using primary, secondary, and tertiary legal materials. The method of analysis used is qualitative method. This research concludes on the mechanism of land acquisition by the Land Bank Agency in Indonesia in accordance with Law No. 6 of 2023. The agency manages land for public interest and development in a transparent and non-profit manner. Its main tasks include planning, procuring, managing and distributing land, as well as planning licences and setting service rates. Land acquisition is conducted through several stages involving the public and the results are submitted to the Governor. If there are objections from the public, an evaluation is conducted. Landowners are entitled to fair compensation, and dispute resolution can be through the courts. The process must be fair and protect human rights by involving deliberation to reach an agreement.

Keywords : Land Rights, Land Acquisition, Public Interest, National Development

INTRODUCTION

Indonesia is a state of law that requires all actions to be governed by law. There are two bases of authority in the formation of laws: formal (institutional authority) and material (based on higher regulations). Law No. 5/1960 on Basic Agrarian Regulations provides legal certainty and recognises community rights to land, in accordance with the 1945 Constitution. It emphasises that all land rights are social, meaning that land can be taken for social purposes with fair compensation.

Compensation is essential in the land acquisition process, both for large and small projects. The history of small land acquisition started with Permendagri No. 2 Year 1985, which was later amended by Presidential Decree No. 5 Year 1993, and finally became Presidential Decree No. 36 Year 2005. However, these regulations were only

instructions for government officials and were not binding on the public. In 2012, Law No. 2 Year 2012 established a stronger legal basis for land acquisition, followed by a number of implementing regulations.

The government also issued a new regulation, PP No. 19 of 2021, which explains land acquisition for public interest. Land for public interest covers many sectors, such as infrastructure and social facilities. Small-scale land acquisition can now be done directly by the government if the area is no more than 5 hectares. However, in practice problems often occur, including planning difficulties and community resistance.

Legal issues that arise include land acquisition that is not in accordance with spatial planning and community opposition due to lack of information. A real-life case in Serang District shows land rights violations committed for industrial purposes, leading to a lawsuit from the community. New legal remedies are expected to address difficulties in the land acquisition process. The Job Creation Law passed in 2023 introduced a Land Bank Agency to manage land and facilitate procurement more systematically. However, there are concerns that changes in articles may reduce legal protection for landowners. Communities still feel injustice in the compensation received.

The precautionary principle and respect for landowners' rights must be applied in procurement to protect communities from arbitrary actions (Tehupeiory, 2017). Therefore, there is an urgent need to ensure fairness in adequate and balanced compensation so as not to harm individual rights and support fair and equitable development. Finally, there is an urgency for further research on the rights of landholders in land acquisition for public interest, so that regulations can provide adequate protection.

LITERATURE REVIEW

Definition of Land Rights

Land is the surface of the earth that is very important for human life (Ramadhani, 2022). With the increasing human population and limited land area, the state needs to play a role in maintaining order through binding rules. Land rights are rights that include powers, obligations and prohibitions related to actions on land. It emphasises the power of the right holder. Meanwhile, land use rights differ from land rights in that the owners of use rights are still allowed to use and benefit from the land they own. This distinction is important in understanding land-related rights (Ramadhani, 2018).

Land rights before the enactment of the UUPA

Prior to the enactment of the Basic Agrarian Law (UUPA), there were two legal systems governing land rights, namely western law and customary law. There were several types of land rights, namely:

1. Eigendom Rights are the highest property rights that can be inherited and are not limited in time, regulated in Article 570 of the Civil Code.
2. Erfpacht allows a person to enjoy land owned by another person with the obligation to pay annual tribute, and can also be inherited. '
3. Opstal Rights is the right to build a house or plant on someone else's land, as per Article 711 of the Civil Code.

4. Gebruik Rights gives permission to a person to use and benefit from another person's property for their own needs.
5. Adat Rights refers to individually owned land in the hak ulayat area of an adat law community, where the owner does not yet have full power and this right has a social function, such as inherited rice fields.
6. Ulayat Rights is the right of indigenous peoples to own the territory in which they live, which allows them to use the natural resources in the territory for their daily lives. The relationship between the indigenous people and the territory is hereditary and uninterrupted.

The Social Function of Land in Indonesian Land Law After the Birth of UUPA

On 24 September 1960, Law No. 5/1960 on the Basic Regulation of Agrarian Principles was published, known as the Basic Agrarian Law (UUPA). This law was an important step in unifying national land law in Indonesia and brought about fundamental changes in agrarian law, especially regarding land arrangements. UUPA stipulates that all land rights and other agrarian rights have a social function, which is evident in several articles, particularly Article 6 which states that all land rights have a social function. The elucidation of Article 6 highlights that the use of land should not be solely for private interests if it is detrimental to society. Land use should benefit both individual and community welfare. Although the UUPA prioritises the interests of the community, it also pays attention to the interests of individuals. Therefore, the interests of the individual and the community must balance each other to achieve the common goals of prosperity, justice and happiness of all the people. The concept of social function under the UUPA does not focus solely on individual rights, but rather seeks to create a balance between individual and community interests, which characterises the dualistic nature of land rights in the context of Indonesian agrarian law. (Parlindungan, 1986)

Land title certificate

Certificate comes from the Dutch language which means a letter of evidence or information about something. In the context of land, a land title certificate is a letter that proves land rights. Although the Basic Agrarian Law (UUPA) does not directly explain land title certificates, there is an article that states that land registration activities end with the provision of a certificate of proof of rights (Ramadhani, 2018). However, the article does not provide details on the type of title evidence in question. Legally, this evidence shows that there is a relationship between the information on the certificate and the actual situation of the subject of the land right. In other words, the land title certificate records information regarding legal ownership of the land. In Government Regulation (PP) 24/1997, there is no detailed definition of a land title certificate, but it is mentioned that a certificate is a proof of right for various types of registered land rights.

Land Acquisition for Public Interest

National Development aims to improve all aspects of people's lives and develop the country's system in order to achieve the National Goals, especially promoting public welfare. Achieving public welfare will create a just and prosperous society. For this reason, the government needs to continue to carry out development in various sectors

(Gunanegara, 2008). As population and welfare increase, people need better public facilities, and the government has the responsibility to fulfil this need.

However, there is a problem of limited land for development (Limbong, 2011). The government wants to build public facilities such as transport and energy, but is hampered by the limited land available, much of which is already titled. The land required is usually large and difficult to move. To acquire land, the government 'takes' people's land in the public interest, even at the expense of their rights, although compensation is provided. This process is known as land acquisition.

Law No. 2/2012 defines land acquisition as an activity that provides land by compensating eligible parties with fair and just compensation. The term 'decent and fair' indicates protection for rightful owners. Entitled parties can include landowners as well as other parties who own buildings or plants on the land. The law also describes various aspects of land acquisition, including: land acquisition is the provision of land with fair compensation; the object of procurement includes land, buildings, plants, and others; entitled parties are those who control or own the object; public interest is for the prosperity of the people; compensation is compensation in the land registration process; relinquishment of rights involves legal termination from the entitled party to the state; and the land agency is represented by BPN RI. The legal basis for land acquisition includes several laws, government regulations, and presidential regulations that support development for the public interest, including Law No. 6 of 2023 on Job Creation and several other related regulations.

Principles in land acquisition

Land acquisition for development in the public interest must follow several principles. First, humanity, which prioritises the protection of the human rights and dignity of citizens. Second, justice, ensuring that the entitled parties get fair compensation. Third, expediency, so that the results are beneficial to society and the state. Fourth, certainty, ensuring fair compensation and legal certainty. Fifth, openness, providing access to information to the public. Sixth, agreement, conducted through deliberation without coercion. Seventh, participation, involving the community from planning to development. Eighth, welfare, providing a positive impact on the community. Ninth, sustainability, ensuring sustainable development. Finally, harmony, land acquisition must be balanced with the interests of society and the state.

Changes in Land Acquisition System over Time

The historical and legal aspects of land acquisition in Indonesia, based on its association with colonialism and the governments of several time periods that influenced land policy, namely:

1. Dutch Colonial Era: The Netherlands established significant control over land through the Agrarisch Wet of 1870, which confirmed state ownership of land without private claims. Land without evidence of private ownership became state property, undermining indigenous peoples' rights and facilitating colonial exploitation.
2. Japanese Occupation: Japan ruled Indonesia from 1942 to 1945, continuing oppressive land acquisition practices. The military-led government seized land by force, with often inadequate compensation and for inappropriate locations, further disadvantaging local communities.

3. Post-Independence (1945 - 1960): After declaring independence, Indonesia faced a power vacuum that led to a legal framework for agrarian reform. The Basic Agrarian Law (UUPA) enacted in 1960 aimed to redistribute land and recognise the state's role as regulator rather than owner, emphasising the social function of land ownership..
4. During the New Order: the Indonesian government had strong control over land acquisition, using military force to achieve its goals, both in determining compensation and implementing land acquisition. Under Soeharto's authoritarian regime, democracy was regressed, leaving the people without a voice and only able to follow the will of the government. People faced many difficulties due to lack of transparency and unfairness in compensation assessment, adding to their suffering. Efforts to relocate landless communities through government programmes were not fully successful, as many were forced to return to their home areas due to inappropriate resettlement sites. In addition, the promised land is often wilderness, making it difficult for communities to maintain a source of livelihood.
5. The President issued Presidential Regulation No. 36 of 2005, which replaced the previous regulation on land acquisition. Although aimed at speeding up the process, this regulation has been criticised as reflecting authoritarian and unfair leadership, similar to policies in the New Order era. In this Perpres, the mechanism of land acquisition is explained, including the expropriation of land rights, which is considered contrary to the principle of protecting human rights.
6. Presidential Regulation No. 65/2006, which was an amendment to Presidential Regulation 36 and received much criticism. It emphasised the community development aspect and clarified the boundary between public and non-public interest land acquisition, as well as strengthening the compensation rules for affected communities. Then, came Law No. 2/2012 which provided advantages over previous regulations, with an emphasis on the need for fair compensation for the entitled. The law provides clearer procedures for the transfer of land rights and ensures that compensation covers not only physical but also non-physical losses. While it provides new hope for affected communities, there are still weaknesses in implementation, particularly related to the overly broad definition of public interest and the lack of attention to the social aspects of the losses experienced.
7. The implementing regulation of Law No. 2 Year 2012 is also continued by Presidential Decree No. 40 Year 2014 which regulates land acquisition for development. Criticisms of this law include efforts to resolve conflicts and disagreements over the amount of compensation, which is still considered inadequate. The survey method used in determining compensation has also been questioned, pointing to problems in legal procedures.
8. Law No. 6 of 2023 on Job Creation promotes changes in land acquisition rules previously stipulated in previous regulations. The law also provides new guidelines for the implementation of development in the public interest. Legal principles are important in understanding and applying legal norms, which include ethical and social values. More detailed regulations on land acquisition are contained in Articles 122-123, which explain the process of replacing land for development. Article 34 of the UUCK stipulates that the value of compensation for landowners is determined at the time the location of the development is announced, by an expert assessment submitted to a state institution. The amount of compensation is determined based on

the results of this assessment and is final and binding. The determination of the form of compensation involves the main provider of the property acquisition, the appraiser, and the beneficiary. Article 34 also emphasises the importance of time in valuation, so the cost of waiting must be considered in determining value. Land valuation must be completed before it can determine the property to be replaced. If there are discrepancies in the data, comparisons and revisions can be made which are then associated with the final evaluations. If there is a dispute over the amount of compensation, the authority to decide lies with the tribunal authorised to handle the case.

Land Bank Agency

The concept of Land Bank emerged in the 1960s in the United States as a solution to the problem of urban sprawl and the shortcomings of urban renewal programmes (Alexander, 2015). The first realisation of Land Bank occurred in 1971 in St. Louis, followed by Cleveland, Louisville and Atlanta in the following years. The early generation of Land Bank focused on the management of abandoned properties and tax arrears. Some scholars define Land Bank in different ways: Frank S. Alexander (2015) sees it as a government agency that takes over vacant properties to increase productivity; Terry Van Dijk & Diana Kopeva (2006) consider it a systematic acquisition of unused land for future development; and Bernhard Limbong (2013) emphasises its role in land management to solve land transfer and utilisation issues.

Based on Article 1 point 1 of Government Regulation No. 64 of 2021 on the Land Bank Agency, the Land Bank is defined as a special legal entity established by the central government to manage land with Management Rights, which allows the granting of Building Rights, Business Rights, and Use Rights to other parties. Based on Government Regulation 64 of 2021, the Land Bank has several functions, including planning, acquiring, procuring, managing, utilising and distributing land. The Land Bank must operate according to the principles of transparency, accountability, and nonprofit, with transparency meaning openness in decision-making, accountability relating to clarity of functions and responsibilities, and nonprofit indicating that income is used for the development of the organisation. The objectives of the Land Bank are to increase the productivity of land use, ensure the availability of land for development, budget efficiency, reduce conflicts in land acquisition, and minimise the negative impacts of land liberalisation. (Limbong, 2013)

Theoretical Overview

Legal Protection Theory

Legal certainty has two main meanings. First, there are general rules that help individuals understand what they can and cannot do. Second, it provides legal protection so that individuals are not exposed to arbitrary actions from the government (Syahrani, 2019).

Legal certainty guarantees justice, and norms that support justice must be obeyed. According to Gustav Radbruch, justice and legal certainty are important parts of the law, which must be maintained to maintain the security and order of the country. Positive law must also be obeyed (Ali, 2002).

Hans Kelsen states that law is a system of norms, which defines the actions that should be done. The rules contained in the law provide guidelines for individuals in interacting in society. These rules provide legal certainty by regulating actions against individuals (Marzuki, 2013). The author argues that the theory of legal certainty requires a set of

regulations that are effective and consistent in their implementation by human resources. The purpose of law is to encourage actions that conform to the rules. The enforceability of norms can occur through compliance or the implementation of prescribed sanctions. Legal protection theory is also relevant in analysing land acquisition for public interest and the compensation process.

Legal Justice Theory

The concept of justice is very important in law, closely related to the understanding of natural law. Aristotle identified two types of justice: distributive justice, which gives to each person according to his or her merit, and commutative justice, which gives equal shares without considering merit (Apeldoorn, 2009). Justice in law is connected to the values of Pancasila and its implementation in the life of the nation. Hans Kelsen (2009) states that a law can be considered just if it can properly regulate human behaviour. He also notes that justice relates to conformity with positive law. Social justice in Indonesia includes the fulfilment of rights and obligations in the life of the nation and state, and often relates to sharing and compensation in situations of injustice.

RESEARCH METHOD

This research is a juridical study that aims to find legal rules and solutions to legal problems (Fajar & Achmad, 2015). The research is descriptive, explaining how the Land Bank Agency acquires land according to Law Number 6 of 2023 concerning Job Creation, as well as legal provisions for land rights holders according to Government Regulation Number 19 of 2021 which was amended to Government Regulation Number 39 of 2023. The method used is a statutory approach (Marzuki, 2013), and the data used is secondary data from related literature. This research involved three types of legal materials: primary, secondary, and tertiary (Marzuki, 2005; Soekanto, 2018). Primary legal materials include laws and government regulations, while secondary materials include legal works that provide further explanation. Data collection was conducted by document study and analysis using qualitative methods to understand the issues under study.

RESULT AND DISCUSSION

MECHANISM OF LAND ACQUISITION BY LAND BANK AGENCY FOR PUBLIC INTEREST LAND ACQUISITION BASED ON LABOUR COPYRIGHT LAW

1. Land Bank Agency based on Law No. 6 of 2023 on Job Creation

Law Number 6 Year 2023 on Job Creation regulates the establishment of a Land Bank Agency by the Central Government. This agency is tasked with managing land as a separate state asset. Its duties include planning, acquiring, procuring, managing, utilising and distributing land. The Land Bank Agency ensures the availability of land for public, social, national development, economic equality, land consolidation, and agrarian reform. Its functions shall be transparent, accountable, and non-profit. The source of the Land Bank Agency's wealth comes from the State Budget, its own revenue, state capital participation, and other legitimate sources. The law also stipulates that land managed by the Agency is granted management rights, which can be followed by business use rights, building use rights, and use rights. Building use rights can be extended and renewed if they are fit for purpose. The Land Bank

Agency is authorised to prepare master plans, facilitate business licences, conduct land acquisition, and determine service tariffs. In addition, the Central Government is responsible for supervising the use of the land.

2. Land Bank Agency based on Government Regulation No. 64 of 2021 on Land Bank Agency

Government Regulation No. 64 of 2021 regulates the Land Bank Agency, which was established under the Ciptaker Law to manage land in Indonesia. The Land Bank is a legal institution that has special authority to ensure the availability of land for various purposes such as: public interest, social, national development, economic equality, land consolidation, and agrarian reform. It has important functions in planning, procuring, managing, utilising and distributing land.

The duties of the Land Bank include planning activities, land acquisition for public interest, land management, land utilisation, and land distribution. Land acquisition can be done through certain stages and includes land development, maintenance and control activities. Land development aims at housing, infrastructure, and strategic projects.

Maintenance involves legal and physical aspects to ensure legal certainty over land rights. Land utilisation is done through cooperation with other parties in the form of sale and purchase, lease, or other forms of cooperation. The distribution of land to various parties such as ministries, local governments, and communities is handled by the Land Bank. Support for the public interest includes facilities such as roads, sanitation, ports, as well as social and educational infrastructure. The Land Bank is authorised to develop master plans, provide ease of doing business, conduct land acquisition, and determine service rates. This demonstrates the important role of the Land Bank in supporting equitable economic development and infrastructure development in Indonesia.

3. Mechanism of land acquisition by the Land Bank Agency for land acquisition

After the implementation of the UUCK law, there have been changes in the regulation of land acquisition which is regulated in various related government regulations, including the Land Acquisition Regulation and the Land Bank Regulation. The Land Bank functions as an institution that has the duty and authority to conduct land acquisition for public purposes. The land acquisition process involves several stages, starting with planning which includes the preparation of planning documents that must involve the National Land Agency as well as relevant agencies.

The planning documents created by the Land Bank should include a variety of information, including the purpose and objectives of the development, conformity with the spatial plan, the location and extent of the land required, and a budget plan. Once the documents are finalised, the next stage is preparation, where the Land Bank notifies the community of the development plan, conducts site data collection, and organises public consultations to reach agreement with those who have rights to the land.

If there are objections from the public or entitled parties, the Governor will form a team to evaluate the objections. This team will recommend whether the objection is accepted or rejected. If rejected, the aggrieved party can file a lawsuit to the State Administrative Court.

After location determination, the Land Bank starts the implementation of land acquisition through inventory and identification, assessment of compensation, deliberation of compensation determination, and compensation to landowners. This compensation must be made in accordance with the court's decision if there are objections.

The Land Bank is also responsible for the release of land owned by government agencies and ensuring that land needed for development can be used for the public interest. Proceeds from land acquisition will be turned into Land Bank assets.

Monitoring and evaluation is carried out by the government to ensure that the land acquisition process is carried out correctly and in accordance with applicable regulations. Land acquisition must follow the principles stipulated in the law and must be directed to the interests of public development, with a clear plan for land use after the procurement is carried out. The Land Bank should not hand over the procured land to private interests, so that the development process still supports the public interest.

JURIDICAL PROVISIONS FOR HOLDERS OF LAND RIGHTS TRANSFERRED FOR PUBLIC PURPOSES

1. Granting Compensation for Land Acquisition in the Public Interest for Freehold Land

Land rights in Indonesia are rights granted to citizens to control and use land, water, and airspace. The types of rights regulated in the Basic Agrarian Law (UUPA) include property rights, business use rights, building use rights, use rights, and others. The right of ownership is considered the strongest right a person can have and has a social function.

UUPA provides for the state to manage land based on Article 33 of the 1945 Constitution, recognising private property rights that cannot be arbitrarily expropriated. It is also regulated in several articles of the law on human rights, which affirms that everyone has the right to legal property rights. In the context of land acquisition for public development, compensation must be made for those who have rights to the land being used. The land acquisition process involves a series of steps from identification of land use to the granting of compensation, which must be done in an open and legally compliant manner.

Every procedure in land acquisition must follow clear rules, including the announcement of survey results and the determination of compensation values by authorised appraisers. The compensation can be in the form of money, replacement land, or other agreed forms. If there is no agreement, the landowner can file a dispute with the court. The party conducting the land valuation must comply with the standardisation and provisions of applicable laws. Land that is not removed from control within a specified time will become state property for public use. Indonesian regulations outlining the process and provisions related to land rights and compensation, including interrelated laws and government regulations, emphasise the importance of fairness in every step of land acquisition.

2. Legal Remedies for Owned Land Owners in the Granting of Compensation that is not in accordance with Applicable Regulations

Land certificates are important documents proving land ownership in Indonesia, where this ownership follows the principle of social function (Maulani, 2001).

Landowners are often unable to use the land as they wish because they must respect the rights of others. In land acquisition by the state, ownership rights can be expropriated if the land has a social function (Limbong, 2015). People whose land is taken expect compensation in excess of the market price, and some even wish to be compensated based on predicted future prices.

Land acquisition by the government can have both advantages and disadvantages. One of the problems is that there is often dissatisfaction between the government and landowners, which can lead to expropriation of land rights without consent. The law states that compensation should be fair to improve social life. In order for development not to disrupt social life, efforts should be made to minimise population displacement. Where displacement cannot be avoided, the party requiring the land must compensate fairly.

In the land acquisition process, there are agreements that need to be reached, and community involvement is essential. Oversight must be in place so that communities can participate in the process. Legal protection aims to ensure fairness in land acquisition, although sometimes there is a lack of clarity in the application of the law that can lead to disputes.

Compensation includes not only physical aspects but also non-physical aspects, which must be evaluated fairly. If there is any dissatisfaction regarding the compensation, the landowner can appeal through several legal steps stipulated in the law. The granting of compensation must be agreed upon through deliberation between the party requiring the land and the landowner. The concept of depositing compensation in court is problematic as it can deprive landowners of their rights without adequate legal protection. Overall, the land acquisition process should involve dialogue and fair agreement between all parties to ensure legal certainty and community welfare. (Nastiti & Firmansyah, 2021)

CONCLUSION

This research discusses the mechanism of land acquisition by the Land Bank Agency established under Law No. 6 of 2023. The Agency is tasked with managing and providing land for the public interest, national development, and agrarian reform in a transparent and accountable manner. The Agency's sources of wealth include the state budget and its own revenue. The Land Bank Agency has land management rights and the authority to plan and grant necessary permits. The land acquisition process starts with planning based on the Regional Spatial Plan.

The Land Bank shall coordinate with the National Land Agency in the preparation of the planning document. Next, the plan is announced to the public, and public consultations are held to obtain agreement. If there are objections, the Governor forms a team to evaluate and make recommendations. Once the location is determined, the Land Bank starts the procurement process with a land inventory, valuation and compensation which must be completed before the land is handed over to the Land Bank. Supervision is carried out by the government, and valuation must be fair and in accordance with the principles of procurement.

In the case of land rights transferred for public purposes, Law No. 5/1960 regulates the types of land rights, including property rights and business use rights. The process of recognising land rights is done by following procedures that prioritise justice and legal certainty. The granting of compensation is considered important and must be through

deliberation, with the provision that if landowners object, they can file objections within a certain time limit. In emergency conditions, right holders may receive quick compensation. If there is a dispute about the value of compensation, it can be resolved in court. The land acquisition process must be fair and provide adequate compensation. If there is no agreement, landowners can apply to the courts, but often this process does not provide sufficient protection. Community involvement in planning and monitoring is essential to reach a fair agreement on land acquisition.

SUGGESTION

Based on the conclusions obtained, the author provides several suggestions. First, the implementation of land acquisition for the public interest is good, but attention needs to be paid to its implementation in the field, because land banks interact with people who have land rights. Second, the mechanism of land acquisition is systematic, but the public does not understand the stages. Therefore, socialisation needs to be held to educate the public about land acquisition. Third, optimisation of land acquisition can be done through seminars for implementers, so that they can carry out their duties with the aim of creating justice and legal certainty.

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