

State Of Law: Measuring Advocate Organizations Compliance With Jurisdictions That Have Enforced Power Of Law

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ABSTRACT

This research is the output of the Research Contract 1075/D5/SPKP/LPPM/UNPAM/X/2021. The purpose of this research is to determine the compliance of the Advocate Organization with the name of the Perkumpulan Advokat Indonesia on a court decision that has permanent legal force related to the PERADIN organization brand dispute. The method used is normative research with a statutory approach and a case approach that occurred in the Commercial Court at the Central Jakarta District Court where the decision to be analyzed is the Supreme Court of the Republic of Indonesia Decision Number 6K/Pdt.sus-HKI/2016 dated 26 May 2016. Results The research shows that the advocate organization of the Perkumpulan Advokat Indonesia has illegally used the PERADIN Mark belonging to the Persatuan Advokat Indonesia and the decision has permanent legal force. Even though there has been a final and binding decision, the Perkumpulan Advokat Indonesia did not voluntarily implement the decision, and even filed 5 lawsuits in a row, 3 trademark lawsuits at the Commercial Court at the Central Jakarta District Court, 1 lawsuit at the Jakarta State Administrative Court and 1 Action Lawsuit. Against the Law at the North Jakarta District Court. The implication of this writing is to encourage advocate organizations to have compliance in carrying out judges' decisions that have permanent legal force so that the advocate organization has integrity in upholding a just law.

Keywords: Rule of Law, Legal Compliance, Organization of Advocates

A. Background.

The State of Indonesia is a state of law in which there are law enforcement officers, one of which is an advocate. Advocates take shelter in advocate organizations. Every advocate must, of course, comply with the applicable laws in Indonesia, including the advocate organization where the advocate belongs. In a state of law guaranteeing freedom of organization is no exception in organizing advocates. Sometimes in advocate organizations there are divisions where the management claims to be an organization whose management is legitimate even though they use the same organization name.

In this study, what will be investigated is the split of the advocate organization of the *Persatuan Advokat Indonesia (Peradin)* where in 2014 the fractional organization established an advocate organization with the name *Perkumpulan Advokat Indonesia* with the same abbreviation, Peradin. *Perkumpulan Advokat Indonesia* claims that its organization is the most entitled to the name Peradin abbreviation.

Due to the actions of the *Perkumpulan Advokat Indonesia*, there was a trademark dispute which was tried in the Commercial Court at the Central Jakarta District Court with case register No.27/Pdt.sus-Merek/2015/PN.Niaga.Jkt.Pst. where the *Persatuan Advokat*

Indonesia has sued the *Perkumpulan Advokat Indonesia* over the use of the Peradin mark by the *Perkumpulan Advokat Indonesia* and the Panel of Judges in the case won the case by partially granting the lawsuit.

Not accepting the decision, the *Perkumpulan Advokat Indonesia* then filed an appeal to the Supreme Court which was registered with No.6K/Pdt.sus.HKI/2016 with the result that the Supreme Court decided to reject the appeal from the *Perkumpulan Advokat Indonesia* with the consideration that the *Persatuan Advokat Indonesia* was the first owner. Peradin “first to file”, because the brand owned by the *Perkumpulan Advokat Indonesia* contains similarities in essence that can confuse the consumer community. In addition, the petitioner for cassation uses the term "Association" while the owner of the "brand" and "logo" in dispute is the "*Persatuan Advokat Indonesia*" as registered with the Director General of Intellectual Property Rights, Ministry of Law and Human Rights, then the two organizations are different organizations.

The Supreme Court emphasized that as a different organization it must have its own organization logo. Therefore, the argument that the *Perkumpulan Advokat Indonesia* refuted that the Indonesian Advocates Association's brand as the same organization as the *Persatuan Advokat Indonesia* but has different management due to divisions among Peradin members is an unacceptable argument.

After the decision, instead of obeying the judge's decision which had permanent legal force voluntarily, the *Perkumpulan Advokat Indonesia* filed 5 lawsuits in a row, 3 trademark lawsuits at the Commercial Court at the Central Jakarta District Court, 1 lawsuit at the Jakarta State Administrative Court and 1 lawsuit Unlawful Acts at the North Jakarta District Court. This proves that the *Perkumpulan Advokat Indonesia* as an advocate organization does not comply with and implement court decisions that have permanent legal force.

B. Formulation Of The Problem

The formulation of the problem in this research is how is the compliance of the *Perkumpulan Advokat Indonesia* as an advocate organization in carrying out the judge's decision which has permanent legal force?

C. Research Methodology

The research methodology used is normative research with a statutory approach and a case approach that occurs in the Commercial Court at the Central Jakarta District Court

where the decision to be analyzed is the Decision of the Supreme Court of the Republic of Indonesia Number 6K/Pdt.sus-HKI/2016 dated 26 May 2016.

D. Discussion And Results

Advocates are a noble profession and have legal knowledge in carrying out their profession. Research on the professionalism and immunity of advocates has been carried out by Aldis Sanndika (2016) which reviews the rights of advocate immunity where advocates in carrying out their profession must be in good faith, must comply with and not violate applicable laws and regulations and comply with the advocate's code of ethics with a view to maintaining noble profession (*officium nobile*) [1]. Another study from Abdul Fatah (2018) regarding the role of advocates in handling litigation cases shows that the existing judicial power requires the role of the advocate profession in the context of law enforcement [2]. Furthermore, Hibnu Nugroho (2019) said that to maximize the role of advocates, it must start with an advocate organization that encourages all its members to actually become lawyers with integrity, and quality and not just produce top advocates [3].

The three studies show that the role of advocate organizations is very important in law enforcement in Indonesia. Advocate organizations are able to produce advocates who are professional, ethical and comply with applicable laws. As an organization, of course, it is carried out as well as exemplifying its compliance with the law, including court decisions that have permanent legal force as one of the end results of litigation legal efforts.

The results showed that the Indonesian Advocates Association did not voluntarily implement the decision of the Supreme Court of the Republic of Indonesia Number 6K/Pdt.sus-HKI/2016 dated 26 May 2016. Ralang Hartati and Syafrida (2021) stated that the execution of decisions could be carried out voluntarily and by force. The implementation of the judge's decision is voluntarily carried out directly by the losing party without court intervention. In practice the losing party is not willing to carry out the judge's decision voluntarily, then it is carried out by force through the district court that decides the case [4]. Likewise, research conducted by Susanto (2019) states that execution as a legal action carried out by a court against a losing party in a country is a follow-up rule and procedure for the case examination process. Therefore, execution is nothing but a continuous action of the entire civil procedural law process. Execution is an integral part of the implementation of the procedural rules contained in the HIR or RBG. For everyone who wants to know the guidelines for the rules of execution, they must refer to the laws and regulations stipulated in the HIR or RBG [5].

The evidence that the *Perkumpulan Advokat Indonesia* did not implement the decision voluntarily is by filing 5 lawsuits in a row, 3 trademark lawsuits at the Commercial Court at the Central Jakarta District Court [6], 1 lawsuit at the Jakarta State Administrative Court [7] and 1 Action Lawsuit. Against the law in the North Jakarta District Court [8], besides that the *Perkumpulan Advokat Indonesia* proved its disobedience to a decision which has permanent legal force to apply for trademark registration at the Director General of Intellectual Property with Application Number JID2020041632 class code 45, filed on 29-07-2020, Number Application DID2020066904, class code 41, applied for 03-11-2020, application number JID2020064628 class code 42, applied for 23-10-2020, application number DID2020064645, class code 16, applied for 23-10-2020, application number J002019022393, class code 45, requested by 30-04-2019 [9].

By registering the 5 marks above, it proves that the *Perkumpulan Advokat Indonesia* not only did not comply with the decision of the Supreme Court of the Republic of Indonesia Number 6K/Pdt.sus-HKI/2016 dated 26 May 2016 voluntarily but also disobeyed the judge's decision which had permanent legal force and set an example. unprofessional behavior towards its members. Even by filing 5 lawsuits again, it seems as if they want to prove that the organization is taking legal action, but in fact it is an act of contempt for the court product, namely the judge's decision which has permanent legal force.

The five lawsuits are 3 trademark lawsuits in the Commercial Court at the Central Jakarta District Court with Case Number First, No. 62/Pdt.sus.Merek/2020/PN.Niaga.JkT.Pst.. which was decided the lawsuit could not be accepted because the lawsuit had been overdue or expired and at the level of cassation at the Supreme Court of the Republic of Indonesia, No. 919K/Pdt.sus-HKI/2021 dated 28 July 2021, rejecting the appeal from the Indonesian Advocates Association. Second, case No.65/Pdt.sus.Merek/2020/PN.Niaga.JkT.Pst.. which was decided the lawsuit could not be accepted because the lawsuit mixed the lawsuit with different legal regimes and the Indonesian Advocates Association filed an appeal to the level of cassation. Third, case No.66/Pdt.sus.Merek/2020/PN.Niaga.JkT.Pst.. which was decided the lawsuit could not be accepted because the lawsuit was *nebis in idem* and was at the level of cassation at the Indonesian Supreme Court, No.872K/Pdt.sus -HKI/2021 dated July 28, 2021, rejected the appeal from the *Perkumpulan Advokat Indonesia* [6].

The *Perkumpulan Advokat Indonesia* also filed a lawsuit against the law at the North Jakarta District Court with case number 676/Pdt.G/2020/PN.Jkt.Utr [8]. which decided that the lawsuit could not be accepted on the grounds that the *Perkumpulan Advokat Indonesia*

was a different organization from the *Persatuan Advokat Indonesia*, for this decision the Indonesian Advocates Association filed an appeal to the DKI Jakarta High Court. The case at the Jakarta State Administrative Court No.110/G/2021/PTUN.JKT which was decided on August 31, 2021 also provided legal considerations that the *Perkumpulan Advokat Indonesia* did not have legal standing as an organization of advocates who disputed the organization of the *Persatuan Advokat Indonesia*. The case is in the appeal process at the Jakarta State Administrative High Court [7].

It should be in accordance with the decision of the Supreme Court of the Republic of Indonesia Number 6K/Pdt.sus-HKI/2016 dated May 26, 2016 which confirmed the Decision of the Commercial Court at the Central Jakarta District Court No.27/Pdt.sus-Merek/2015/PN.Niaga.Jkt .pst. On September 29, 2015, the *Perkumpulan Advokat Indonesia* stopped its activities that were detrimental to the *Persatuan Advokat Indonesia* related to the use of a mark in the form of the name and/or logo of Peradin. And further destroy and destroy all goods resulting from the actions of the *Perkumpulan Advokat Indonesia* using a mark in the form of the name and/or logo of Peradin belonging to the *Persatuan Advokat Indonesia*, including but not limited to letterhead, nameplate and sending news and pictures with the help of a computer, which is detrimental to the *Persatuan Advokat Indonesia*.

In browsing the website of the *Perkumpulan Advokat Indonesia*, a survey at the DPP office of the *Perkumpulan Advokat Indonesia* on Jalan Daan Mogot No.19-C, Grogol, West Jakarta as well as several DPW and DPC offices of the Indonesian Advocates Association showed that they still use the name and/or logo of Peradin without voluntarily changing or changing and eliminating the word Peradin on the nameplate and the website of the *Perkumpulan Advokat Indonesia* [10].

According to several studies, this action can be regarded as a non-compliance by the advocate organization on the judge's decision which has permanent legal force. Even some researchers such as Fajar Laksono Soeroso (2013) mention the term "Disobedience" in their research even though the object of research is the Constitutional Court Decision [11]. Novendri M Nggilu (2019) also mentions the term "disobedience" in his research on initiating sanctions for the act of Constitution Disobedience against the Constitutional Court Decision [12]. In this study, the researcher also mentions the term "disobedience" against court decisions that have permanent legal force which have been carried out by the *Perkumpulan Advokat Indonesia*. Softening into "non-compliance" with court decisions by advocate organizations becomes inappropriate if you look at some of the unlawful acts

committed by the *Perkumpulan Advokat Indonesia* after a court decision that has permanent legal force.

The researcher also disagrees with the research by Rendy H Permana (2016) which examines the feud against the Peradin logo which has been known by the public regarding Intellectual Property Rights, Trademarks and Copyrights. Peradin Ropaun Rambe owns the Intellectual Property Rights of Copyright while on the side of Peradin Frans Winarta owns the Intellectual Property Rights of Marks. Peradin Ropaun Rambe has been recognized by the government as the owner of the copyright for painting in the form of the Peradin logo since 1964, while Peradin Frans Winarta has only registered the Peradin logo as a brand in 2010, proving that Peradin Frans Winarta has bad intentions. Copyrights whose protection period has expired will become public property, and public property cannot be registered. Registration in the General Book of marks can only be abolished if there is a decision by the commercial court. The decision of the first instance of the Jakarta Commercial Court did not give a sense of justice, the panel of judges only adhered to the first to file trademark registration. There must be standard rules regarding trademark registration so that it is not subjective, that is, it is up to the mark examiner to accept or reject the registration [13].

According to Article 1 point 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications (UU MIG) it is explained that in essence one of the things that can be called and registered as a mark is a logo. While the protection of creation includes several forms, one of which is works of art in all forms of painting, engraving, calligraphy, sculpture, sculpture or collage (Article 40 paragraph (1) letter f of Law Number 28 of 2014 of 2014 concerning Copyright (Copyright Law). In the explanation of the article, the purpose of the image includes motifs, diagrams, sketches, logos, color elements and beautiful letter shapes. Regarding whether the logo is registered with trademark rights and copyrights, it is certainly not biased. Because in Article 65 The Copyright Law explains that the recording of works cannot be carried out on painting in the form of a logo or distinguishing mark used as a mark in the trade in goods/services or used as a symbol of an organization, business entity or legal entity.

For this reason, Rendy H Permana's research is no longer relevant in line with the recent MIG Law and Copyright Law as well as from the description of legal issues between the Indonesian Advocates Association and the Indonesian Advocates Association which have entered the realm of the courts where some decisions have permanent legal force and prove that the names and/or or the Peradin logo is the legal property of the Indonesian Advocates Association.

Discussing non-compliance and disobedience, of course, will then be connected with a discussion of relevant and lawful sanctions against advocate organizations that do not comply with the judge's decision which has permanent legal force. The Indonesian Advocates Association declared itself as a community organization. In this regard, the issuance of Law Number 16 of 2017 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations into Laws, has replaced the substance of Law Number 17 of 2013 concerning Community Organizations.

One of the pressing points for the issuance of this regulation is the abolition of the judicial process in the series of processes for the dissolution of social organizations. Whereas the administration of justice to uphold law and justice is one of the keys or pillars in the rule of law and the enforcement of human rights, considering that community organizations are one of the manifestations of the constitutional rights of citizens in the field of freedom of assembly and association. The potential for government arbitrariness as well as the opportunity to reduce freedom of assembly and association rights are becoming wider and wider.

However, in the problems raised by this research, the *Perkumpulan Advokat Indonesia* is in a position as an organization that does not obey decisions that have permanent legal force. Referring to the Community Organizations Law, there are legal violations committed by the Indonesian Advocates Association

Article 59 paragraph (1) of the Community Organizations Law states that Ormas are prohibited from: (a) using names, symbols, flags, or attributes that are the same as the names, symbols, flags, or attributes of government institutions (b) using names, symbols, flags without permission other countries or international institutions/agencies become the name, symbol, or flag of the Ormas; and/or (c) use a name, symbol, flag, or graphic that has similarities in principle or in its entirety to the name, symbol, flag, or image of another Ormas or political party. In relation to these provisions, it can be seen that the legal violations committed by the *Perkumpulan Advokat Indonesia* are the provisions of Article 59 paragraph (1) of the Ormas Law letter (b) and have been proven by a court decision that has permanent legal force.

Article 60 (1) of the Community Organizations Law states that Ormas violating the provisions as referred to in Article 21, Article 51, and Article 59 paragraph (1) and paragraph (2) will be subject to administrative sanctions. Then Article 61 (1) The administrative sanctions as referred to in Article 60 paragraph (1) consist of: a. written warning; b. cessation

of activities; and/or c. revocation of registered certificate or revocation of legal entity status. Referring to this, the government should have imposed sanctions on the *Perkumpulan Advokat Indonesia*.

A brand is a name or symbol used by consumers to define goods/services among others. The brand also guarantees the quality of the goods/services. From the above understanding it can be said that brands have strategic and important values for both producers and consumers. For producers, the brand is not only intended to differentiate its products from other similar companies' products, it is also intended to build a company image, especially in marketing. For consumers, the brand in addition to facilitating identification is also a symbol of self-esteem. People who are used to the choice of goods from certain brands, tend to use goods with brands that they are familiar with of good quality.

According to Article 1 paragraph (1) of Law no. 20 of 2016 concerning Brands states that, "A brand is a sign that can be displayed graphically in the form of an image/logo, name, word, letter, number, color arrangement in two-dimensional and/or three-dimensional form, sound, hologram, or a combination of the two. or more of these elements to distinguish goods/or services produced by persons or legal entities in the activities of trading goods and/or services". While the trademark based on the provisions of Article 1 paragraph (2) and paragraph (3) of Law no. 20 of 2016 concerning Marks which regulates trademarks and service marks, which states that "Trademarks are marks used on goods traded by a person or several persons jointly or by legal entities to distinguish them from other types of goods".

While a service mark is a mark used on services held by a person or several people together or a legal entity to distinguish it from other similar services. Article 1 paragraph (5) of Law no. 20 of 2016 concerning Marks states that, "The right to a mark is an exclusive right granted by the state to the owner of a registered mark for a certain period of time by using the mark himself or giving permission to other parties to use it". A protected mark consists of a sign in the form of an image, logo, name, word, letter, number, arrangement, color in two-dimensional and or three-dimensional form, sound, hologram, or a combination of two or more of these elements to distinguish goods and/or services produced by a person or legal entity in the activity of trading in goods and/or services. In general, product users tend to choose products with brands that have been known for a long time, and have good quality, are durable and have a high reputation in the community. This means that apart from having good quality, the brand is also well known in the community as a product with a prestigious brand. So that the function of the brand as a guarantee of quality and containing a high

prestigious value for its users is increasingly real, especially related to products with brands that are already well known in the community with guaranteed quality and a high reputation.

It can be said that the brand guarantees the value or quality of the goods and services concerned. Furthermore, the brand also functions as a means of promotion (means of trade promotion) and billboards for producers or entrepreneurs who trade the goods and services concerned. "The use of a brand in practice also has an influence on people's acceptance of the brand's existence. If a brand is well known in the community, then the brand is considered to have sufficient distinguishing power to be accepted as a brand.

The regulation of marks has undergone several changes, including Law Number 19 of 1992 concerning Marks, Law Number 14 of 1997 concerning Amendments to Law Number 19 of 1992 concerning Marks, Law Number 15 of 2001 concerning Marks and Law no. 20 of 2016 concerning Trademarks that are currently in effect.

Changes in the trademark law are related to the trademark registration system, namely changes to the trademark registration system that adheres to the declarative system (first to use principle) as adopted by the 1961 Trademark Law, which was later changed to a constitutive registration system (First to file principle).

From the provisions above, it can be said that the right to a mark is obtained after the mark is registered at the Directorate of Marks of the Ministry of Law and Human Rights of the Republic of Indonesia. Based on the Decree of the Minister of Law and Legislation of the Republic of Indonesia Number M.03.PR07 of 2000 and the Approval of the Minister of State for Administrative Reform in Letter Number 24/M-PAN/1/2000 the term "Intellectual Property Rights" without "above" can be abbreviated as IPR or with the acronym "HaKI". The reason for the change, among others, is to adjust to the rules of the Indonesian language which is perfected.

In this constitutive principle, a trademark registration is required for a person or legal entity to obtain legal protection and recognition of trademark rights. Registration is carried out at the Directorate General of Intellectual Property Rights (Directorate General of Intellectual Property Rights) through an inspection process until it reaches the stage of granting rights to a mark in the form of issuing a trademark certificate (registered in the General Register of Marks). However, this trademark registration does not escape the possibility of unauthorized registration carried out by certain parties with bad intentions.

Unauthorized registration often occurs in well-known brands because well-known brands usually have a reputation attached to them, which makes certain parties with bad intentions try to gain profits by riding or piggybacking on the reputation of a well-known

brand. Even though this reputation is intangible, it is a valuable asset for the brand owner and also for the law, so it needs to be protected. Nowadays, new acts of crime against marks often occur by piggybacking on the fame of a brand that is already known to the public by registering almost the same mark (containing an element of equality in essence), the aim of which is to obtain the maximum profit and harm the interests of the mark owner. legitimate.

Types of Marks are described in Article 2 of Law Number 20 of 2016 concerning Marks and Geographical Indications, namely Marks as regulated in this law include Trademarks and Service Marks. Article 1 number 2 explains that a trademark is a mark used on goods that are traded by a person or several people together or by a legal entity to distinguish similar goods. Meanwhile, service marks are described in Article 1 point 3, namely Marks used for services traded by a person or several persons jointly or a legal entity that distinguishes similar services.

Brands can be divided into 3 (three) types that are known in the community, including **[14]:**

1. Regular Marks (Normal Marks)

Also referred to as normal marks which are classified as ordinary marks are those that do not have a high reputation. This brand with an ordinary degree is considered to lack a symbolic radiance of a lifestyle, both in terms of usage and technology, the public or consumers perceive that the brand is of low quality. This brand is considered not to have a drawing power that is able to give a touch of intimacy and suggestive mystical power to the public and consumers and is unable to form a layer of market and users.

2. Famous Brand (Well Known Mark)

Well-known brands are commonly referred to as well-known marks. This type of brand has a high reputation because its symbol has the power to attract attention. Such a brand has a radiating power that is stunning and attractive, so that any type of goods under this brand immediately creates a touch of familiarity (familiar attachment) and mythical bonds (famous mark).

3. Famous Brand (Famous Mark)

The highest level of brand degree is a well-known brand. To such a degree its worldwide fame has resulted in its reputation being classified as a world aristocratic Brand. The degree of a well-known brand is higher than an ordinary brand, so that any type of goods under this brand immediately creates a touch of myth. Because of this definition, for those who try it, it is very likely that they will be stuck with the overlapping formulation of well-known brands.

Article 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications explains that Mark rights are exclusive rights granted by the state to the owner of a registered Mark for a certain period of time by using the Mark himself or giving permission to another party to use it [15].

Trademark rights function as a monopoly because only the owner of the mark can use the mark. Trademark rights are not absolute monopoly because if the period of protection of the mark has expired and the owner of the mark does not extend the period of protection, other parties can use it. The right to a mark can be defended against anyone, unauthorized parties cannot use the mark as an exclusive right. A Mark becomes a right that is solely intended for the owner of the Mark or other parties who are allowed to use the right with the permission of the Mark owner.

Opinions and understandings regarding exclusive rights can be concluded that exclusive rights are rights granted by the state to the owner of a registered Mark in the general register for a certain period of time, where with the existence of exclusive rights owned by the Mark owner, he can use his own Mark and other parties do not. may be allowed to use the Mark except with the permission of the Mark owner.

Trademark rights give rise to economic rights for the owner because the trademark rights are exclusive rights, so only the trademark owner is entitled to the economic rights of a trademark. Economic rights are rights to obtain economic benefits from intellectual property. The economic rights are in the form of a sum of money obtained from using the Mark itself or because it is used by another party under a license. Economic rights in Marks are limited to only 3 (three) types, namely self-use, use through trademark licenses, and trademark licenses without other variations.

E. Conclusions And Suggestions

The conclusion in this study is that the advocate organization of the *Perkumpulan Advokat Indonesia* has illegally used the PERADIN brand belonging to the *Persatuan Advokat Indonesia* and the decision has permanent legal force. Although there has been a decision with permanent legal force, the *Perkumpulan Advokat Indonesia* did not voluntarily carry out the contents of the decision and even filed 5 lawsuits in a row, 3 trademark lawsuits at the Commercial Court at the Central Jakarta District Court, 1 lawsuit at the Jakarta State Administrative Court and 1 Action Lawsuit. Against the Law at the North Jakarta District Court. The implication of this writing is to encourage advocate organizations to have

compliance in carrying out judges' decisions that have permanent legal force so that the advocate organization has integrity in upholding a just law.

The suggestion in this study is that the government should strictly impose sanctions on advocate organizations that are proven to have violated the law such as the *Perkumpulan Advokat Indonesia* in the form of disbanding the organization because it has violated the trademark law, strengthened by a court decision that has permanent legal force. The dissolution is carried out in order to provide a deterrent effect and provide legal and fair certainty from the legal process that has been taken.

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