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**THE URGENCY OF DEREGULATION TO MANIFEST A SINGLE NATIONAL EDUCATION SYSTEM AS MANDATED IN CONSTITUTION**

**Abstract**

*The Indonesian constitution imposes a mandate for the government to organize and manage a single national education system that shall be regulated by law (Article 31 paragraph (3)) in order to educate the life of the nation. As time goes by, Indonesia's education regulation governance has deviated from that mandate. In reality, there are multiple Laws related to education in Indonesia. This circumstance has not only caused some difficulties for the stakeholders who want to understand the regulation, but also caused overlapping and hyperregulation. In this article, the Authors aim to map out the problems in Indonesia's education regulation policies and analyze the solutions. Deregulation by unifying all the Laws related to education should be considered in overcoming the hyperregulation. This research uses normative legal research method in exploring the relevant theories, histories, good practices, and options to manifest an effective education regulation governance as a single national education system. Lately, the regulatory governance of education in Indonesia has deviated from what is envisioned in the constitution, which is the realization of a single national education system. Hyperregulation continues to be the biggest problem in regulatory governance in Indonesia, including in the field of education. The proliferation of too many laws leads to overlapping authorities and generates a multitude of implementing regulations.*

**Keywords:** *Education Policy, Deregulation, National Education System*

**Abstrak**

Konstitusi Indonesia mengamanatkan pemerintah untuk menyelenggarakan dan mengelola satu sistem pendidikan nasional yang diatur dengan undang-undang (Pasal 31 ayat (3)) guna mencerdaskan kehidupan bangsa. Seiring berjalannya waktu, tata kelola regulasi pendidikan di Indonesia telah menyimpang dari amanat tersebut. Faktanya, terdapat banyak Undang-undang terkait pendidikan di Indonesia. Keadaan ini tidak hanya menimbulkan kesulitan bagi para pemangku kepentingan yang ingin memahami peraturan tersebut, namun juga menimbulkan tumpang tindih dan hiperregulasi. Dalam artikel ini, Penulis bertujuan

untuk memetakan permasalahan kebijakan regulasi pendidikan di Indonesia dan menganalisis solusinya. Deregulasi dengan menyatukan seluruh peraturan perundang-undangan yang terkait dengan pendidikan harus diperhatikan dalam mengatasi hiperregulasi. Penelitian ini menggunakan metode penelitian hukum normatif dalam menggali teori, sejarah, praktik baik, dan pilihan yang relevan untuk mewujudkan tata kelola peraturan pendidikan yang efektif sebagai satu sistem pendidikan nasional. Belakangan ini, regulasi tata kelola pendidikan di Indonesia menyimpang dari apa yang dicita-citakan dalam konstitusi, yaitu terwujudnya sistem pendidikan nasional tunggal. Hiperregulasi masih menjadi permasalahan terbesar dalam tata kelola regulasi di Indonesia, termasuk di bidang pendidikan. Berkembangnya terlalu banyak undang-undang menyebabkan tumpang tindih kewenangan dan menghasilkan banyak peraturan pelaksanaan.

**Kata Kunci: Deregulasi, Kebijakan Pendidikan, Sistem Pendidikan Nasional**

## INTRODUCTION

Education is one of the determining factors in economic growth, job opportunities, and a country's income (Woessmann, 2016). Based on data gathered by UNESCO (2012), if more than 75% of 15-year-old children in the 46 poorest countries in the world can achieve the minimum scores set by the OECD in the Programme for International Student Assessment (PISA) for mathematics, economic growth can increase by 2.1% from the baseline, and 104 million people can escape extreme poverty. In the Global Competitiveness Report 2015-16 released by the World Economic Forum (2015), it is explained that education can influence a country's productivity in three ways. First, education enhances the collective ability of the workforce to complete tasks more efficiently. Second, education, especially through secondary and higher education, facilitates the dissemination of knowledge related to information, products, and technology. Third, education can enhance creativity, which increases a country's capacity to generate new knowledge, products, and technology. Indonesia considers education as an integral part of the country, as reflected in the preamble of the 1945 Constitution, which explicitly emphasizes that educating the life of the nation is a noble goal to be achieved through Indonesia's independence. Furthermore, the 1945 Constitution entrusts the government with the task of organizing a national education system regulated by Law.

However, along the way, other Laws related to education have emerged alongside Law Number 20 of 2003 on the National Education System (*UU Sisdiknas*). All of these laws contain content and scope similar to what is regulated in *UU Sisdiknas*. The abundance of Laws containing content that could ideally be unified or become derivative regulations is the main factor contributing to hyperregulation in Indonesia. In this article, the problem statement is how to address the issues of hyperregulation in the governance of Indonesia's education. The author will explore regulatory options that must be undertaken to achieve an ideal national

education system in accordance with constitutional mandates, based on existing theories and regulations.

## RESEARCH METHODS

This research uses a normative juridical method. This method is literature-based legal research conducted by examining secondary data or various literary materials (Soekanto & Mahmudji, 2015). The analysis is primarily based on the relevant and existing regulations related to education in Indonesia. This study attempts to examine both the history of the regulation of Indonesia's national education system and the current conditions to analyze how this regulatory governance can be improved in the future. The secondary data used includes Laws related to education, supported by literature references from journals, books, and reports that substantively relate to the issues in this research.

## RESULTS AND DISCUSSION

### The Importance of One National Education System

The establishment of a single national education system is a necessity for Indonesia, which is a unitary state. The existence of a single national education system, besides fulfilling the fundamental rights of all citizens to education by ensuring fair and quality education, also serves as a primary tool for maintaining the integrity of Indonesia as a nation. A unified education system becomes a source of national cohesion and protects the national identity of the country. It is even said that education is the only means or tool through which the world can become a safe place for a national organization called a state (Cummings et al., 1994).

The birth of a national education system coincides with the presence of a nation-state, or it can be said that a single national education system is an implication of the existence of a nation to meet the needs of the state in protecting its national identity and culture. National education is the primary engine for integrating and assimilating local and national cultures, thereby fostering a shared consciousness as a nation, a national identity that binds citizens to their country. Through national education, the state creates and celebrates the national language, national history, and disseminates laws, customs, and other social norms (Green, 1997).

Apart from serving as a unifying tool for the nation, the presence of a single education system is also crucial because education is a highly complex form of public service with a heavy burden (Chitty, 2017). Therefore, various countries allocate a significant budget for education. In Indonesia, the state budget allocation for education reaches 20%. The significance of education to a nation is due to its key role as a policy lever for a country to promote economic growth and achieve social welfare. To achieve this collective vision, education must manage a very complex network of relationships that span various communities or stakeholders, authorities, services, and levels of government (Chitty, 2017).

In recent times, globalization has also been seen as a new challenge to a single national education system. Globalization threatens the existence of national education and the national education system as we know it today. According to globalization theory, the end of the nation-state as a primary unit of political organization and the emergence of what is called a borderless state where national identity and culture are replaced by cultural hybridization and global communication pose potential impacts on education that cannot be avoided (Green, 1997). The central government will no longer have full control over the education

system, which will gradually converge into regional or global norms, erasing all forms of national character. The historical function of the national education system in transmitting national culture will be lost, and replaced by various international and global actors. These are the various challenges that a nation must face, making the strengthening of a single national education system a necessity. Strengthening a single national education system can be achieved, in part, through the development of comprehensive and non-fragmented regulations related to the national education system.

### **Utilitarianism Theory in the Politics of Law**

Every country has its own national goals, greatly influenced by social values, geographical conditions, historical formation, and political influences from the rulers of the country (Fitriana, 2015). To achieve these goals, a national legal framework is needed, and its formation cannot be separated from the politics of law. Mahfud MD (2020) defines the politics of law as a country's legal policy regarding which laws will be enforced or not enforced to achieve national objectives. Another view by Satjipto Rahardjo (2012) defines the politics of law as the activity of choosing the means to achieve specific social and legal goals within society. The legal political framework in Indonesia is based on the 1945 Constitution (Mattalatta, 2009). Therefore, the regulatory regime related to education in Indonesia should also align with the 1945 Constitution, which mandates a single national education system regulated by law.

There are several theories underlying the politics of law chosen by a country, one of which is utilitarianism. Jeremy Bentham's utilitarianism theory holds that legal certainty is not limited to the enactment of legal products but is also important to evaluate how useful they are in society (Pratiwi et al., 2022). Utilitarianism places human needs at the center of legal and moral considerations (Kymlicka, 1990). This indicates that legal products do not stand alone but arise from the dynamics of the regulated community's needs. In many cases, what is seen by professionals and policymakers differs from what is seen by people living in poverty (Chambers, 1995). This creates a gap between legal products and the aspirations of the people affected by those legal products. In the context of education in Indonesia, the abundance of regulations poses a significant challenge for teachers and school principals, especially those in rural areas. This contradicts the utilitarian politics of law that emphasize the usefulness of a regulation and the human need as the central consideration in policy-making.

### **Principles of Lawmaking**

#### **Principle of Legal Certainty**

Gustav Radbruch explained that the principle of legal certainty is one of the fundamental values of the law (Rahardjo, 2012). The existence of this principle serves as a form of protection for individuals against arbitrary actions through general rules (Mertokusumo, 1993). This principle emphasizes the consistent, constant, and clear application of the law, where its implementation is not influenced by subjective conditions (Prayogo, 2016). In connection with the principle of legal certainty, a regulation is better when the community, as the primary stakeholders, is involved in its creation (OECD, 2021). Varvasovszky and Brugha (2000) define stakeholders as actors with an interest in an issue, those affected by an issue, or individuals who, due to their position, can have an active or passive influence on decision-making and implementation processes. Stakeholders in the education sector in Indonesia are diverse, ranging from teachers, educational staff, students,

parents, the community, to the government. Of course, we cannot assume that all of them have equivalent and sufficient regulatory literacy to understand the numerous regulations related to education. Based on research conducted by Akbal and Umar (2017), the understanding of teachers regarding operational regulations for their duties, both at the level of Government Regulations and Ministerial Regulations, is still not comprehensive, ranging from 57% to 75%. Therefore, in line with the opinion of Jan Michiel Otto, one tangible aspect of legal certainty achievement is for policymakers to create realistic, accessible, and clear regulations that facilitate stakeholders (Yuliandri, 2010).

### **Principle of Consistency between Hierarchy, Type, and Content**

Burkhardt Krems, as mentioned in Indrati (2007), suggests that there are four main elements in the formation of regulations: (1) *Inhalt der Regelung* (content of the regulation); (2) *Form der Regelung* (structure and form of the regulation); (3) *Methode der Ausarbeitung der Regelung* (method of regulation formation); (4) *Verfahren der Ausarbeitung der Regelung* (procedure and process of regulation formation). Regarding the content of regulations, there are important principles to be considered. Law Number 12 of 2011 on the Formation of Laws and Regulations regulates various principles to be taken into account when drafting a good legislative regulation. One of the principles stipulated is the principle of consistency between hierarchy, type, and content which requires that in the formation of legislative regulations, there must be coherence in the content material based on hierarchy and type.

Each type of legislative regulation is arranged hierarchically and each has a certain proportion of content material that differs from one another (Mahfud MD, 2011). For example, a matter that, according to its provisions, must be regulated by a Law is not allowed to be regulated by other forms of legislative regulations (Soehino, 2006). Law Number 12 of 2011 on the Formation of Laws and Regulations has already specified the kind of content material that needs to be included at the Law level. When viewed in relation to other regulatory products, the content material of a Law is either an advanced regulation of provisions already present in the constitution or a mandate from another Law. Furthermore, the content material of a Law can consist of the approval of certain international treaty ratifications, follow-up to meet legal needs in society, or decisions of the Constitutional Court. In practice, research conducted by Anggono (2018) found several issues such as the unclear placement of a type of regulation in the hierarchy of legislative regulations, excessively broad content material, and similarities in content material between legislative regulations.

The other Laws related to education, apart from *UU Sisdiknas*, can be said to not meet the requirements of content material as stipulated in Law Number 12 of 2011 on the Formation of Laws and Regulations. There are no provisions in the 1945 Constitution or other Laws mandating the creation of Laws related to education besides *UU Sisdiknas*. The fragmentation of education regulations across various Laws is contrary to the 1945 Constitution, which mandates the regulation of a single national education system through a Law. All Laws related to education, apart from *UU Sisdiknas*, also do not constitute the approval of certain international treaty ratifications, follow-up to meet legal needs in society, or decisions of the Constitutional Court. Further discussion on the content material of Laws related to education, apart from *UU Sisdiknas*, will be addressed in another part of this manuscript.

### **Hyperregulation in Indonesia**

Hyperregulation remains a significant issue in Indonesia, as expressed by President Joko Widodo during the Annual Report Presentation of the Constitutional Court in 2019.

President Joko Widodo stated that there were approximately 15,985 regional regulations and 8,451 central regulations (Sekretariat Negara Republik Indonesia, 2020). This condition is referred to by President Joko Widodo as hyperregulation or regulatory obesity that needs to be addressed promptly.

If we refer to Law Number 12 of 2011 on the Formation of Laws and Regulations, a Law is the highest legislative regulation with a hierarchy below the 1945 Constitution and the People's Consultative Assembly Decree. With the hierarchy in legislative regulations, a Law becomes the source for the creation of derivative regulations below it, which are more technical in nature. Therefore, the more Laws that are enacted, the implication is that there will be an increasing number of technical regulations that need to be derived from those Laws (Wardhani, 2019).

For example, *UU Sisdiknas* has regulated certain matters related to teachers and mandated the regulation of teachers to be set at the Government Regulation level. However, Law Number 14 of 2005 on Teachers and Lecturers also contains regulations related to teachers. As a result, there are two Laws related to teachers, automatically increasing the number of their derivative regulations. The World Bank (2018) identified one of the main reasons for the failure of students in most developing countries to obtain quality education is poor education governance and management. In relation to this, the role of regulations becomes crucial in building a conducive environment for good education governance and management.

Unfortunately, the state of regulatory governance in Indonesia at present cannot be considered adequate. A report published by the OECD (2012) regarding regulatory reform in Indonesia stated that the weaknesses in regulation in Indonesia lie in the substance of regulations, which often do not address the root causes and frequently overlap. The issue of overlap remains a major concern in the governance of education regulations in Indonesia, primarily related to the numerous Laws governing education. Substantive overlaps in regulations also result in policy issues that cannot be resolved by merely improving one Law (Putra, 2020).

The Indonesian government has taken various steps to address this situation. Recent deregulation efforts by the Indonesian government involve merging multiple Laws or consolidating certain clauses from multiple Laws. For example, in 2020, the government and the parliament passed the Omnibus Law on Job Creation (*UU Cipta Kerja*), which revised several clauses in 79 Laws related to the goals of the *UU Cipta Kerja* and consolidated all the changes into one Law. However, the implementation of the *UU Cipta Kerja* still requires significant improvements. The issue of overregulation in investment regulation, which the *UU Cipta Kerja* aimed to address, has become even more challenging to resolve. This is because the *UU Cipta Kerja* mandates the creation of around 500 derivative regulations, potentially exacerbating the issue of overregulation (Fakultas Hukum Universitas Gadjah Mada, 2020).

The method used by the *UU Cipta Kerja*, which consolidates certain provisions from 47 other laws, is a novel practice in Indonesia's legislative drafting. The process of drafting the *UU Cipta Kerja* is known as the Omnibus Law method. The concept of Omnibus Law aims to address issues arising from excessive and overlapping regulations. This method is not new in the international context, as various countries have implemented it, such as the United States through The Omnibus Act of June 1868 (Busroh, 2017).

Deregulation needed for the national education system essentially involves more than just partially repealing some legislative regulations because, in principle, with the constitutional mandate for a single national education system, education regulations at the legislative level should be contained in one Law. Moreover, there has been a precedent for the return of a single national education system in one Law in 1989 when Law Number 2 of 1989 on the National Education System was issued, which entirely consolidated five other education-related Laws.

### **The Essence of One National Education System in Indonesia's Constitution**

If we delve further into the matter, the spirit of establishing a single national education system has been present in the original text of the 1945 Constitution. In that text, Article 31, paragraph (2), stated, "The government must establish and develop a complete and harmonious national educational system that is regulated by Law." Initially, the term used was "*sistem pengadjaran nasional*" (national teaching system). This term was also used in Law Number 4 of 1950 on the Fundamentals of Education and Teaching in Schools. As time went on, with the socio-political developments in post-independence Indonesia, other education-related Laws emerged, such as Law Number 19 PNPS of 1965 on the Fundamentals of the Pancasila National Education System, Law Number 14 PRPS of 1965 on the National Education Council, and Law Number 22 of 1961 on Higher Education. During that period, considering the existing conditions, it was deemed necessary to align the education system with the demands and needs of national education development, in accordance with the 1945 Constitution. This spirit was then realized through the enactment of Law Number 2 of 1989 on the National Education System.

A paradigm shift occurred during the formation of Law Number 2 of 1989 on the National Education System. The concept of "*satu sistim pengadjaran nasional*" (a single national teaching system) in the 1945 Constitution was expanded to "*satu sistem pendidikan nasional*" (a single national education system). This expansion affirmed that this law viewed education in a more holistic manner, not limited to teaching alone but also considering various educational elements related to the development of Indonesian society's character. The use of the term "*sistem pendidikan nasional*" (national education system) to replace "*sistim pengadjaran nasional*" (national teaching system) also became a point realized in the fourth amendment of the 1945 Constitution in 2002.

Law Number 2 of 1989 on the National Education System defines the national education system as one that is a whole and developed to support the fulfillment of national goals. From this definition, it is evident that a single national education system is a holistic entity, where a law that encompasses the national education system should serve as the sole legal basis for all educational matters in Indonesia.

### **The Analysis of Another Laws concerning Education in Indonesia**

#### **Law Number 14 of 2005 on Teachers and Lecturers (*UU Guru Dosen*)**

*UU Sisdiknas* states that "Provisions regarding educators and educational personnel as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be further regulated by Government Regulation." From this article, it can be seen that the regulation related to teachers and lecturers should not be at the level of a Law but should be within the Government Regulations level.

Law Number 14 of 2005 on Teachers and Lecturers (*UU Guru Dosen*) currently covers many employment-related matters of the teaching profession. For example, this law even

regulates very specific labor provisions such as income components and leave entitlements for teachers. When referring to the governance of existing laws in Indonesia, there are two regulatory regimes that should be considered when discussing employment matters. These are Law Number 13 of 2003 on Manpower, revised through *UU Cipta Kerja*, and Law Number 5 of 2014 on the State Civil Apparatus. The enactment of the *UU Guru Dosen* has caused overlap and incoherence in regulations related to teacher employment.

Since the enactment of this law in 2005, the policies produced can be considered less than optimal. One example is the policy of providing teacher professional allowances equivalent to one month's basic salary, first regulated by this law. Teacher certification has not been proven to have an impact on improving student learning outcomes (De Ree et al., 2018) and has not been shown to enhance teachers' knowledge of content or attendance rates (Kusumawardhani, 2017). However, this policy is costly and has the potential to continue growing until it consumes a significant portion of the education budget in the future (The World Bank, 2013). Therefore, the *UU Guru Dosen* needs to be updated, and there should be a formulation of a new mechanism for teacher professional allowances that can lead to improved education service quality.

Based on the 2017 report issued by the National Law Development Agency of the Ministry of Law and Human Rights (Suparmiyati & dkk, 2017), the content of the *UU Guru Dosen* should have been regulated at the Government Regulation level. This report further strengthens the argument that, in terms of content, the *UU Guru Dosen* is not suitable to be included at the Law level.

#### **Law Number 12 of 2012 on Higher Education (*UU Dikti*)**

Both in the *UU Sisdiknas* and in the 1945 Constitution, there is no specific provision stating that higher education regulation should be in the form of a Law. The existence of Law Number 12 of 2012 on Higher Education (*UU Dikti*) has led to higher education in Indonesia being guided by two legal bases that are both used as guidelines in its implementation. Such a regulatory governance situation clearly creates confusion in the management of higher education policies. One example is related to the fulfillment of National Education Standards. *UU Sisdiknas* stipulates that higher education institutions must also meet the National Education Standards, which consist of eight standards (assessment, financing, management, educational facilities, educational personnel, graduate competencies, processes, and content). Meanwhile, *UU Dikti* also has what is called the National Higher Education Standards, which include standards for community service, research, and education. Since both laws are in effect, the consequence is that higher education now has 24 standards, with each of the research, education, and community service standards needing to be translated into the eight standards of the National Education Standards.

Moreover, the dual regulation of higher education also leads to overlapping jurisdiction between institutions in the provision of higher education. One example is related to Higher Education Institutions under Ministries/Agencies (*PTKL*). Under *UU Sisdiknas*, ministries other than the education ministry only have the authority to provide in-house education, which serves solely to maximize skills for civil servant candidates or civil servants. However, *UU Dikti* does not recognize the term in-house education. Instead, the Law introduces a new concept known as Higher Education Institutions under Other Ministries which allows for the establishment of higher education institutions by ministries/agencies that do not produce civil servants or civil servant candidates. These higher education institutions under other

ministries are known as *PTKL*. Based on a study conducted by the Indonesian Corruption Eradication Commission, the proliferation of *PTKL* offering vocational education with graduates returning to the community has the potential to create overlaps in the policy implementation and supervision of higher education between the ministry concerning education and the ministries/agencies that operate *PTKL* (KPK, 2019). In terms of regulatory governance, the enactment of *UU Dikti* contradicts *UU Sisdiknas*, which mandates further regulation of higher education through Government Regulations. If we examine the content, the report by the National Law Development Agency of the Ministry of Law and Human Rights (Suparmiyati & dkk, 2017) states that the content of *UU Dikti* should have been regulated at the Government Regulation level.

### **Law Number 18 of 2019 on Islamic Boarding Schools (*UU Pesantren*)**

Based on the study conducted by the Center for Indonesian Policy Studies (Azzahra, 2020), there are at least three main reasons behind the enactment of Law Number 18 of 2019 on Islamic Boarding Schools (*UU Pesantren*). These reasons are as follows: (1) to provide a legal basis for Islamic boarding schools to receive additional financial assistance from regional and central governments; (2) the need to equate graduation certificates from Islamic boarding schools with formal school diplomas; (3) addressing concerns about radicalism in Islamic boarding schools. Referring to these reasons, aside from matters related to additional financial assistance, these are issues that could be addressed without the need for a new Law. Recognizing Islamic boarding school diplomas to be equivalent to formal school diplomas does not necessarily require intervention at the Law level, and the prevention and monitoring of radicalism in Islamic boarding schools are already addressed in other existing Laws. According to *UU Sisdiknas*, religious education is one of the types of education covered by the Law. *Pesantren* represents a form of religious education for Islam. Therefore, the regulation of *Pesantren* as part of religious educational institutions should not be governed by a separate law outside of *UU Sisdiknas*.

### **Conclusion**

From the discussions that have been presented, it can be concluded that the regulatory governance of education in Indonesia has deviated from what is envisioned in the constitution, which is the realization of a national education system. Hyperregulation continues to be the biggest problem in regulatory governance in Indonesia, including in the field of education. The proliferation of too many laws leads to overlapping authorities and generates a multitude of implementing regulations. These implementing regulations cause prescriptive clauses that burden the teacher with a lot of administrative tasks. Hyperregulation also poses a significant challenge for teachers and school principals, especially those in rural areas as the main stakeholders of education in Indonesia. One single regulation as a reference would be much more convenient for them to understand the legal basis. In addition to being a constitutional mandate to establish a national education system as outlined in the Law, all other Laws related to education, except for *UU Sisdiknas*, contain content that should be regulated at the level of Government Regulations. Some of them have even been explicitly delegated to *UU Sisdiknas* for further regulation through Government Regulations. Given the current condition of hyperregulation in Indonesia, efforts to deregulate to achieve a single national education system should now be a government priority. The deregulation should be done by using the omnibus law method to consolidate

all education-related Laws as precedented in 1989 when Law Number 2 of 1989 on the National Education System consolidated five other education-related Laws.

The regulations related to education issues scattered across several Laws need to be streamlined and consolidated. The constitutional mandate to establish a single national education system within one Law is a viable option to consider when improving the governance of educational regulations in Indonesia. Referring to the history of national education regulations, the current situation is similar to the conditions at the time of the enactment of Law Number 2 of 1989 on the National Education System. At that time, this Law revoked 5 (five) laws related to education to realize a single national education system as mandated by the Indonesian constitution. Considering the utilitarian theory in legal politics and the wide range of stakeholders in the education sector in Indonesia, regulations should be designed to facilitate the stakeholders. The paradigm of drafting legislation also needs to incorporate the perspective of stakeholders who will read and implement the rules in those regulations. Consolidating all education-related laws into a single Law will simplify the reading process and enable stakeholders to refer to only one legal document.

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