

PAPER NAME

**2022 Juridical Review Cancellation 853-
Article Text-7149-1-10-20221016.pdf**

WORD COUNT

5988 Words

CHARACTER COUNT

33115 Characters

PAGE COUNT

9 Pages

FILE SIZE

311.8KB

SUBMISSION DATE

May 1, 2023 3:22 PM GMT+7

REPORT DATE

May 1, 2023 3:23 PM GMT+7

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Juridical Review Cancellation of Graduation of Applicants in Procurement of Civil Servants due to Incompatibility of Educational Qualifications

Risang Pujiyanto

Politeknik ATK Yogyakarta

Sonny Taufan

Politeknik STMI Jakarta

sonny_taufan@gmail.com

Rr Gumilar Tw

PEM Akamigas

Abstrak

This study has the aim of analyzing the cancellation of the graduation status of Civil Servant procurement applicants whose educational qualifications are not in accordance with those that have been established and only known in the future. This research uses normative legal research methodology with a statute approach. The results of the study found that Government Regulation Number 11 of 2017 concerning Management of Civil Servants as amended by Government Regulation Number 17 of 2020 only regulates the dismissal of Candidates for Civil Servants and does not explicitly regulate the cancellation of graduation. The provisions in Government Regulation Number 11 of 2017 mutatis mutandis apply to the cancellation of the graduation status of applicants who have educational qualifications that do not match, with the limitation that applicants have provided incorrect information regarding their educational qualifications. The principle of *contrario actus* stipulates that the Staffing Officer is the official authorized to revoke/cancel a decision due to a substance defect in the form of a factual discrepancy regarding educational qualifications caused by the applicant. However, the cancellation of the applicant's graduation cannot be done if the incompatibility of educational qualifications is caused by the inaccuracy of the Civil Service Procurement Committee. This is because there is the principle of mistakes made by State Administrative Officials in issuing decisions that cannot result in losses for justice seekers/society.

Kata Kunci: each procurement of civil servants, the principle of *contrario actus*, general principles of good government

INTRODUCTION

Procurement of Civil Servants (PNS) is one of the management parts of the State Civil Apparatus (ASN) which must be managed properly. The procurement of civil servants will largely determine the profile of civil servants obtained, civil servants who are qualified and relevant to the needs of the organization or precisely civil servants who are counter-productive to the organization (Simanungkalit, 2008). In 2021, the government opened 688,632 formations to occupy vacant positions in the central and local governments (Sembiring, 2021). The enthusiasm of the public to participate in the procurement of civil servants in 2021 is quite high, as evidenced by the number of applicants who reached 4,112,722 accounts (Okezone, 2021). In accordance with the Regulation of the Minister of Apparatus Empowerment and Bureaucratic Reform Number 27 of 2021 concerning Civil Servant Procurement (PerMenPAN Procurement of Civil Servants), the procurement of civil servants in 2021 can be followed by all Indonesian citizens as long as they meet general requirements and special requirements. Article 5 paragraph (1) of the Civil Servant Procurement Regulation determines the general requirements for applicants for civil servant candidates are as follows:

- a) The lowest age of 18 (eighteen) years and the highest 35 (thirty-five) years at the time of application;
- b) Has never been sentenced to imprisonment based on a court decision that already has permanent legal force for committing a criminal offense with a prison sentence of 2 (two) years or more;

- c) Have never been dismissed with honor, not at their own request or dishonorably as a civil servant, soldier in the Indonesian national armed forces, a member of the Indonesian national police, or dishonorably dismissed as a private employee;
- d) Is not domiciled as a candidate for civil servants, civil servants, soldiers of the Indonesian national army, or members of the national police of the Republic of Indonesia;
- e) Not being a member or administrator of a political party or engaging in practical politics;
- f) Have educational qualifications in accordance with the requirements of the position;
- g) Physically and spiritually healthy in accordance with the requirements of the position applied for;
- h) Willing to be placed in all areas of the unitary state of the Republic of Indonesia or other countries determined by government agencies; and
- i) Other requirements according to the needs of the position set by the kdp.

The conformity of educational qualifications with position requirements is one of the general requirements regulated in Article 5 paragraph (1) letter f of the Civil Servant Procurement Regulation and Article 23 paragraph (1) number (6) of Government Regulation Number 11 of 2017 concerning Civil Servant Management as amended by Government Regulation Number 17 of 2020 (PP Management of Civil Servants). The requirement for educational qualifications still seems to be a crucial problem in the procurement of civil servants in 2021, as conveyed by the Member of the Ombudsman of the Republic of Indonesia (ORI), Robert Endi Jaweng (Rusiana, 2021). A similar problem also occurred in the procurement of civil servants in 2018, where ORI received complaints from the public in the form of unclear determination of terms in scientific families, so that participants who should meet the requirements according to the required formation were not passed at this stage (Ombudsman RI, 2019). In the procurement of civil servants in 2019, problems related to educational qualifications and knowledge clusters also still arise. ORI stated that there are still policy differences regarding education clusters between districts/cities that provide civil servant procurement which ultimately results in applicants not being able to be approved in the next stage (Ombudsman RI, 2020). ORI in 2018 has provided recommendations for improvement on educational qualification problems in the form of "Requirements related to the level of education of prospective participants must pay attention to the family of knowledge, not use the nomenclature of study programs and must receive consideration from the Ministry of Research, Technology and Higher Education before being announced to the public". (Ombudsman RI, 2020). However, the use of the cluster of knowledge as proposed by ORI does not seem to be able to run optimally as a way to overcome problems in administrative selection.

In the procurement of civil servants in 2021, agencies that open vacancies have the authority to decide whether someone can pass the administrative selection with the consideration of still having the same knowledge family or not (Saptoyo, 2021). Apabila of the procurement committee of civil servants agencies sees that there is a discrepancy between educational qualifications and knowledge families and the requirements of the position, so an applicant will be declared not to have passed the administrative selection. In addition, if the applicant has been declared graduated but in the future it is proven that his educational qualifications are not in accordance with what has been determined, then the applicant can also be canceled his graduation status by the Civil Service Supervisory Officer (PPK). (MENTERI PENDAYAGUNAAN APARATUR NEGARA DAN REFORMASI BIROKRASI REPUBLIK INDONESIA, 2021) Article 53 paragraph (1) letter (c) of the Civil Servant Procurement Regulation is the basis for the provision to cancel the graduation status of applicants whose educational qualifications are not in accordance with what has been established and is only known in the future.

The use of knowledge clusters in administrative selection according to ORI recommendations in the procurement of civil servants in 2021, allows for errors in

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graduating an applicant due to the inaccuracy of the selection committee. This is inseparable from the authority of each agency to decide the passage of administration based on the family of knowledge, allowing for different treatment of applicants who apply to the same type of position but in different agencies. Different treatment in the same type of office has the potential to violate the provisions of Article 28 D paragraph (3) of the 1945 NRI Constitution. The principle of "equalizing the same and distinguishing the different" is one of the manifestations of the principle of equality of position to participate in government as stipulated in Article 28 D paragraph (3) of the 1945 NRI Constitution. (Manan, 2009) The provisions of Article 53 paragraph (1) letter (c) of the Civil Servant Procurement Regulation are provisions that are still normatively vague, keeping in mind that the provision does not distinguish whether a person's passing in the administrative selection is due to inaccuracy from the procurement committee of the civil servants of the agency or due to manipulation carried out by an applicant. Errors in the cancellation of the applicant's graduation status will have the potential to violate the human rights of citizens and become an Administrative dispute if the cancellation of the applicant's graduation status is not carried out in accordance with the laws and regulations and the General Principles of Good Governance.

Based on the background that has been stated by the author, the problem that will be discussed is how the provisions for canceling the graduation status of applicants for the procurement of Civil Servants whose educational qualifications are not in accordance with what has been determined and will only be known in the future according to laws and regulations and general principles of good governance.?

METHOD

This research uses normative legal research methodology with a statutory approach. The legal materials used in this study are primary legal materials and secondary legal materials. Primary legal materials include Law No. 5 of 2014 concerning The State Civil Apparatus, Law No. 30 of 2014 concerning Government Administration, Government Regulation No. 11 of 2017 concerning Civil Servant Management and Regulation of the Minister of Apparatus Empowerment and Bureaucratic Reform Number 27 of 2021 concerning Procurement of Civil Servants. The secondary legal material is in the form of scientific works and internet media that have relevance to the research theme. Legal materials, both primary and secondary legal materials will then be analyzed prescriptively to produce recommendations on the legal issues studied This research was conducted from January to May 2022.

RESULTS AND DISCUSSION

Result

In 2021, the government carried out the procurement of civil servants to fill vacant positions in 56 Ministries/Institutions and 538 local governments. The position filled in the procurement of civil servants in 2021 is an executive position with reference to panrb ministerial regulation number 25 of 2016 concerning the nomenclature of executive positions for civil servants in government agencies and functional positions that refer to the corresponding PANRB Ministerial Regulation. Selection in civilservants consists of 3 (three) stages, including administrative selection, basic competency selection, and field competency selection. In the administrative selection stage, the Agency Procurement Committee verifies to ensure that the applicant's educational qualifications are in accordance with the requirements of the position applied for. The

conformity of the qualifications and competencies of the prospective applicant's position with the requirements of the position is one of the manifestations of the merit system in the procurement of civil servants. The ASN Law expressly stipulates that the merit system is used in the procurement of civil servants as part of the management of civil servants. The merit system in the selection of civil servant procurement is carried out through an objective assessment based on competencies, qualifications, and other requirements needed by the position. (UNDANG UNDANG REPUBLIK INDONESIA, 2014).

In the context of civil servant procurement administrative selection is one of the important stages of selection to ensure that a person has educational qualifications that are in accordance with the requirements of the position applied for. A civil servant applicant whose educational qualifications are not in accordance with the requirements of the position will be declared not to have passed the administrative selection. The discrepancy in educational qualifications will also affect the graduation status of an applicant, where an applicant can be canceled his graduation in the procurement of civil servants if in the future it is known that his educational qualifications are not in accordance with the requirements of the position. This is in accordance with the provisions of Article 53 paragraph (1) letter c of the Civil Servant Procurement Regulation which stipulates that in the event that the applicant has been declared passed by the Civil Service Supervisory Officer (PPK) but in the future terbukti his educational qualifications are not in accordance with those set by the Minister, then the KDP must announce the cancellation of the graduation concerned.

Article 1 number 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Court defines KTUN as a written determination issued by a state administrative agency or official that contains state administrative legal actions based on applicable laws and regulations, which are concrete, individual, and final, that gives rise to legal consequences for a person or civil legal entity. Through article 87 of Law No. 30 of 2014 concerning Government Administration (Government Administration Law), KTUN has been expanded to:

- a. Written determination that also includes a factual Act;
- b. Decisions of State Administrative Agencies and/or Officials in the executive, legislative, judicial, and other state administrators;
- c. Based on the provisions of the legislation and the AUPB;
- d. Is final in a broader sense;
- e. Decisions that have the potential to cause legal consequences; and/or
- f. Decisions applicable to Citizens of the Community.

The provisions of Article 87 letter f which states that a decision that applies to citizens cannot be interpreted as everyone having a legal standing to sue KTUN if the KTUN is detrimental to the community. Article 1 number 15 of the Government Administration Law determines that what is meant by a citizen is a person or civil legal entity related to a Decree and/or Action. Restrictions on citizens who have legal standing in the Government Administration Law are in line with the individual nature of a KTUN. Thus, if there is a KTUN in the procurement of civil servants that harms the community, only residents of the community related to the KTUN can file a lawsuit.

KTUN related to the procurement of civil servants such as the decision of applicants who do not pass the administrative selection or the decision to cancel the applicant's graduation status must meet the provisions of the laws and regulations and AAUPB. The legal order in a country is not a system of norms that stand on an equal footing or equality, but rather an order of order of norms of different levels where the formation of lower norms is determined by other higher norms (Irfani, 2020). Provisions regarding the cancellation of the graduation status of applicants whose educational qualifications are not in accordance with what has been determined as stipulated in Article 53 paragraph (1) letter (c) of the Civil Servant Procurement Regulation certainly also refers to higher regulatory norms, namely the ASN Law and civil servant management regulation. The ASN Law and civil servant management regulation do not contain provisions that explicitly regulate the cancellation of graduation from an applicant because

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in the future it is proven that his educational qualifications are not in accordance with the qualifications of the position. However, if you look at the Civil Servant Management Regulation, provisions will be found regarding the dismissal of prospective civil servants if they provide incorrect information or evidence at the time of application, as contained in Article 37 paragraph (2) letter d. Incorrect information or evidence at the time of application is related to the fulfillment of the general requirements of civil servant applicants as contained in Article 23 paragraph (1) letter 6 of the Civil Servant Management Regulation in the form of having educational qualifications in accordance with the requirements of the Position. Thus, if a civil servant candidate submits information about educational qualifications that are not in accordance with the requirements of the position, then the civil servant candidate will be dismissed from his position. The same thing mutatis mutandis applies to applicants in the procurement of civil servants, who are shown to provide inappropriate information regarding their educational qualifications. An applicant who has been declared graduated, may be canceled for graduation by the KDP as a consequence of providing information regarding educational qualifications that are not in accordance with the requirements of the position.

The provisions contained in Article 53 paragraph (1) of the Civil Servant Procurement Regulation, Article 23 paragraph (1) and Article 37 paragraph (2) letter d of the Civil Servant Management Regulation, as well as the Merit System in the ASN Law are interrelated because the law is a unit and none of the provisions in the law are stand-alone rules (Marzuki, 2011). Article 66 paragraph (1) of the Government Administration Law specifies that annulment of a decision can be made if there is a defect in the authority, procedure, and/or substance in a decision. Defects in substance, not explained in the explanatory section of Article 66 paragraph (1) of the Government Administration Law. The scope of substance defects can be found in the explanatory section of Article 64 paragraph (1) of the Government Administration Law which regulates the revocation of KTUN. Defects in substance according to the explanatory part of Article 64 paragraph (1) of the Government Administration Law include:

1. The decision is not executed by the recipient of the Decision until the specified time limit;
2. the facts and legal terms on which the Decision is based have changed;
3. Decisions may harm and harm the public interest; or
4. The decision is not used in accordance with the purposes stated in the contents of the Decision.

The discrepancy of the facts and legal terms on which the KTUN is based is a form of defect of substance. Coercion and fraud are one of the causes of substance defects in the manufacture of KTUN which can result in the cancellation of a KTUN (Putra, 2020). Soehino stated that one of the considerations for the revocation or change of the KTUN was because the applicant committed fraud in the process of forming an administrative provision (Soehino, 2000). A KTUN arising from containing elements of fraud, coercion or bribery, misdirection or error is no longer a purely issued decision, so that the KTUN can be canceled or canceled (MD & Mahfud, 2011). For KTUN that has a substance defect, the official who issued the decision can cancel the KTUN that has been issued (Pemerintah RI, 2014).

In relation to the cancellation of the applicant's graduation, the KDP as the official who issued the KTUN may cancel the graduation of applicants who do not have the suitability of educational qualifications. The cancellation of an applicant's graduation because the applicant's educational qualifications are not in accordance with the requirements of the position is part of the application of the merit system as mandated by the ASN Law. This needs to be done by considering that the procurement of civil servants who have not been based on the merit system will result in civil servants obtained having low quality, and in the end it will have an effect on the low level of effectiveness of government administration (Komisi Aparatur Sipil Negara, 2018). However, the

cancellation of graduation by the KDP can only be done if the applicant does not provide correct information regarding his educational qualifications. With the restrictions in the form of applicants as subjects who submit incorrect information, the cancellation of the applicant's graduation because the educational qualifications are not in accordance with the requirements of the position will be in accordance with the provisions of the legislation.

Discussion

The General Principles of Good Governance (AAUPB) are open principles introduced by the Commissie de Monchy in 1946-1950 in the Netherlands, as legal protection for the community against possible actions by the authorities that harm the community (Marbun, 2013). The existence of AAUPB has an important role to protect the public in relation to the legislative authority given to the government for administrative purposes and the provision of *freies ermessen* (HR, 2017). For government administration, AAUPB is useful as a guideline in interpreting and implementing statutory provisions that are still vague or unclear and to avoid possible deviations in the implementation of *freies ermessen* (Syuhudi, 2017). The Government Administration Law makes AAUPB, which was previously an open principle, concreted into binding legal norms. AAUPB is the principle used as a reference for the use of Authority for Government Officials in issuing Decisions and/or Actions in the administration of government (Pemerintah RI, 2014). AAUPB is regulated in Article 10 Paragraph (1) and (2) of the Government Administration Law. Article 10 paragraph (1) contains 8 AAUPB principles, namely the principle of legal certainty, the principle of expediency, the principle of impartiality, the principle of accuracy, the principle of not abusing authority, the principle of openness, the principle of public interest, and the principle of good service. Meanwhile, Article 10 paragraph (2) of the Government Administration Law shows that other principles other than the 8 AAUPB principles can be recognized as AAUPB.

There are 2 (two) AAUPB which are interrelated in relation to the cancellation of graduation for applicants if in the future it is found that their educational qualifications are not in accordance with the requirements of the position, namely 1) the principle of *contrario actus* and 2) the principle of mistakes made by the TUN Official in issuing the KTUN. result in losses for justice seekers/society. The principle of *contrario actus* comes from the Mataram Administrative Court Decision Number 7/G/2015/PTUN-MTR. In the procurement of civil servants in Dompu Regency for Fiscal Year 2014, one of the participants sued the Regent of Dompu. In their consideration, the Mataram Administrative Court Panel of Judges through the Mataram Administrative Court Decision Number 7/G/2015/PTUN-MTR was of the opinion that the Dompu Regent's Decree Number: 800/77/BKD/2015 concerning Amendments to the Attachment to the Dompu Regent's Decree Number: 800/334/BKD/ 2014 was the result of the initiative to make corrections because errors were found in the administrative validation process and corrections should have been made as the responsibility of the administration of government affairs. The Mataram Administrative Court Panel of Judges is of the opinion that this is in accordance with the sound of the *contrario actus* principle which means that the TUN Official/Agency that issues a Decision Letter is the one who has the obligation to make corrections to his decision if an error is found. Giving facts or data that are not appropriate, so that if the data is given correctly then the decisions given will be different is one of the reasons for withdrawing the KTUN (Philipus M Hadjon, 2015). The existence of a substance defect caused by fraud in facts or data that underlies the issuance of a KTUN is one of the limitations in the application of the *contrario actus* principle (Pujiyanto, Dkk, 2018).

The principle of mistakes made by TUN officials in issuing KTUN cannot cause harm to justice seekers/society is one of the AAUPB determined by the Supreme Court with reference to the developed doctrine and court decisions (jurisprudence) (Mahkamah Agung, 2007). However, M. Hadjon has a different opinion, the principle of mistakes

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made by TUN officials in issuing KTUN which results in losses for justice seekers / the community should not be charged or become a risk in question is not AAUPB (Hadjon, 2015). The principle of wrongdoing by the State Administrative Body/Officer cannot harm the public is used in deciding disputes over the procurement of civil servants through the decision of PT TUN Jakarta Number 144/B/2013/PT.TUN.JKT and Supreme Court Decision Number 447 K/TUN/2016. In the procurement of civil servants in Kubu Raya Regency in 2010, as many as 71 people who have passed and accepted as candidates for civil servants in Kubu Raya Regency sued the Regent of Kubu Raya, the Head of BKN and the Minister of PAN and RP. In the decision of the Pontianak Administrative Court Number 18/G/2012/PTUN.PTK, the Panel of Judges is of the opinion that the Decree of the Regent of Kubu Raya Number: 810/0845/BKD-C was issued due to a procedural error which was originally caused by the organizer (the Regent of Kubu Raya) and not by the candidates for the PNS exam, so that the actions of the Regent of Kubu Raya are contrary to the principle of official error and the resulting losses cannot be imposed on the community. The Pontianak Administrative Court decision was later upheld by the Jakarta PT TUN Panel of Judges Number 144/B/2013/PT.TUN.JKT.

In the procurement of civil servants in Konawe Islands Regency in 2014, an applicant named Rosmadewi who has been declared to have passed the procurement of civil servants in Konawe Islands in 2014 sued the Head of BKD of Southeast Sulawesi Province. PTUN Kendari through decision Number 35/G/2015/PTUN.KDI in the main case decided to reject the plaintiff's claim. The plaintiff/Rosmadewi then appealed the decision of the Kendari Administrative Court. The Panel of Judges of PT TUN Makassar is of the opinion that errors in the implementation of the selection exam for prospective civil servants cannot be imposed as a risk for the test-taking community. With the decision Number 59/B/2016/PT.TUN.MKS, PT TUN Makassar decided to cancel the Kendari Administrative Court Decision Number 35/G/2015/PTUN.KDI. Based on the decision of PT TUN Makassar, the Head of BKD of Southeast Sulawesi Province filed an appeal. In the Cassation, the Panel of Judges considered that the consideration of the Judex Facti Decision of the Makassar State Administrative High Court regarding errors in the implementation of the selection test for Civil Servants Candidates could not be charged as a risk to the test-taking community was correct and not wrong in applying the law. With the decision number 447 K/TUN/2016, the Supreme Court decided to reject the cassation request from the Cassation Petitioner: Head of the Regional Personnel Agency of Southeast Sulawesi Province.

The principle of *contrario actus* and the mistakes of the State Administration Agency/Officer cannot harm the community has not been explicitly stated in the legislation, but in practice the AAUPB is used by judges as the basis for deciding State Administration cases. AAUPB which is sourced from the Court's decision normatively becomes AAUPB which must be obeyed by all parties. As explained in Article 10 paragraph (2) of the Government Administration Law, other general principles other than AAUPB are general principles of good governance originating from decisions of district courts that are not appealed, or decisions of high courts that are not appealed or decisions of the Supreme Court. Thus, these two principles are also part of the AAUPB that must be obeyed by state officials, including in the implementation of civil servant procurement.

Based on the *Contrario Actus* Principle, it can be concluded that the cancellation of the applicant's graduation on the grounds of providing incorrect information by the applicant regarding educational qualifications is the right thing and is in accordance with the AAUPB. But on the other hand, cancellation should not be done haphazardly, bearing in mind that there is a principle in the AAUPB which states that mistakes made by TUN officials in issuing KTUN, which result in losses for justice seekers/society, should not be charged or become the risk concerned. Cancellation of the applicant's graduation has the potential to violate AAUPB if the discrepancy between educational qualifications and job requirements is due to the selection committee's error. The selection committee in

issuing TUN decisions related to the procurement of civil servants needs to be based on complete information and documents so that errors that may arise can be minimized. Thus, the State Administration Agency/Officer does not need to take corrective action for the mistakes made and the people affected by the TUN decision are not harmed.

CONCLUSION

Based on the discussion that has been presented in the previous chapter, it can be concluded that the ASN Law and the PP on Civil Service Management do not explicitly regulate the cancellation of applicants' graduation because they are later proven to have educational qualifications that are not in accordance with the job requirements. PP of PNS Management only regulates the dismissal of prospective civil servants because prospective civil servants provide incorrect information at the time of application. This provision *mutatis mutandis* also applies to the provisions for canceling applicants' graduation as regulated in the Ministerial Regulation for Procurement of Civil Servants. Cancellation of the applicant's graduation related to educational qualification discrepancies can only be made to applicants who provide incorrect information. The inaccuracy of the civil servant procurement committee in the administrative selection cannot be used as a reason for the cancellation of the applicant's graduation because it is not in accordance with the PP of PNS Management.

The principle of *contrario actus* and the principle of mistakes made by TUN officials in issuing KTUN cannot cause harm to justice seekers/society is AAUPB related to cancellation of applicant's graduation due to mismatch of educational qualifications. The *contrario actus* principle stipulates that the official who issues the KTUN or in this case the PPK is authorized to revoke/cancel the KTUN. The existence of a substance defect is one of the reasons for the application of the *contrario actus* principle. The substance defect related to the procurement of civil servants is the provision of incorrect information by applicants to the civil servant procurement committee regarding educational qualifications. Cancellation of the applicant's graduation due to a mismatch of educational qualifications caused by the inaccuracy of the civil servant procurement committee in the administrative selection cannot be carried out. The principle of mistakes made by TUN officials in issuing KTUN cannot cause harm to justice seekers / the public is the AAUPB which is the basis for canceling applicants' graduation because of mismatch of qualifications caused by the inaccuracy of the civil servant procurement committee.

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