

Obligations and Responsibilities of Notaries in Providing Social Services to The Community as Public Officials

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Abstract. *At present, where economic development is increasingly rapid and supported by increasingly developing technology and the increasingly dense population in Indonesia, this country has various and varied problems. Likewise with its diverse society where in reality the economic gap between the able and the unable has its own burden for the person concerned and also the state. In its journey, especially for those who are unable, of course, they also need a notary in achieving their desires, especially regarding the certainty and validity of a letter regarding their assets or related to certain agreements. The role of a notary is needed in society, especially for those who are unable to get their desires for free as mandated in the Notary Law (UUJN) Article 37 paragraph (1) which states that "requires a notary to provide legal services in the notary field free of charge for those who are unable". However, in reality, many notaries do not implement or obey and are trustworthy of the law, which of course is not a good thing. In writing this scientific paper, the author uses a normative legal research method supported by a legislative and historical approach to the formation of notaries and the regulatory norms that surround them. This is done to analyze and see how effective the regulations are for notaries in implementing their functions and performance in providing services to the general public, especially the less fortunate. Notaries in their rights and obligations tend to help people who are able due to economic needs. The honesty and integrity of a notary are questioned in helping people who are unable, where this of course makes it seem as if the notary profession is a profession that is intended for certain people only in this case for people who are able and seem exclusive.*

Keywords: *Public; Obligation; Rights.*

1. Introduction

The Republic of Indonesia as a country based on law, so that every activity of

society which is its life activity must be based on existing laws and norms that apply in society. Indonesian law is the law, system of norms or system of rules that apply in Indonesia.¹ A state of law is a state or government that is based on law. The state places law as the basis of state power and the implementation of power is carried out under the rule of law. Power grows on law and everyone is equal before the law.¹ According to Law No. 30 of 2004 on the Position of Notary in conjunction with Law No. 2 of 2014, a Notary is a public official appointed by law to make authentic deeds that guarantee the truth and certainty of the date, place, legal event written in the authentic deed including the truth of the signatures of the parties, witnesses and the notary himself. According to Article 1 number 1 of Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the position of notary, it is expressly stated that a Notary is a public official (*openbaar ambtenaar*) who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.²

Notaries are also required to have high moral values, because with high morals, notaries will not abuse their authority, so that notaries will be able to maintain their dignity as public officials who provide services in accordance with applicable regulations and do not damage the image of the notary itself. As Komar Andasmita hopes, so that every notary has sufficient and deep knowledge and skills so that they are the mainstay of the community in designing, compiling and making various authentic deeds, so that the language structure, legal techniques are neat, good and correct, because in addition to these skills, honesty or sincerity and objective nature or views are also needed.

The definition of a position that must continue continuously (continuously) can be applied to a Notary, even if someone has retired and his position as a Notary, or if someone stops being a Notary, his position as a Notary will also stop, while the Notary as a Position will continue to exist and deeds made before or by the Notary who has retired will continue to be recognized and will be kept (as a continuity) by the Notary who holds the protocol.³ These positions will remain, if the legal regulations governing these positions are not revoked or replaced with another form. In positions in the Government or an organization, officials can change at any time and all decisions or policies made previously remain the same as those who replace them or can even be replaced or changed by the officials who replace them, this is a form of continuity of a position, while in the Notary Position such continuity does not apply.

The position of Notary is held or its presence is required by legal regulations

¹Ilhami Bisri, 2011, Indonesian Legal System, Rajagrafindo Persada, Jakarta, p. 5.

²Abdul Ghofur Anshori, 2009, Indonesian Notary Institution, Legal and Ethical Perspectives, UII Press, Yogyakarta, p. 15.

³GHS Lumban Tobing, 1999, Notary Job Regulations, Erlangga, Jakarta, p. 31.

with the intention of helping and serving the community who need authentic written evidence regarding circumstances, events or legal acts. On this basis, those who are appointed as Notaries must have the spirit to serve the community, and for this service, the community who has felt served by the Notary in accordance with his/her job duties, can provide an honorarium to the Notary. Therefore, a Notary means nothing if the community does not need him/her. Thus, a Notary is a Public Position

Notary as one of the law enforcers because Notaries create written evidence that has the power of proof. Legal experts are of the opinion that a Notarial deed can be accepted in court as absolute evidence regarding its contents, but even so, it can be denied with contrary evidence by witnesses, who can prove that what the Notary explains in his deed is true.⁴

The government wants Notaries as public officials who are appointed and dismissed by the Government and are given the authority and obligation to be able to provide services to the community in helping to make agreements, making deeds and their ratification which are also the authority of Notaries. Although called Public Officials, Notaries are not Civil Servants as referred to in the laws and regulations governing civil service. Notaries are bound by the Government Position Regulations, Notaries do not receive salaries and pensions from the Government, but receive salaries from honorariums or fees from their clients.

2. Research Methods

In this study, using the normative legal research method, Peter Mahmud Marzuki explained that normative legal research is carried out to produce new arguments, theories and concepts as prescriptions for solving the problems faced.⁵ achieve the predetermined objectives. The study aims to ensure whether the results of the application of legal events in concreto are in accordance with the provisions of the law or not. Normative legal research begins with written positive legal provisions (laws) that apply to legal events in concreto in society. The implementation is realized through real actions and legal documents. In the data analysis method in this study, especially in normative research, it always takes the contents of a norm. The analysis in this study is prescriptive, according to Mukti Fajar and Yulianto Achmad, prescriptive analysis is intended to provide arguments for the results of the research that has been carried out. The arguments that have been put forward are to provide prescriptions or assessments regarding right or wrong or what should be according to the law regarding facts or legal events from the results

⁴Liliana Tedjosaputro, 1991, Notary Malpractice and Criminal Law, Agung, Semarang, p. 4

⁵Peter Mahmud Marzuki, 2005, Legal Research, Kencana, Jakarta, p.35

of the research⁶

3. Results and Discussion

3.1. Notary as a Public Official

Notary as one of the law enforcers because Notaries create written evidence that has the power of proof. Legal experts argue that a Notarial deed can be accepted in court as absolute evidence regarding its contents, but even so, it can be denied with evidence to the contrary by witnesses, who can prove that what the Notary explained in his deed is true. The government requires Notaries as public officials who are appointed and dismissed by the Government and are given the authority and obligation to be able to provide services to the community in helping to make agreements, make deeds and their ratification which are also the authority of Notaries. Although called Public Officials, Notaries are not Civil Servants as referred to in the laws and regulations governing civil service. Notaries are bound by the Government Position Regulations, Notaries do not receive salaries and pensions from the Government, but receive salaries from honorariums or fees from their clients.⁷

During the Dutch colonial era, the Notary institution was formed to accommodate all matters related to the civil law field, especially the need for evidence and to regulate the issue of the formation of Notary quotas in a region with the aim that Notaries can live decently. The era of globalization and free trade in the 21st century has experienced very rapid progress in all fields of life, including economics, finance, socio-culture, political law and the environment. For Indonesia, free trade encourages advanced and quite significant development, especially in the business world. The integration of business actors that occurs will certainly require legal instruments that can help protect the interests of these business actors. In relation to the role of Notaries, the development of the business world has encouraged the civil law field to always accommodate the need for written evidence. Notaries in the profession are actually institutions that with their deeds create written evidence with authentic properties. A notary as a public official, legally appointed by the competent authority for the benefit of every citizen, is given the authority to provide authenticity to his writings regarding the actions, agreements and decisions of people who come before him.⁸ To carry out his/her duties, a Notary must meet the requirements stipulated in Article 3 of Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the Position of Notary. Notaries are appointed by the minister, specifically the Ministry of Law and Human

⁶Mukti Fajar, 2023, *Dualism of Normative & Empirical Legal Research*, Pustaka Pelajar Publisher, Yogyakarta, p. 36

⁷Abdul Ghofur Anshori, 2016, *Indonesian Notary Institution*, UII Press., Yogyakarta: p. 16.

⁸Muhammad Adam, 1985, *Origin and History of Notarial Deeds*, Sinar Baru, Bandung, p. 43.

Rights. To become a Notary, one must complete a Bachelor's degree in law and have completed a Masters in Notary at the undergraduate level. This is an obligation that must be taken by a notary. In Law of the Republic of Indonesia Number 30 of 2004 in conjunction with Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary, the appointment of a notary is in Article 2.

The Code of Ethics is a moral rule that must be obeyed by every member of the association to maintain the honor and nobility of the Notary position. Enforcement of the Code of Ethics is enforced by the Honorary Council, while the Association Management and/or Honorary Council cooperate and coordinate with the Supervisory Board to enforce the Code of Ethics. The Code of Ethics applies to all members of the Association and other people (as long as the person concerned is carrying out the position of Notary), both in carrying out the position and in everyday life. The Notary Code of Ethics is a moral rule determined by the notary professional organization, namely the Indonesian Notary Association, which must be obeyed by all members of the association who carry out the duties of the Notary position. All limitations of people, especially those who have a profession as a Notary, cause deviations or violations of legal and social rules that can cause disorder and instability in society in general and the Notary professional environment in particular. To restore this instability and disorder, a Notary Code of Ethics and supporting facilities are needed, namely state organizations and professional organizations.

The ethics of the Notary profession are ethical attitudes as an integral part and attitude of life in living life in the notary field. Only the Notary himself can or knows best whether his behavior in carrying out the notary profession meets the demands of his professional ethics or not. Compliance with the ethics of the notary profession is highly dependent on the morals of the notary concerned. The Notary community itself requires concrete objective guidelines for their professional behavior. Therefore, from within the Notary environment itself, a set of behavioral rules emerged as guidelines that must be adhered to in carrying out the Notary profession. Basically, the Notary Code of Ethics aims to maintain the dignity of the profession concerned on the one hand, while on the other hand to protect the community, especially the Applicant from abuse of expertise and/or professional authority. A Notary in carrying out his duties must be in accordance with the ethics that have been mutually agreed upon in the form of a code of ethics. This code of ethics limits the actions of notaries so that in carrying out their practices they do not act arbitrarily. Notaries in carrying out their duties are influenced by a person's mental attitude or personality. Responsibility for the quality of service lies on the shoulders of the notary based on the Notary Code of Ethics. Several reasons and objectives for the creation of the Notary Code of Ethics are described in detail by Sumaryono as follows:

a. As a means of social control

The Notary Code of Ethics is a professional principle criterion so that it can be a parameter regarding the professional obligations of its members. Through the Notary Code of Ethics, the possibility of a conflict of interest between fellow members of the Notary group, or between members of the Notary group and the community can be prevented. Members of the Notary group or members of the community can carry out control through the formulation of the Notary Professional Code of Ethics.

b. To prevent interference from other parties

The Notary Code of Ethics determines the standardization of the professional obligations of Notaries. Thus, the government or the community no longer need to intervene to determine how the Notary Group should carry out its professional obligations as a Notary.

c. As a preventative measure against misunderstandings and conflicts

The substance of the Notary Code of Ethics is a norm of behavior that is considered correct or has been established and of course will be more effective if the norm of behavior is formulated so well, so as to satisfy the interested parties. The Notary Code of Ethics is a crystallization of behavior that is considered correct according to public opinion because it is based on considerations of the interests of the Notary concerned. The Notary Code of Ethics can prevent all misunderstandings and conflicts, and on the contrary is useful as a reflection of the Notary's good name.

3.2. Obligations and Authorities of Notaries

The term authority or authority is often equated with the term “bevoegdheid” in Dutch legal terms. The term “bevoegdheid” is used both in the concept of public law and in the concept of private law. In Indonesian law, the term authority or authority should be used in the concept of public law.⁹ According to HD Stoud, authority is the totality of rules relating to the acquisition and use of government authority by public law subjects in public law.¹⁰ There are two elements contained in the concept of authority presented by HD Stoud, namely the existence of legal rules; and the nature of the legal relationship. Authority (or often referred to as authority) is a legal action that is regulated and given to a position based on applicable laws and regulations that regulate the position concerned. Without legitimate authority, an official cannot carry out an act in accordance with his position.¹¹ Thus, every authority has its

⁹Philipus M. Hadjon, 1997, Authority, Juridika, UNAIR Faculty of Law Magazine, Number 5 and 6, Year XII, September-December, Surabaya, page 1

¹⁰Ridwan HR, 2008, State Administrative Law, Raja Grafindo Persada, Jakarta, p. 110.

¹¹Lutfi Effendi, 2004, Principles of Administrative Law, Bayumedia, Malang, p. 77.

limitations as stated in the laws and regulations that govern it, including the authority of a Notary which is limited by the Law that regulates the position concerned. Legitimate authority when viewed from the source of the authority is born or obtained, then there are three categories of authority, each of which has different characteristics and characteristics, namely Attribution, Delegation, and Mandate. Attribution Authority is the granting of new authority to a position based on a law or legal regulation. Attribution is also said to be the authority to make a decree. In its implementation, the authority of Attribution is carried out by the official himself, while the responsibility and liability lie with the official himself. Authority by Mandate is actually not a transfer or transfer of authority, but because the competent person is prevented. The mandate does not cause a transfer of responsibility from the mandate giver to the mandate recipient, therefore responsibility in terms of the mandate does not shift, it remains with the mandate giver. The theoretical description of the source of this authority, when correlated with the world of Notaries based on its legal umbrella, namely the UUJN.

The title of Notary as a Public Official and specifically given the authority to make authentic deeds. The authority to make authentic deeds granted by the state to Notaries through law automatically places Notaries as delegates of the state with attributive authority. The duties and authorities of the Notary Office are something that is unique and different from the duties and authorities in government offices in general, even though both carry out state administrative functions with different objects of competence.

Article 15 paragraph (2) letter g UUJN-Amendment stipulates as follows, that a notary is authorized to make a deed of auction minutes. The definition of auction minutes is not found in the UUJN. Based on Article 1 paragraph 28 of the Regulation of the Minister of Finance Number 40/PMK.07/2006 concerning Auction Implementation Guidelines which stipulates as follows, auction minutes are minutes of the auction implementation made by an auction official which is an authentic deed and has perfect evidentiary force for the parties. Based on Article 1 paragraph 13 of the Regulation of the Minister of Finance Number 40/PMK.07/2006 which stipulates as follows, an auction official is a person who is specifically authorized by the Minister of Finance to carry out the sale of goods by auction. Therefore, the granting of authority for a notary to make a deed of auction minutes as referred to in Article 15 paragraph (2) letter g UUJN-Amendment cannot be applied simply. This means that a notary cannot immediately hold the position of auction official. Based on the explanation above, the appointment of auction officials is carried out by the Minister of Finance (hereinafter referred to as MENKEU), while the appointment of notaries is carried out by the Minister of Law and Human Rights (hereinafter referred to as MENKUMHAM).

In Article 37 paragraph (1) UUJN must reflect the basic values of justice,

benefit, and legal certainty. The implementation of the provisions of the obligations contained in Article 37 paragraph (1) of the Notary Law and Article 3 paragraph (7) of the notary code of ethics will increase the dignity and honor of notaries and increase public trust regarding the provision of legal services in the notary field. The meaning of Article 37 paragraph (2) of the Notary Law regarding the existence of notary office sanctions has an impact on two sides, internal and external. Internally, it is marked by the formation of awareness of the notary that when he exercises the authority of his position, the values of the nobility of dignity and responsibility as a public official must be upheld as high as possible. While externally, the interests of the public or society remain well maintained and will increase public trust in the profession of a notary.

Regarding the value of implementing the provision of free legal aid services to the underprivileged community, this has been regulated in Article 37 paragraph

(1) Law No. 2 of 2014, hereinafter referred to as the Notary Law, can be classified into the third value. The purpose of this value is to describe and clarify a value in the implementation of the provision of free legal aid services to the underprivileged community in Article 37 paragraph (1) of the UUJN so as not to cause multiple interpretations, so that the values of the provision of free legal services in Article 37 paragraph (1) of the UUJN have been regulated, only that these provisions have not been clearly described so that further explanation is needed in Government Regulations.

In real terms, notary practice, based on research results, shows that there are still poor people who request legal services in the notary sector.

free of charge because clients who deal with notaries are generally people or communities with middle to upper economic levels, because the lower middle class rarely or never deal with notary matters. In addition, in practice, many middle to upper class people are found asking for a reduction in the price of making a deed if the community objects to the price given by the notary. The factors that become obstacles to providing free legal aid services to the poor are as follows:

- a. Because most lay people do not know about the existence of a law that regulates the provision of free legal aid services in the notary field to the underprivileged;
- b. Low supervision carried out by MPD, MPW and MPP; And
- c. There are no strict limits on the provision of free legal aid services to the underprivileged.

The implementation of the provision of free legal services in the field of notary by notaries based on Law No. 2 of 2014 concerning UUJN in the City of

Semarang, especially the analysis of Article 37 paragraph (1) and (2) has the understanding that the provision of services in the field of notary is influenced by several things, namely because of humanity which is based on the morality and integrity of a notary, and is also supported by knowledge about the provisions contained in the Law on the Position of Notary, one of which concerns the obligation to provide free legal aid services to the underprivileged community,

Notaries in carrying out their duties and authorities as public officials have the main characteristics, namely in their position (position) which is impartial and independent, even firmly stated "not as one of the parties", notaries as public officials in carrying out their functions provide services to those concerned, among others, in making authentic deeds, not at all parties to the parties concerned. Notaries, even though they are legal officers, are not "law enforcers", notaries are truly neutral and do not side with any of those concerned. As an illustration of the scope of the duties and authorities of notaries in making authentic deeds, it can be understood through the quote below

A Notary in carrying out his profession has obligations as regulated in Chapter III, part two of the Notary Law. A Notary must act honestly, carefully and impartially. Honesty is important because if a Notary acts dishonestly, there will be many incidents that are detrimental to clients and will even reduce the client's distrust of the Notary. Carefulness in acting is one of the things that a Notary must always do.¹² In addition, in carrying out his/her position, a Notary is also obliged to maintain client confidentiality, make documents or deeds requested by the client, make a list of deeds he/she has made, read deeds before the parties, and accept interns in his/her office. Regarding the obligations of a Notary, this is regulated in full in Article 16 paragraph (1), paragraph (2) and paragraph (3) of the Notary Law. Notaries need to pay attention to what is referred to as professional behavior which has elements, namely the behavior of a Notary must have solid moral integrity, must be honest in acting towards clients and himself/herself, be aware of the limits of his/her authority and not act solely based on monetary considerations.¹³

The notary's duties require integrity not only in attitude but also in action. As is known, a notary not only makes a deed or legal material and documents but also has humility in providing services to his services.

The position held by a Notary is a position of trust and precisely because of that, someone is willing to entrust something to him. As a trusted person, a

¹²Ira Koesoemawati and Yunirman Rijan, 2009, *To a Notary, Achieve the Hope of Success*, Jakarta, p. 41.

¹³Liliana Tedjosaputro, 2003, *Professional Ethics and the Legal Profession*, Various Sciences, Semarang, p. 93.

Notary is obliged to keep confidential everything that is told to him as a Notary. The obligation to keep confidentiality can be carried out by seeking the right to deny, which is an exception to the provisions in Article 1909 of the Civil Code that everyone who is called as a witness is required to give testimony in court. In addition, a Notary in carrying out his position is required to fulfill and obey provisions as regulated in UUJN-P and the Notary Law. While in the notary code of ethics there are 4 (four) types of obligations, namely general obligations, notary obligations to the Appearing Party, notary obligations to fellow notaries, and notary obligations to themselves. Before discussing social services, first discuss services. Service is an effort to serve the needs of others by obtaining compensation (money) or services. Service is the process of fulfilling needs through the activities of others directly. Service can be interpreted as carrying out activities or actions whose results are intended for the benefit of others, whether individuals, groups or communities.

Service arises because of the obligation as a process of organizing organizational activities, both government organizations and private organizations. In addition to effective and efficient public services, quality services are also known. What is meant by quality service is a service that is fast, pleasant, does not contain errors, follows the processes and procedures that have been determined in advance.

According to Moenir, as a party who wants to obtain good and satisfactory service, the manifestation of satisfactory service is

- a. There is convenience in managing interests with fast service, meaning without obstacles that are sometimes artificial.
- b. Get reasonable service.
- c. Get equal treatment in services for the same interests, orderly and without discrimination.
- d. Honest and straightforward service. This means that if there is an obstacle due to an unavoidable problem, it should be reported, so that someone does not wait for something uncertain.

While in general, social services as a form of social policy can be stated that every law and regulation concerning the social life of the community. Social services are actions (actions) to overcome social problems and make programs aimed at helping individuals and groups who experience deficiencies in meeting their life needs. Social services are activities that aim to improve relationships with their social environment. Social services are often referred to as social welfare services. Social welfare in the sense that it really includes various actions taken by humans to achieve a better level of community life.

According to Walteral Friedlender in Muhidin¹⁴, social welfare is an organized system of social services and institutions designed to aid individuals and groups to attain satisfying standards of life and well-being, and personal and social relationships which permit them to develop their full capacities and to promote their well-being in harmony with the needs of their families and the community.

Notary obligations are something that must be carried out by a notary, and if they are not carried out or violated, then sanctions will be imposed on the notary for this violation.¹⁵ In relation to the obligation and evidentiary power of an authentic deed made by or before the notary mentioned above, Habib Adjie concludes 2 (two) things as follows:

- a. The notary's job is to formulate the wishes/actions of the parties in an authentic deed, taking into account applicable legal provisions.
- b. A notarial deed as an authentic deed has perfect evidentiary power, so that it does not need to be proven or supplemented with other evidence if there is a person/party who assesses or states that the deed is not true, then the person/party who assesses or states that it is not true is obliged to prove his assessment or statement in accordance with applicable legal provisions.

One of the obligations of a notary above can be seen in Article 16 letter k that a notary is obliged to have a stamp or seal containing the National Emblem of the Republic of Indonesia, namely the Garuda Bird, where the shape and size of the stamp with the Garuda symbol are regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia. Number M.02.HT.03.10 of 2007. Notaries are also obliged to keep the contents of their deeds confidential and are even obliged to keep all discussions of their customers confidential when preparations are made to make the deed. Notaries are also obliged to provide free assistance to the underprivileged community as stated in Article 37 of the UUJN. There are other things where a Notary is obliged to refuse to provide assistance, namely in the case of making a deed whose contents are contrary to public order or morality. Also in the case of making a deed where there are no witnesses who cannot be recognized by the Notary or cannot be introduced to him¹⁶

Position in the sense of function, task, work area of government in general or equipment agency in particular. The term or designation Position is a term used as a function or task or work area in government. In addition, notaries are

¹⁴Muhidin, 1997, Introduction to Social Welfare. Student Library, Yogyakarta, p. 1.

¹⁵R. Soegondo Notodisoerjo, 2002. Notarial Law in Indonesia An. Explanation. CV. Rajawali. Jakarta: p. 229.

¹⁶Abdul Ghofur Anshori, 2009, Principles of Notary Office, Legal and Ethical Perspective, UII Press, Yogyakarta, p. 5.

required to always be ready to serve the community in their work area¹⁷. Notaries are required to provide legal services to the public who need their services, in this case the service should not be interpreted narrowly as only making deeds, legalizing private deeds, providing legal consultation/counseling related to the notary field but also concerning several aspects starting from the ease of the public in obtaining information about the requirements for making authentic deeds and the friendliness of notaries and their employees in serving clients, all of which are part of the activities in carrying out the notary profession.

4. Conclusion

That the legal regulations regarding the obligations and responsibilities of a notary in providing social services to the community based on Article 37 of the UJN require notaries to provide free services to the underprivileged community, however, the law does not clarify the definition or category of the underprivileged community so that notaries only differentiate between underprivileged communities based on the acknowledgement of the person appearing. In addition, free services can also be provided to users of notary services who are close to the notary, such as friends or family. The implementation of social services to the community related to the position they hold which is given to the underprivileged community by waiving fees by considering the humanitarian aspect, The provision of free notary legal services by a notary is based on humanitarian factors because of the moral urge of the notary to help fellow human beings in this case the underprivileged community and the honesty aspect of the person appearing as a client who explains their financial circumstances and conditions, the provision of free notary legal services by a notary based on the client's frankness to the notary because of the honesty expressed by the client regarding the inability to pay the honorarium for a legal service that is needed, so that it can arouse the social spirit of the notary concerned to provide it for free; and the aspect of the notary's belief that assesses that the person appearing is truly an underprivileged community, the provision of free notary legal assistance services by a notary because of the notary's belief that initially emerged because of the notary's assessment of the client.

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