

Authority of Land Procurement Committee In The Implementation of Compensation For Land Acquisition

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Abstract: The enactment of the Basic Agrarian Law in Indonesia creates dualism in land law that is sourced from customary law and on western law. The Basic Agrarian Law ends the dualism and creates the unification of our national land law. In the consideration of the Basic Agrarian Law it is stated that the need for a national agrarian law, based on customary law on land. In addition, article 5 of Basic Agrarian Law states that national land law is customary law; it indicates a functional relationship between customary law and national land law. In the development of national land law, customary law serves as a primary source in taking the necessary materials. Related to positive national law of land, customary law norms serve as complementary laws. In solving the problem, the author uses a sociological juridical problem approach to describe and analyze problems based on legal provisions and legal facts prevailing in the wider community. The results is then classified and material that can be used as to solve problems is determined .

Keywords: authority, committee on land acquisition, compensation, land acquisition.

1. INTRODUCTION

Revocation of rights and land acquisition means to unravel one of the causes of the breaking of the legal relationship between the subject of rights and the object of the land. The termination of the legal relationship between the subject of rights and the object of the land may be carried out in various ways, depending on the authorities and the right-holders or other causes beyond the will of the parties.

If the termination of legal relationship is carried out by the authorities unilaterally and by force and by compensation, it is called revocation of rights, or nationalization. If the termination of legal relations is carried out by the ruler without any compensation, it is called the settlement. If carried out by the right-holders in a voluntary manner it may be referred to as a right or grant, or a grant of wills, while if done because of the settlement or to pay a third party debt arrears are called auctions.

If performed by the holder of rights with another party as the recipient of the next right by agreement and in equal legal position, it is called buying and selling, exchange, distribution

of rights together and others. If performed without the willingness of the parties but because of legal events, it is because of inheritance.

Termination of the legal relationship may only be followed by the abolition of rights or in other words the holder of the old right loses his or her right and the right to the land itself ends by law, it can also occur the termination of the legal relationship the right to survive or remain valid only the holder of his right to move to the party other. Revocation of rights including categories causing the breaking of legal relations between the subject and the object of his rights and at the same time the abolition of the land rights and status into the land directly controlled by the state, then the state that acts as the party that directly controls the land and the state will also make arrangements return to the land rights.

Revocation of such rights may cause the rightful holder to lose their right to their land, while the ownership of land rights constitutes one of human rights as regulated in the constitution namely Article 28-H paragraph (4) of the 1945 Constitution which affirms "Everyone has the right to private property rights and property rights shall not be arbitrarily taken by any person"

Therefore any revocation of rights or the occurrence of termination of such relationship shall and only may occur if it has been done under the order of the Act, then without the instruction of the Act the execution of the revocation or termination of the legal relationship can not be justified because it concerns the human nature. The President even without the law order cannot deprive the rights to a person's land, even if in this country the land is mentioned social function is not necessarily on the land of a person can be deprived of his rights without any law that allows it even for the public interest.

Due to the urgency of land acquisition issues for the public interest, especially in the form of ideal arrangements that must be regulated by law, if new regulations regulating the revocation of rights, land acquisition or land acquisition established under the law, get criticized, therefore when it is issued the pledge of land procurement for public interest with Government Regulation no. 36 of 2005.

However, with the new regulations set forth in the lower regulations of the Act can be categorized as a mistake, because in terms of the true substance still regulated by the Act. Thus the issuance of Government Regulation no. 36 of 2005 and No. 65 year 2006 needs to be observed, because it can be called has repeated mistakes in the past when the issuance of rules that regulate the same thing that only the level of Minister of Home Affairs (Permendagri) namely Permendagri No. 15 of 1975 and No. 75 year 1993.

In addition to government's mistakes, it can also be seen as the negligence of the makers and the formulation of the Act, namely the Parliament, which until now did not take the initiative to draft the Act as a revision of Law no. 20 of 1961 is deemed no longer able to meet the requirements of government and society as well as the needs of development and development of the times.

The issuance of the Presidential Regulation, at the time of its enactment is still much highlighted and received a negative response from various elements of society, whether incorporated in political organizations, campuses and non-governmental organizations, but until now the government continues and remains committed to enforce it and it seems that there is no intention and attempts to revoke it, as well as the House of Representatives may not have a deep understanding for it, so only to the stage of commenting on the regulation, not just helped make it in the form of Law.

The government's force to enforce this rule is increasingly beckoning suspicious questions, what exactly the government wants behind the imposition of the Government Regulation on the good in terms of the content and review of the system of constitutionalism has been expressed by those who oppose that this Government Regulation is imperfect and problematic.

There are various form of sale and purchase of land, thus land purchasing and selling acomes from different motivations, some buy land for their own use and some buy land for sale again, in its development know the sale and purchase of private land by the land acquisition is then sold again in the form on which there is a housing or factory. Just as the private sector needs land either for public housing (KPR BTN) or for industrial estate. This is because the need for housing continues to increase in line with the increase in population that also increases, if we see a glimpse of this same we review from the aspect of buying and selling, that they buy and sell it again to the needy and labalah they are looking for, but there are also parties purchase of land by speculating and sell them at high prices, while the housing entrepreneurs in that it helps the government issues public housing is needed.

Usually land acquisition will be hampered in terms of compensation, or matters related to the beliefs of the community or the fear of impact after the land acquisition.

In this paper, those whose land is exposed to land acquisition, government offices and urban village offices are the object of the research. This is because these parties, if we examine the two institutions are directly involved in this case, the government office as the party that handles the land issue as well as the Regent authorized to grant location permit and Governor as the authority to grant the application of land rights and the forming committee of land

acquisition and the urban village is a party directly opposite the community, the spearhead of the government as the lowest government under the head of sub-district. Both of these agencies are as authorities for land acquisition, head of the land office as chairman and village head as a member, based on Permendagri No. 15 of 1975 Jo Permendagri no. 2 years 1976 Jo Permendagri no. 3 year 1987.

The fact that residents reject land acquisition on the basis of religious or religious magic or ask for a relatively high compensation or place as a substitute for its value is less fit for compensation, resulting in land acquisition somewhat hampered such as high compensation or requesting to be moved to a better place permanent, such as the consideration of soil fertility and economic effectiveness, in the sense that can generate income (income) is high.

Entrepreneurs who want the land of housing residents is familiarized with KPR BTN, construction of housing to be sold to people who need a house with credit. Another problem is developing; the entrepreneur demands a cheap compensation, if the land that has been released did not continue its development.

2. LAND PROCERUMENT

Land procurement is to relinquish the original legal relationship between the right-holders or the rulers of their lands by compensation.¹

Land procurement for development purposes actually has a long history because it has existed since the colonial era known as *onteigening*. Prior to the drafting of the Law on the Rules of Order of the Law (PTUP) no. 12 of 2012, then the form of PTUP regulatory activity in a row is Permendagri No. 15 of 1975, Decree of Presides no. 55 of 1993, Government Regulation no. 36 of 2005 and lastly Government Regulation no. 65 of 2006 as the realization of the mandate: first chapter 6, 27, 34, 40 Basic Agrarian Law. Second as a mandate from Law no. 39 of 1999 on human rights which mandates that as a consequence of land resources is one part of human rights, then that linked to it must be regulated by Law.

The term of land procurement is not really known in Law no. 5 of 1960 under the Basic Agrarian Law, since under article 27, articles 34 and 40 on the expiration of land ownership rights are known only legal acts of the release of land rights and the transfer of land rights.

In addition, pursuant to Article 18 of Act no. 5 year 1960 known also legal action of revocation of rights to land, the act of disposal of land rights done when subject of land rights get request from state done by government / regional government who want rights of land for

¹ E. Soewanda Natanegara, SH and H. Karbini. Association of Agricultural Regulations in Indonesia. Inter-City Publishers, 1984, p. 273.

development activity for public interest pursuant to Article 6 that all rights to social functioning land.

Transfer of rights to land occurs when the right to land other than the right of ownership is surrendered by the subject of its right to the state before its expiration due to the provisions of Article 6 of Law No. 5/1999. 5 years 1960. Legal implications relating to legal acts of release of land rights and disposal of land rights sam namely the removal of land rights from legal subjects concerned and the legal status of land objects into land controlled by the state as Article 2 Jo Article 4 of Law No. 5 years 1960.

The most important aspect of land procurement activities for development purposes is the land requirements of the country for public interest activities where no land is controlled by the state, so the government on behalf of the state makes a policy to take up land rights. In the juridical perspective, the state act shall be based on the constitutional basis, namely article 33 paragraph (3) of the 1945 Constitution and Article 28 H paragraph (4) stated: every person shall have the right of private property and the right shall not be taken arbitrary by anyone.

Referring to the view of Mary SW Sumardjono is certainly in the policy of land acquisition should be based on the principles of democracy and uphold human rights by paying attention to the following things:

- a. Land Acquisition is a legal act which results in the loss of a person's physical and non-physical rights and loss of property for a time or forever.
- b. Compensation for losses must take into account:
 1. Loss of rights to land, buildings, plants.
 2. Loss of income and other sources of life.
 3. Help to move to another location by providing an alternative new location equipped with decent facilities.
4. Revenue recovery assistance in order to achieve a state equivalent to the circumstances before a transfer occurs.
- c. Those who are displaced by land acquisition should be accounted for in compensation should be expanded.
- d. To obtain accurate data about those affected by evictions and the amount of compensation is absolute, basic and socioeconomic surveys are undertaken.
- e. It is necessary to apply the agency responsible for the implementation of acquisition and resettlement.
- f. The way deliberations to reach agreement must be developed.

- g. There is a need to accommodate complaints and resolve disputes arising in the process of land acquisition.

As a guidance for the purpose as stated by Sumardjono, in the context of the legal system is included so that when the legal system occurs a dispute, the principle of duty to settle in relation to land procurement activities, according to Boedi Harsono there are 6 legal principles of land procurement namely:

1. Mastery and use of land by anyone and for any purposes there must be a legal basis.
2. All rights to land are directly or indirectly rooted in the rights of the nation.
3. How to obtain land that has been haki someone must through an agreement between the parties concerned.
4. In circumstances that compel, if the way of deliberation can not result in agreement, for the common good, the ruler in this case the President is authorized by law to take the necessary land by force.
5. Whether in the event of acquisition on the basis of an agreement, or in the event of revocation of rights, to the party who has submitted his land shall be given a reasonable compensation.
6. People who are asked to give up their land for development projects are entitled to obtain a bailing from a bureaucratic official.

Judging from the constitutional basis of article 28 H paragraph (4) of the 1945 Constitution, the legal act of land procurement, whether for the interest of the state with motives for the public interest, let alone for private purposes shall respect the full rights of individuals. Respect for individual rights is a necessity that must be granted by the state especially to a citizen whose assets or property is just a plot of land.

Land acquisition for housing is stipulated in Permendagri No. 3 of 1987 but more precisely we know in advance about the company of housing development, housing provision of land and land permit location permits, those understandings are:

1. The housing development company is a business entity in the form of a legal entity that seeks in the field of housing construction over land area, which is a residential neighborhood, equipped with environmental infrastructure, public utilities and social facilities settlements.
2. Housing is a group of well-deserved homes or residences supplemented by environmental infrastructure, public utilities and social facilities.
3. The provision of land is any activity to acquire land for the enterprise's purposes by providing compensation to the entitled.

4. Land provision is the provision of land area for the purpose of housing development in accordance with the basic pattern of regional development and or master plan of city / city plan.

Location permit is a license for appointment of land use granted to an enterprise that is absolutely necessary for housing construction.²

3. LAND ACQUISITION

Land acquisition committee is a committee in charge of examination or research or settlement of losses in the framework of the acquisition of a right to land with or without a building or plant growing on it, whose establishment is determined by the Governor of the Head of Region for each Regency or Municipality within a Provincial Territory concerned.

The term "Land Acquisition" arose in conjunction with the issuance of Permendagri number 15 year 1975 dated December 3, 1975 on the provisions on the procedure of land acquisition. With the issuance of this regulation as well as revoke the provisions of Bijblad number 11372 Jo No. 12476, looking at the anatomy of the rule, the various peculiarities will appear from preamble to dictum, also from substance and formality, so that many criticisms are conveyed by various parties when tested in various scientific forums as well as many reap protests in the level of its implementation in the field.

This regulation does not clearly define and with the acquisition of this land, it simply refers "to meet the need for land in development efforts, especially for government purposes". Supposedly the provisions of the land acquisition is the implementation with the help of the committee of land acquisition which was formed by the government whose members are all from the government, as expressly stated only for activities relating to the public interest, so that there is selectivity and avoid the misuse of interests made by the committee pembebsan ground .

As outlined in the previous chapter, the issue of land acquisition for the benefit of the government/service since the colonial period up to 1961 still refers to the provisions of Bijblad no. 11372 Jo No. 12476, but since 1961 the provisions of Bijblad No. 11372 Jo No. 12476 has been declared revoked and ordered to be held a new rule because it is no longer appropriate with the circumstances and needs, then since then (1961) there is no rule that can be secured if the government wants to acquire land for the public interest, that's one factor that menaddi consideration in issuing this rule. But the provisions of Bijblad No. 11372 Jo No. 12476 when examined published by the highest government leaders at that time as outlined in the

² | Wayan Suandra, SH. Indonesian Land Law. RonekaCipta Publishers, 1991, p. 327

Governments of Foreign Affairs, supposedly the replacement of the replenishment is not made by the minister but made by the government in the form of Government or by the President's minimal government by presidential decree that when judging from the substance, set forth in the form of law.

The regulation even includes Law no. 5 of 1960 in consideration of "remembrance", but obviously overrides the Law no. 20 of 1961, in the case of Law no. 20 of 1961 as the implementing regulation of article 18 of the Basic Agrarian Law. This waiver is as if everyone or the landowner concerned should not be denied the land acquisition by the government and must receive compensation set by the committee, because there is no other means provided if the refusal of both the act of land acquisition and the determination of the compensation, even the government seems very confident in carrying out this land acquisition as regulated in Article 6 paragraph (4) which confirms that the implementation of land acquisition should be completed within a short time.

This is unfortunate because in the same provisions that prevailed earlier as in Bijblad no. 11372 Jo No. 12476 in the consideration of "weighing" this as a reference, it is stated that if the land can not be settled properly then it can be pursued through the revocation of rights as regulated in *Onteigeningser donan tie sttb.1920-574*.

It should be enshrined in the issuance of this land acquisition legislation by stating the completion of land acquisition if it can not be resolved normally by using a land abolition institution that has been regulated in Law no. 20 of 1961.

Another regulation that the land acquisition regime has ruled out is the land law as the implementation of the Basic Agrarian Law, namely Government Regulation no. 10 of 1961 concerning land registration, especially concerning the follow-up procedure after completion of land acquisition, ie when the land has been acquired, the government who has obtained the land is required to obtain a new land title through the procedure of land registration, even though in article 10 has been mentioned the procedure of obtaining the status of the land through Permendagri No. 6 of 1972 and No. 5 year 1973. Should be umay both Permendagri is Government Regulation no. 10 of 1961 is meant to be included *konsiderannya*.

The rights-releasing event, pursuant to Article 9 of Permendagri number 15 of 1975, then the execution of disposal shall be carried out at the same time or at the same time as compensation. In practice, of course, sometimes for land owner who refuses the land acquisition, usually their compensation is given through court in payment. For this class there are for disposal followed, and usually with great force and lack of volunteering.

The cost of land acquisition is obtained from fees charged by the committee to the applicant or the agency requiring the land, by providing official land. The amount of fee to be given to the committee is for transportation and other expenses, in the form of honorarium ¼% of the estimated price with the provision for the whole membership of 1.5% or in the form of Rp.1.000.000, -. The basis of the cost of land acquisition, pursuant to Article 12 of Permendagri number 15 of 1975.

The composition of the committee of land acquisition is regulated in Article 2 of Permendagri number 15 year 1975 in everyday practice can be used as usual buying way as usual selling and selling that we know, with the existence of demand and supply.

However, since the land needs a lot of community involvement, for the purchase of land that is not a state land, it is for the sale and purchase of land such as economic theory is difficult to execute the land acquisition path used, as well as the revocation of land rights, due to differences in compensation and etc. then the road is implemented.

Usually compensation and generally is in the form of money and also in the form of land or other land facilities, such as for land change we can see land can land in another village or another island like *bedol desa*. The process of determining the price should pay attention to the local price of the local area, this is based on Article 1 paragraph (4) Permendagri number 15 year 1975 which is determined: the local public price is the basic price set periodically by a committee as referred to in Permendagri number 1 of 1975 for an area according to the type of its use.

As for the needs of the Regency/City the general price used in land acquisition varies, and this is for the price of land classified as less fertile soils, and will differ from the general price of land close to the center of the crowd or economically having more strategic facilities.

For other facilities we can take the example as for the company then in giving compensation is usually given facilities or get employment in the company. Analysis of the source of the land acquisition committee pursuant to Article 2 paragraph (1) of Permendagri number 15 year 1975 is determined:

- a. Head of sub-directorate of agrarian district or municipality as chairman concurrently member (now district office or city land office).
- b. An official from a local government office appointed by the bupati or mayor of the relevant region as a member.
- c. Head of IPEDA / IREDA office or officer appointed as member (BAPPEDA).
- d. An official appointed by the agency requiring the land.

- e. Head of the local public works office or designated official if on the land of the building and or head of the regional agricultural service or the appointed official if on farm land as a member.
- f. Head of the relevant sub-district official as a member.
- g. Head of village or who is equated with it as a member
- h. An official from the sub-directorate of agrarian offices of the kabupaten / kota appointed by the sub-directorate of agrarian affairs of the county or municipality concerned (now the district or municipal land office).

Chairman of the committee of land acquisition can be directly appointed by the Regent/ Mayor. This is regulated in Article 2 paragraph (2) Permendagri number 15 of 1975, even this in certain circumstances only

4. AUTHORITY OF THE COMMITTEE IN COMPENSATION OF LAND ACQUISITION

Revocation of rights, acquisition of land or land acquisition means taking one of the things that cause the termination of the legal relationship between the subject of rights with the land object. Termination of legal relationship between the subjects of rights with the object of the land can be done in various ways, depending on the authorities and the rights holders or other causes beyond the will of the parties.

If the termination of legal relationship is carried out by the authorities unilaterally and by force and by compensation, it is called revocation of rights, or nationalization. If the termination of legal relations is carried out by the ruler without any compensation, it is called the settlement. If carried out by the right-holders in a voluntary manner it may be referred to as a right or grant, or a grant of wills, while if done because of the settlement or to pay a third party debt arrears are called auctions.

If performed by the holder of rights with another party as the recipient of the next right by agreement and in equal legal position, it is called buying and selling, exchange, distribution of rights together and others. If performed without the willingness of the parties but because of legal events, it is because of inheritance.

Termination of the legal relationship may only be followed by the abolition of rights or in other words the holder of the old right loses his or her right and the right to the land itself ends by law, it can also occur the termination of the legal relationship the right to survive or remain valid only the holder of his right to move to the party other. Revocation of rights including categories causing the breaking of legal relations between the subject and the object of his rights and at the same time the abolition of the land rights and status into the land directly

controlled by the state, then the state that acts as the party that directly controls the land and the state will also make arrangements return to the land rights.

Revocation of such rights may cause the rightful holder to lose their right to their land, while the ownership of land rights constitutes one of human rights as regulated in the constitution namely Article 28-H paragraph (4) of the 1945 Constitution which affirms "Everyone has the right to private property rights and property rights shall not be arbitrarily taken by any person"

Therefore any revocation of rights or the occurrence of termination of such relationship shall and only may occur if it has been done under the order of the Act, then without the instruction of the Act the execution of the revocation or termination of the legal relationship can not be justified because it concerns the human nature. The President even without the law order cannot deprive the rights to a person's land, even if in this country the land is mentioned social function is not necessarily on the land of a person can be deprived of his rights without any law that allows it even for the public interest.

Due to the urgency of land acquisition issues for the public interest, especially in the form of ideal arrangements that must be regulated by law, if new regulations regulating the revocation of rights, land acquisition or land acquisition established under the law, get criticized, therefore when it is issued the pledge of land procurement for public interest with Government Regulation no. 36 of 2005.

However, with the new regulations set forth in the lower regulations of the Act can be categorized as a mistake, because in terms of the true substance still regulated by the Act. Thus the issuance of Government Regulation no. 36 of 2005 and No. 65 year 2006 needs to be observed, because it can be called has repeated mistakes in the past when the issuance of rules that regulate the same thing that only the level of Minister of Home Affairs (Permendagri) namely Permendagri No. 15 of 1975 and No. 75 year 1993.

In addition to government's mistakes, it can also be seen as the negligence of the makers and the formulation of the Act, namely the Parliament, which until now did not take the initiative to draft the Act as a revision of Law no. 20 of 1961 is deemed no longer able to meet the requirements of government and society as well as the needs of development and development of the times.

The issuance of the Presidential Regulation, at the time of its enactment is still much highlighted and received a negative response from various elements of society, whether incorporated in political organizations, campuses and non-governmental organizations, but until now the government continues and remains committed to enforce it and it seems that there is no

intention and attempts to revoke it, as well as the House of Representatives may not have a deep understanding for it, so only to the stage of commenting on the regulation, not just helped make it in the form of Law.

The government's force to enforce this rule is increasingly beckoning suspicious questions, what exactly the government wants behind the imposition of the Government Regulation on the good in terms of the content and review of the system of constitutionalism has been expressed by those who oppose that this Government Regulation is imperfect and problematic.

While it has not been predicted that the results achieved in the enactment of the Government Regulation will be able to provide the greatest prosperity of the people, it is clear that in the implementation there have been several bloody incidents in various places, such as the Kuromba Kendari case (for the construction of the monument) and in Central Lombok there has been a physical clash between the police and the people who defend their land for the construction of airfields.

It is unfortunate if the Government Regulation on land procurement is a battle arena between the government and the people or groups on behalf of the people. Seen the government with the will to uphold its prestige, though not necessarily true, continue to insist to consider running this Government Regulation is a legitimate and correct act both juridically, politically and practically.

Government Regulation no. 36 of 2005 and Law no. 65 of 2006 is also touted as a good tool to accelerate the construction of a supposedly public infrastructure based on transparency and respect for legal rights on the ground, but there are those who consider the authorities to have publicly deceived, the people there are government programs such as the construction of toll roads that are categorized as public interest, it turns out the people see with visible business content, especially if the project is implemented and fully financed by the private sector, why the private sector is fully facilitated by the government through land procurement committee? In one side, the people in the name of oppression defend their right, declared the implementation of the Government Regulation has violated the law, even feared will destroy the joints of ownership of the land in the future, because after the termination of people's relations with the land, then deprived the roots of culture and life with nature around the place where they live their lives so far, especially for those who are taken their land with compensation is often unfair and fair value so that there is impoverishment because the conditions it faces no better life than before taking the land, so it will rape the property rights of the community.

If this dispute is to continue, it is certain that the people remain the target of the liberation and procurement of the land, as it may be that the people who take the opposite position will be labeled as opponents of development or against the government and the state. So at the beginning of this paper I first offer an alternative solution that the best way out is to fix the mistake, if indeed the Presidential Regulation is wrong, it's good to do the improvement with the field of chest without a sense of defeat, because the ideals of upholding justice and legal certainty in Government Regulation also is the desire of all people without battle and violence. The government should not feel itself defeated in this case, because the conditions of this dispute will create legal uncertainty, there will continue to be obstacles in giving way to bring in investors, because there will continue to disturb the people of the landowners if the procurement of land is not based on the agreement of the people.

The main point of this review is not to see how the public response and political response to a conflict arises from the growing discourse in addressing the existence and perception of the Government Regulation, but intrinsically it will try to comment critically on several issues on a theoretical scale.

In such a position, of course, if this criticism is merely a practical prediction, then we will stand on the view that what is being studied in this study, is simply to seek feedback, thus it can be contribute to better rules.

However, on the basis of this approach, this at least will be able to assist the formulator of the makers and implementers of the Act to put this rule above the attitude of the truth so that it is not suspected as problematic anymore, especially from the beginning this Government Regulation is indeed regarded as "order", because it is very related to its birth after existence infrastructure summit.

5. CONCLUSION

The authority of the land acquisition committee is carried out in view of the request from the private sector/company, after obtaining the location from the Regent / Mayor, and the Regency / City Office determines the location of the land for housing. Considerations of the status of the land, property and land conditions are lacking. In accordance with the condition of the soil in which the land is in the village, and it is stipulated that the provision of land of less than 200 hectares and for the Regency has a General Plan of Urban Spatial, the location permit shall be in the Regent / Mayor.

The position and authority of the land acquisition committee is assistance to private parties/companies that require the land acquisition committee. For decisive acquisition of authorized land, its authority gives information of the preliminary research on soil fertility or.

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