

CONCRETIZATION OF URGENT REASON AND SUFFICIENT EVIDENCE IN PROVIDING MARRIAGE DISPENSATION FOR CHILDREN BY THE JUDGE

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Abstract: *The article discusses the concretization of urgent reasons and sufficient evidence for granting marriage dispensations in Law Number 16 Year 2019. This purpose of this study is how to concretize urgent reasons and sufficient evidence by the judge in providing marriage dispensations for children. Researchers used empirical legal research methods and primary legal materials, secondary legal materials and primary data obtained through interviews with Syar'iyah court judges. Data analysis was performed prescriptively to provide an assessment of the implementation of the Marriage Law. The results showed that the petition for marriage dispensation for children after the legitimation of Law Number 16 Year 2019 increased despite being complicated by the Supreme Court Regulations and it was resulted that the age of the petition for marriage dispensation between 15 and 19 years old. Children must attend the court for obtaining the advice related to the risk of child marriage. Concretization of the urgent condition and sufficient evidence is carried out with observing the facts at the council, namely worrying about acts that are prohibited from religion, getting pregnant out of wedlock and doing tandem (khalwat). The sufficient evidences were concreted by the judge. He/She requested the witnesses who knew the background of the parents and prospective husband/ wife attended the council to investigate the reasons for the marriage of the child and proof of marriage rejection from the KUA, Child Identity Cards, birth certificates and final diplomas. It is recommended that judges must prioritize the best interest for the children and the reproductive health certificate from the hospital should be requested.*

Keywords: Marriage Age, Law Number 16 Year 2019, Child

The Introduction

The Constitutional Court through its decision Number 22/PUU-XV/2017, has equated the age of marriage between men and women to be 19 years for men and women. The decision began with a petition for a judicial review to the Constitutional Court regarding Article 7 Paragraph (1) of Law Number 1 Year 1974 concerning Marriage which regulates the age of marriage for men 19 years old and 16 years old for women. This provision is

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considered the discrimination for women and it was contradicted from UUD 1945. The Constitutional Court granted the petition and increased the age of marriages specifically for women to 19 years old. The Constitutional Court's consideration in deciding the petition was "However, when the difference between the treatment of men and women affected or prevented the fulfillment of the basic rights or constitutional rights of citizens, both those belonging to civil and political rights groups as well as economic, educational, social and cultural rights, which should not be distinguished solely based on gender reasons, such distinctions are clearly discrimination".

Following up on the decision, the Government together with the House of Representatives legitimated Law Number 16 Year 2019 concerning Amendment to Law Number 1 Year 1974 concerning Marriage. The age of marriage from the Law is affirmed in Article 7 Paragraph (1) which states that marriage is only permitted if men and women have reached the age of 19 (nineteen) years old. Quantitatively, the age of marriage in this new law is higher than Law Number 1 Year 1974 before being revised. The aim is to prevent marriage at the age of the child and inhibited the birth rates.

The presence of the new law precisely raises new problems in the empirical reality in the Syar'iyah Court. Petition for dispensation petitioned by parents of children are higher than before the changes. According to data obtained from Suka Makmur Syar'iyah Court, in 2018 petition for child dispensation amounted to 1 case. In 2019, the petition for dispensation increased to 4 cases. Then, in 2020, it increased to 9 cases until April. The phenomenon of the high demand for marriage dispensation does not only occurred in Suka Makmur Syar'iyah Court, but also it happened in Jombang Religious Court. In 2018, it reached 98 cases and increased in 2019 to 183 cases (<https://koranmemo.com/>).

The high number of petition for dispensation is based on the marriage dispensation granted by Law Number 16 Year 2019 as specified in Article 7 Paragraph (2) which states that in the event of a deviation from the consideration of age referred to in paragraph (1), parents of men and / or parents of women can request the dispensation from the Court on the reasons that is very urgent accompanied by sufficient supporting evidence. This provision becomes the basis for parents of children who wanted to marry off their children, but are not yet 19 years old (<https://www.hukumonline.com/akses16> April 2020). Age restriction on marriages for children was aimed to suppress as much as possible in order to prevent child marriages (Manan, 2008: 11).

The emphasis on the existence of urgent reasons and sufficient evidence is actually intended to suppress that underage marriages are not conducted. For the applicant (parent or guardian) must prove to the judge related to urgent reasons so it encouraged the applicant to be petitioned. Likewise, the applicant is required to bring sufficient evidence and showed the judge that the child being applied for marriage dispensation is appropriate for marriage. The reasons and evidence are the basis for the judge to accept and reject the proposed marriage dispensation. This study seeks to analyze petition for marriage dispensation after Law Number 16 Year 2019 concerning Amendments to Law Number 1 Year 1974 concerning Marriage as well as urgent reasons and sufficient evidence used by the judges as a basis for granting or rejecting petition of marriage dispensation for

children. Based on the problems as described above, the following research questions can be formulated, namely: How are requests for marriage dispensation after the legitimation of Law Number 16 Year 2019 concerning Amendments to Law Number 1 Year 1974? and How is the concretization of urgent reasons and sufficient evidence in providing marriage dispensation for children by judges in the Syar'iyah Court?

Research Methods

The research method is a method used in gathering research data and comparing with predetermined size standards (Arikunto, 2002: 126). The type of research that the researchers used in this study is the type of sociological legal research or field research, which examines the applicable legal provisions and those that occurred in reality of the community (Waluyo, 2002: 15). This research conducted on the actual situation in the community with the intention to find out and investigated the facts and data needed, after all the data needed is collected then analyzed regarding the studies in law (Waluyo, 2002: 15).

Sociological law research is also called empirical juridical research. The empirical legal research method (empirical law research) is a positive legal research concerning the behavior of community members in community relations (Wijayanti & Achmad, 2011: 97). The use of this research method is because the researcher wants to describe the enactment of Law Number 16 Year 2019 concerning Amendment to Law Number 1 Year 1974 specifically related to marriage dispensation for marriage which must be based on the existence of urgent reasons and sufficient evidence which must be proven by the applicant.

The data collection method is carried out by examining the available literature in the library regarding primary legal materials, and secondary legal materials used in this study. The primary legal material used is Law Number 16 Year 2019 concerning Amendments to Law Number 1 Year 1974 concerning Marriage. For secondary legal material the researchers used the material contained in books, journals and research results that have relevance to this study (Marzuki, 1983: 56). In addition, this study used primary data that was data obtained directly from the first source related to the problem under study (Amiruddin, 2006: 30). Data sources were obtained directly from the field by interviewing.

Sampling in determining respondents is determined by taking into account cases handled by judges in the Syar'iyah Court. Respondents chosen as a sample are judges who have tried and decided marital dispensation cases. This is because the amount of information obtained by the judge is based on facts that are often petitioned to the council. Interviewing judges who have tried and decided marriage dispensation cases are conducted to obtain the verbal information in order to obtain the accurate information from competent speakers.

Analysis of the data that researchers applied is the prescriptive analysis by providing the arguments for primary and secondary legal materials obtained from the information provided by the judges and the materials contained in the library. The prescription given by the researchers is as an evaluation between law enforcement and the application of the

Marriage Law according to whether or not it is in the perspective of legal science (Fajar ND, 2015: 184).

Discussion and Results

Post-Marriage Dispensation Number 16 Year 2019

The birth of Law Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 concerning Marriage is a breath of fresh air for children. The age of marriage is allowed for those who have reached the minimum age of 19 years for men and women. This latest law adds the age of marriage for women who were previously 16 years to 19 years. This new law is aside from providing a high age limit, but still provides space for marriage dispensation for parents of children. This is confirmed in Article 7 Paragraph (2) of Law Number 16 Year 2019 which stated that in the event of deviation from the age requirement as referred to in paragraph (1), male and / or female parents may request dispensation from the Court on the grounds very urgent accompanied by sufficient supporting evidence. This provision becomes a solution for children and their parents to request marriage dispensation from the Syar'iyah Court. Petition for dispensation certainly must be accompanied by sufficient evidence and reasons complete with the aim of convincing the judge so that his application can be granted.

In the explanation of Article 7 Paragraph (2) provides an explanation of the urgent reasons that is the situation there is no other choice and is very forced to have a marriage. This provision provides the guidance on marriage dispensation only given the existence of an urgent reason so that the forced marriage must take place. The above rules do not provide strict limits on urgent reasons so that careful and careful judgment is needed for the judge in formulating whether or not an urgent reason has been fulfilled. Likewise, the judge in granting the petition for dispensation is accompanied by the sufficient evidence. In the explanation of Article 7 Paragraph (2), it explained the sufficient supporting evidence is "a certificate proves that the age of the bride and groom is still below the provisions of the law and a certificate from the health worker supporting the parents' statement that the marriage is very urgent to be implemented".

This urgent reason and sufficient evidence are a renewal in the effort to prevent child marriage. In Law Number 1 Year 1974 does not specify this reason so that marriage dispensation is very loose and very easily accepted by the judge. Even so the reason that dispensation is often granted is because social problems have occurred among adolescents who become pregnant out of wedlock (Aljan Abdullah, 2017: 29). The provision of urgent reasons and urgent evidence in the Marriage Law after the revision can actually tighten the marriage dispensation of petition process. The petitioner to strengthen his petition is required to prove an urgent reason and bring sufficient evidence in front of the council. The judge will judge the reasons according to the facts presented by the parents as the applicant and witnesses presented.

The request for marriage dispensation is the most effective instrument to legitimize the child marriage by parents. Parents who wanted to marry their children but they are constrained by the minimum age of marriage determined by Law No. 16 Year 2019 so that through the petition of marriage dispensation. Petitions for dispensation have increased since the age of marriage was elevated in Law Number 16 Year 2019. According to Muji

Hendra, the petition of Marriage since the ratification of the Marriage Law has only increased dramatically. Since it was ratified until April 2020, there were 15 cases in Tapaktuan Syar'iyah Court. This figure is different before the Marriage Law, which only 2 or 3 cases in a year (Muji Hendra, Interview, 21 April 2020). The same thing was expressed by Iwin Indra who is a judge of the Suka Makmue Syar'iyah Court. In 2019, there were 4 cases of marriage dispensation. Then, it experienced an increase in 2020 reaching 9 cases until April (Iwin Indra, Interview, 20 April 2020).

Increasing the limitation of marriage age has not been effective in reducing child marriage rates. Exactly the presence of the Marriage Law resulted in the number of petition for marriage dispensations increased (Muji Hendra, Interview, 21 April 2020). The trend of dispensation requests that develops based on concrete facts in the Syar'iyah Court shows a different phenomenon than before the amendment to the Marriage Law, namely the age of the child for whom the dispensation was requested, ranging from 16-18 years old. Prior to the amendment to the Marriage Law, requests for dispensation were often submitted by parents whose children were aged between 15-16 years old and some were 15.8 years old (Mumin Muktasidin, Interview, 21 April 2020). As in the stipulation Number 4 / Pdt.P / 2020 / MS.SKM in which the child is 18 years old and 7 months old. The judge accepted the request and gave permission to marry a child with her 30-year-old husband. Likewise with the decision Number 58 / Pdt.P / 2020 / MS.SKM which provides the determination of children aged 18 years old to marry a man aged 22 years old. Children in this determination have followed high school level education until completion.

This fact shows a change in the request for dispensation before and after the ratification of Law Number 16 Year 2019. The difference is in the level of education that is passed by children. In general, at the age of 18 years children in Indonesia have completed education at the Senior High School level. Unlike before there was a change in the law in which children were married most did not go through education until high school, because the request for dispensation was filed between 15-16 years due to the age limit of 16 years.

The majority of those who apply for marriage dispensations come from the parents of the women and a small portion from the men. There are also those proposed by both parents of prospective husbands / wives because both are still included in the category of children (Irkham Soderi, Interview, 20 April 2020). The reason often given by female parents is because the child has dropped out of school before the age of 19 years. This reason is a sociological reason for people who live in the area because dropouts drop out of school parents marry their children at a relatively young age.

In an effort to suppress marriages at the age of children, the Supreme Court has its own policy by giving birth to Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Passing Judicial Requests for Marriage Dispensation. The presence of this Perma aims to tighten the occurrence of marriage at the age of the child and try as much as possible if the marriage dispensation is given must consider the best interests of the child. Therefore, every request for dispensation must be presented by the child to the court in order to get a response from him related to the reasons that encourage him to marry at the age of the child. According to Muji Hendra, all children

answered marriage at the age of the child is a desire that comes from himself without coercion from others. Children assume they have been able to carry out their duties and obligations as a wife in the household and are compatible with their partners (Muji Hendra, Interview, 21 April 2020). To avoid intervention in getting information from the child, each examination of the child at the trial judge asks parents to come out of the courtroom. This is so that the child can give answers freely without intimidation from both parents. The presence of children in court in addition to aiming to get concrete information from children also aims to be given advice, views and impacts that arise from child age marriages by a single judge who tries him. According to Iwin Indra, in preventing child marriages, the judge had tried his best to convince him to postpone his marriage until he was 19 years old. The response that is always given is to avoid adultery, it is better to use lawful ways that are not contrary to Islamic law and positive law in force in Indonesia (Iwin Indra, Interview, 20 April 2020).

Concretization of Urgent Reasons and Enough Evidence by Judges in Providing Marriage Dispensations

Urgent reasons and sufficient evidence are important grounds that must be submitted by a parent or guardian before a judge with the aim that the judge who hears the case accede to the petition filed. Urgent reasons and sufficient evidence becomes a new thing regulated by Law Number 16 Year 2019 concerning Amendment to Law Number 1 Year 1974 concerning Marriage as stipulated in Article 7 Paragraph (2) which states that In the event of a deviation from the age provisions as referred to in Paragraph (1), the male parent and / or female parent can request a dispensation from the Court on the grounds that it is very urgent accompanied by sufficient supporting evidence. In other words, if the prospective bridegroom and bride-to-be have not met the minimum age limit of the marriage age of 19 years, both male and female parents can request dispensation from the Syar'iyah Court accompanied by sufficient reasons and evidence.

These provisions provide a condition for which dispensation can be submitted if there is sufficient reason and evidence presented to the court by an interested party. According to Muji Hendra, an urgent reason is a situation where the relationship of the prospective bride and groom cannot be postponed again on the grounds that the marriage age limit is not sufficient, given the negative impact caused by the greater for both (Muji Hendra, Interview, 21 April 2020). Irkham Soderi set limits on the reasons for urgent reasons as concrete reasons submitted by the applicant / parent of the child / guardian of the child regarding the status of the relationship between the prospective bride and groom who want the marriage to be carried out in order to avoid acts that are prohibited by religion (Irkham Soderi, Interview, 20 April 2020).

To concretize the urgent reason, it is the responsibility of the judge in law enforcement efforts for the community. The judge will concretize sufficient reason and evidence based on the facts found at the trial. To give or reject a dispensation request is very much determined by the reasons stated by the parties. An application will be granted if the reasons and evidence presented can convince the judge that the reason is acceptable. Instead, the judge will reject the request for dispensation if the reasons submitted are

incomplete and the evidence presented to the trial is not perfect (Mumin Muktasidin, Interview, 21 April 2020).

The Judge of the Syar'iyah Court was actually faced with two conditions of difficulty in considering whether a marriage dispensation application was accepted or rejected. The first difficulty is if it is rejected there will be fear of falling prey to acts that are prohibited by religion. Especially in Aceh related to doing tandem (*khalwat*), adultery, *ikhtilath* (making out between *non-muhrim* people in the open or closed places) and sexual harassment will be subjected to flogging for the people who break them. The second difficulty that the judge is concerned about if the application is accepted is the future of the family relationship of the prospective husband and wife. Lack of maturity in thinking and acting, inadequate financial capacity contributes to muddy family life.

For this reason, the judge gives legal considerations (*tasbib al-ahkam/legal reasoning*) by looking at the urgent reasons for granting the marriage dispensation submitted by his parents / guardian. *First*, getting pregnant out of wedlock, with the rapid advances in technology today, also affects the psychological development of children, where the level of maturity of children today is faster than children in the 1990s. filters and restrictions and circulation of pornographic content that is easily obtained through the internet, so that it triggers curiosity in the child and wants to try something that is seen without realizing the long-term effects on the child, especially children who are less attentive from parents are very vulnerable to do things that are forbidden by religion such as sexual intercourse outside marriage which causes the pregnancy (Iwin Indra, Interview, 20 April 2020). According to Wisono Mulyadi, the reason often presented to the Court was because she was pregnant before marriage, had relations like a husband and wife and had slept together before marriage (Mulyadi, Jurnal Privat Law, 2, Desember 2017: 71).

Several cases submitted to the Syar'iyah Court of Tapaktuan caused the petition of a marriage dispensation request because the woman was already pregnant out of wedlock because between the child and parents who did not live at home, where the child went to school in Tapaktuan while the parents lived in a village quite far from Tapaktuan, so there is no parental control of children (Mumin Muktasidin, Interview, 21 April 2020). Pregnant out of wedlock is a disgrace for each family (Ahyani, Jurnal Wawasan hukum, 1, 2016: 44).

Second, have relations like husband and wife (Muji Hendra, Interview, 21 April 2020). If the candidate is a male who is not of sufficient marriage age, the judge will explore what factors cause the candidate to want to marry underage, usually cases that enter the Syar'iyah Court, against underage candidates who wish to have a marriage due to the occurrence of intercourse that causes pregnancy, so it cannot be avoided to be responsible for the actions that have been carried out. Thus, it can be understood that the purpose of granting dispensation by judges with the aim of providing benefits to women is that men who have had intimate relations are asked to take responsibility for their actions (Muji Hendra, Interview, 21 April 2020). In addition, the aim is so that the child can be known from the person who impregnated him. This is in accordance with the principles contained in the

maqashid shari'ah (the purpose of establishing Islamic law), namely to care for offspring.

Third, the child who was petitioned with her future husband was arrested by the community because of the twos. As contained in the decision number 250 / Pdt.P / 2019 / MS.Skm. it was revealed at the trial that as a result of being arrested by residents, then asked to get married. This phenomenon is a sociological reason that often occurs in Aceh. Consequences for couples who are found together with men who are not Muslims are usually married. In a number of cases arrested by the community it is still categorized as a child and not of sufficient age of marriage as stipulated in the Marriage Law so that they choose to submit a dispensation to the Syar'iyah Court who has the authority to try him (Irkham Soderi, Interview, 20 April 2020).

Fourth, the age of high school dropouts increased. In some cases the submission of marriage dispensation is also caused by the child not continuing school at junior high, high school or university level, so that by not going to school anymore, children have no purpose in life any more than getting married and to reduce the misfortune due to association if they do not get married soon (Muji Hendra, Interview, 21 April 2020).

Other judicial legal considerations in granting petition of the marriage dispensation are due to several factors, namely: First, the applicant's legal position must be submitted by his parents or guardians. In general, applicants for marriage dispensations are filed by the child's parents and guardians. Both parties are people who have direct interests and are authorized to act on behalf of the child in accordance with applicable regulations.

Second, the presence or absence of family relationships which results in the prohibition of marriage between children who are requested dispensation with their future husband. In Islam there are restrictions on marriage that have been underlined by *sharia* law which must not be broken by anyone. For this reason, the judge must be very careful to grant the marriage dispensation and must pay attention to the marriage ban. In Article 8 of the Compilation of Islamic Law stipulates that marriage is prohibited between two people who: related blood in a straight line down or up; related blood in a sideways bloodline, that is, between a sibling, between a parent and a sibling and between a brother and his grandmother's siblings; related *semenda*, namely in-law, step-son-in-law and mother / stepfather; related to breastfeeding, namely breastfeeding parents, breastfeeding children, sisters and breast milk aunts / uncles; related to the wife or as aunt or niece of the wife, in the case of a husband with more than one wife; Having a relationship which by religion or other applicable regulations, is prohibited from marriage.

To prove whether or not there is a relationship that can result in a marriage being unable to take place, the judge asks the applicant to present witnesses who explain that between the prospective bridegroom and the female candidate there is no prohibition on marriage. According to Muji Hendra, the majority of the witnesses were very clear about the condition of the child and the prospective husband / wife there was no obstacle to marriage according to religion (Muji Hendra, Interview, 21 April 2020). Based on the data, it will be a consideration for the judge to accept a dispensation request.

Third, it has the prospective bridegroom's finances. The judge also traces the economic condition of the candidate, if the candidate is a man of sufficient marriage age, then the judge will explore the economic condition of the candidate whether it is appropriate to marry with the economic capabilities existing in the candidate, and from in-depth proof of witnesses, the majority of prospective husbands who are of sufficient marriage age have sufficient income to be responsible for livelihood for their future wives (Iwin Indra, Interview, 20 April 2020).

Urgent reasons argued in the petition must be proven by the petitioner at trial. Therefore, the evidence in the case of marriage dispensation petition has a very strategic role. According to Syaiful Bakhri, proof is an important stage in civil procedural law and to that party is charged with proving the arguments outlined in the petition or lawsuit (Bakhri, 2018: 115). In a dispensation request the judge will consider two important elements in the evidence, namely the evidence letter and witness evidence (Irkham soderi, Interview, 20 April 2020). Evidence recognized by statutory regulations in Indonesia is regulated in Article 164 HIR, Article 284 RBg and Article 1866 of the Civil Code consisting of documentary evidence, witness evidence, allegations, confessions and oaths (Manan, 2008: 239).

Concretization of sufficient evidence that always gets the attention of the judge is emphasizing the witnesses presented to the trial. The presence of witnesses is very important to confirm the reasons and background of married children at the age of the child. For this reason, the judge asks witnesses to be present to obtain the following information: *First*, the witness must know the background of the child's parents. The judge also always seeks information from witnesses about the background conditions of the child's parents, whether there is intervention from the parents to the child to have a minor marriage or indeed the wishes of the child himself. In the majority of cases in the Syar'iyah Court of Tapaktuan, the Judge found that there was no intervention from parents to children to get underage married; in fact most parents sought solutions to get the child married according to the provisions of the Law by giving views and advice to children related to the consequences of underage marriage had been done (Muji Hendra, Interview, 21 April 2020).

Second, the witnesses must know the background of the prospective husband / wife of the child. In addition to knowing the background of the child and the background of the child's parents, the Judge also explored information from witnesses submitted regarding the situation of the prospective husband / wife of the child, what was behind the candidate to marry a child under the age of marriage that has been arranged in Indonesia. The majority of witnesses examined by the Judge also knew the background of the prospective husband / wife of the child, and from the results of the profound evidence that the desire to get married was also motivated by a strong desire from both parties both the child and the prospective husband / wife of the child (Mumu Muktasidin, Interview, 21 April 2020).

Third, the witnesses must know the background of the child to have an early marriage. In the evidence carried out by the judge to the witnesses, the judge usually digs up information against the background of the child's desire to get married under the age specified by the Act. Here the judge will ask the witness the extent of the witness's knowledge of the very basic reasons of the child so that the child is indeed unanimous to marry underage

(Muji Hendra, Interview, 21 April 2020). The three aspects above will determine whether or not a marriage dispensation application is accepted. If it is found that there is an element of coercion from the information submitted by witnesses at the trial, it is certain that the judge rejects the marriage dispensation, because in addition to being in conflict with the Marriage Law it also contradicts the Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Passing a Marriage Dispensation Request.

Conclusion

Based on the problems as described above, it can be concluded that the petition for child marriage dispensation after the legitimation of Law Number 16 Year 2019 are increasing. This is due to the following factors: first, the average parents who petitioned the marriage dispensation is between 15 and 19 years old. Before the ratification of the law only girls aged 14 to 16 applied for marriage dispensation. Second, the lack of massive socialization was delivered by the government to all levels of society. Third, girls who drop out of school were encouraged to get married by their parents. Fourth, dating relationships were done by men and women for a long duration of time.

Concretizing the urgent reasons on which the judges granted the marriage dispensation is the basis: pregnancy out of wedlock, having a relationship like a husband and wife, children arrested by the community for being alone with their *non-muhrim* partner and a child dropping out of school so that they are dismissed if things are not married off which is forbidden by religion. Sufficient evidence is always used as a judge to determine the marriage dispensation is evidence of a witness who knows the background of the child's parents to marry his child and the reasons that encouraged children to marry at an age below the minimum limit set by law. Other evidence that was shown at the council was proof of rejection of the marriage from the KUA, a child's identity card, birth certificate and last diploma.

From the description as the researchers have described above, it was suggested to the judge to be able to consider the best interest of the children in determining marital dispensation for children. It is recommended to the judge to request the letter from the doctor explaining that the child is physically and mentally healthy and healthy in reproductive health.

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