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Family Law Reform in Indonesia in the Perspective of Criminal Law

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Abstract

Family law addresses various family-related issues, including marriage, child support, child abduction, adoption, inheritance, divorce, domestic violence, etc. Most family law provisions in Indonesia are governed by the "Indonesia Criminal Code" (KUHP). However, family law reforms from the criminal law perspective in Indonesia have received little attention in previous research; therefore, the present study has effectively filled this research vacuum. This study employed a judicial legal methodology, and secondary qualitative data was collected from various primary and secondary sources. NVivo was used to perform the content analysis. To achieve the research objective, this study focused on family law in Indonesia and various family law reforms in the context of child marriage, domestic violence, child abduction, parental neglect, and same-sex marriages from the criminal law perspective. According to the findings of this study, family law matters are handled by two distinct categories of courts: religious and district courts. It has been determined that the KUHP and Indonesian marriage law cannot implement a minimum age of 18 for marriage, as international human rights treaties require. Likewise, the KUHP is unable to protect individuals from domestic violence. The development and implementation of UU PKDRT have been effective in this regard. If they cause injury to the children, child abduction and parental neglect are also crimes punishable under the KUHP and child protection law. Nonetheless, same-sex marriages are illegal in Indonesia. Consequently, various recommendations to enhance the family law implications in Indonesia have also been provided. For instance, cooperation between Indonesia's legal authorities and international human rights organizations should be strengthened. This study has both theoretical and practical implications.

Keywords: family law reform; Indonesia; criminal law; KUHP; marriage law

1. Introduction

Family law (Harris et al., 2023) pertains to the statutes, norms, and regulations governing all family-related matters. These family matters may involve marriage,

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children, adoption, inheritance, divorce, child custody, financial matters following divorce, etc. These laws ensure that all sensitive family matters are conducted with great care and respect (Schepard, 2022). Family law is generally distinct from criminal law, but there are occasions when the two overlap. In light of this fact, family law contains several statutes and rules indirectly related to criminal law (Logan, 2023). Criminal law (Rakoff & Goldstein, 2023) relates directly to offenses and crimes and establishes charges and penalties based on the offense. There are various family laws, including laws regarding juvenile marriage and domestic violence, among others. Child marriage law (Fan et al., 2022) emphasizes that no child should marry or be forced to marry before reaching a certain age. This age typically ranges from 16 to 19 years for males and females.

Countries may also have different family laws, with culture and religion also having an impact on the country's legal system (Harris et al., 2023). For instance, Muslim nations such as Indonesia, Malaysia, Pakistan, etc., incorporate their religion into their constitutions and legal systems. As an Islamic nation, Indonesia's laws and regulations follow Islam (Putra & Ahyani, 2022). In addition to Family Laws, Indonesia has other family-related legislation, such as the Constitution of Indonesia from 1945, the Marriage Law from 1947, the Compilation of Islamic Laws in Indonesia from 1991, and the Human Rights Law from 1999. These laws have been in effect in Indonesia for a very long time. As circumstances evolve, laws and regulations must also be revised accordingly. Law reforms are intended to improve the application of the law and ensure its continued validity (Crenshaw, 2020). This is why many nations worldwide strive to reform their family laws.

Additionally, Indonesia is presently working on family law reforms and has done so in the past. With time, it has become abundantly clear that significant reforms are required in family law. Indonesia has been working to reform various family-related statutes, laws, and regulations, but additional reforms are required. Moreover, it has been observed that the implemented reforms are not adequately monitored. Effective implementation of reforms necessitates a certain amount of resources.

Nevertheless, according to the current situation in Indonesia, despite the country's efforts to implement reforms in various laws, the scarcity of resources makes it difficult and challenging to implement the reforms effectively (Wismayanti et al., 2019). In this regard, the present research aims to examine family law reforms from the perspective of criminal law. The current research study is extremely significant and effective from multiple vantage points. This research can contribute to the existing body of knowledge by examining family law reforms from the criminal law perspective. Moreover, it can be extremely beneficial for law-making institutions and authorities to identify any remaining gaps or vulnerabilities. It can also help authorities determine which laws require additional reforms in light of the current situation. In addition, the study's discussion of family law reforms in Indonesia can be of great significance to the general public, as it can increase their awareness of these reforms. The research has relevance for future researchers as well.

1.1 Method

Qualitative research methodology is employed as the current research study investigates family law reforms from the criminal law perspective. Furthermore, the

interpretivism research philosophy that believes in the non-scientific method of data and the inductive approach utilized in this research study is optimal for theory-building research. This study employs the qualitative research method to develop a comprehensive understanding of family law and its reforms in criminal law. Due to the nature of this research study, which is suitable for such a methodology, this method and strategy are used. For data acquisition purposes, the current study employs a judicial legal strategy. The judicial legal approach is one of the legitimate methods for conducting law-related research. The researcher has analyzed family law and criminal law-related legal documents, legislations, constitutions, and regulations.

Moreover, family law reforms are extensively examined. Because this is secondary research, the extensive literature is also reviewed using databases such as Springer, Emerald, JSTOR, West Law, Hein Online, etc. Family law and criminal law-related periodicals and literature are also examined. In this research study, content analysis is utilized by the researcher for data analysis. Content analysis (Killick & Griffiths, 2022) is a qualitative data analysis technique that identifies specific content, themes, or concepts to understand better and analyze the data. This is one of qualitative research's most frequently employed data analysis methods. In addition, NVivo software is utilized for data analysis in this research study.

2. Literature Review

2.1 Family Law Reforms: A General Perspective

Poitras et al. (2021) define family law as the collection of family-related rules and regulations made available to the general public by the government. According to a research study (Bailey et al., 2020), family laws are regulations and statutes guiding family matters. These family issues may involve divorce, marriage, child custody, domestic violence, etc. Certain family (Bettinger-Lopez & Bro, 2020) laws, such as the law against domestic violence, are the same in all countries. This law states that no family member should ever cause injury to another family member. Countries throughout the world are currently implementing family law reforms. Numerous nations are already implementing these reforms. For instance, New Zealand has recently reformed its domestic violence laws by imposing severe penalties on those culpable (Keddell et al., 2022). This reform and charges are related to the 1961 Crimes Act, which states that no one should be harmed and punishes offenders with criminal charges. The reason for the reforms is that over the past few years, various circumstances have changed. These fluctuating statistics and circumstances require the utmost consideration from those who make the laws.

2.2 Family Law Reforms in Western Countries

Recent reforms in the family laws of Western nations, such as the United States, Spain, Germany, Canada, etc., have been observed and penalized by law (Brown et al., 2023). Reforms were made to the domestic violence law in Germany. It has been added to the civil act's physical assault Division 14, Section 185 (two years in prison) and sexual assault Section 178 (at least ten years in prison) (Federal Ministry of Justice, 2023). A person who commits any form of violence may be sentenced to six months and ten years in prison, depending on the gravity of the offense (Henninger,

2022). In the United States, reforms were made to the country's divorce law. In the United States, no-fault divorce was initially prohibited. However, after the reforms, the family law permitted individuals to divorce for any reason (Oren, 2022). Existing law changes are always made for the benefit of the public. It benefits the country and its citizens to have laws reflecting current circumstances. In Spain, changes were made to the law governing child custody. Initially, both parents were not required to be responsible for the child's development. With time, however, it became clear that parents' divorce already has a devastating impact on children. In addition, the complete absence of one parent can negatively impact the child's abilities and mental health (unless the parent has committed a crime or offense). For this reason, the law ensures that parents provide financial and emotional support for their children's upbringing and other matters (Fernandez-Kranz & Nollenberger, 2022). Such reforms benefit numerous individuals.

2.3 Family Law Reforms in Indonesia and Eastern Countries

Similar to other Islamic nations, Indonesian law is influenced by culture and religion. This has been observed in numerous Islamic eastern countries, such as Kuwait, Oman, and Qatar (Fathallah et al., 2020). It is abundantly clear that family issues can occasionally intersect with criminal law. In Indonesia, reforms have been implemented in various areas, such as domestic violence and infant protection. In Indonesia, the law regarding marriages between minors has been revised, for instance. Reforms were made for both the female and masculine ages. Before this reform, the Marriage Law of 1974 (ML) stipulated that the minimum marriage age for women was 16, and for men, it was 19. Reforms were enacted, however, after an increase in related issues, such as forced underage marriages, etc. According to the reforms, Law No. 16 of 2019 stipulated that the minimum age for marriage for males and females is 19. Also mentioned was the possibility of imprisonment for minor marriage (Roslaili et al., 2021). In 2008, West Java was the site of a forced marriage involving minors (Grijns & Horii, 2018). The case involved a man born in 1965 who was already married to a minor, a 12-year-old female and planned to marry two additional minors, aged 7 and 9 years. The only concern of the parents regarding the marriage was the school fee. After the NGOs filed a complaint, the court sentenced the defendant to four years and a sixty million fine. Recent changes to the Egyptian divorce law have expanded the conditions under which a woman can initiate a divorce. This is because initiating a divorce is a difficult process for women. According to recent reforms, however, only she is required to stop paying alimony (Corradini & Buccione, 2023). Similarly, many other eastern nations, such as Kuwait, Qatar, etc., have amended their domestic violence laws by instituting criminal penalties.

3. Results and Discussion

This study concentrates primarily on family law reforms in Indonesia from the criminal law perspective. Various crimes or problems frequently arise within the context of a family, which has prompted various family law reforms. Because Indonesia is an Islamic nation, its legal system contains various restrictions on same-sex marriages, adultery, and other matters. In order to accomplish the purpose of this study, the overview of family law in Indonesia is analyzed to determine its strengths

and weaknesses in the context of various family or marriage-related issues. In addition, family law reforms were observed from the perspective of criminal law in Indonesia, focusing on child marriage, domestic violence, child abduction, parental neglect, and same-sex marriage.

3.1 Overview of Family Law in Indonesia

The "Indonesian Civil Code" (KUHP) influences almost every facet of family law in Indonesia, including aspects such as property rights, marriage, administrators, children's welfare, dissolution of marriage, wills, executors, and guardians. In Indonesia, family law is divided into two distinct categories. The first law applies to all individuals, while the second law establishes essential rules governing divorce, inheritance, marriage, children's welfare, and divorce for Muslim individuals registered with the Indonesian government. Therefore, in addition to the KUHP, the following family-related statutes apply to all individuals:

- Law No. 1/1974, pertaining to Marriage
- Administrative Regulation No. 9/1975
- Supreme Court Circular Letter No. 03/BUA.6/HS/SP/XII/2015, titled "Application of the Results of the 2015 Supreme Court Pleno Room Meeting as a Guide for the Implementation of Court Assignments"

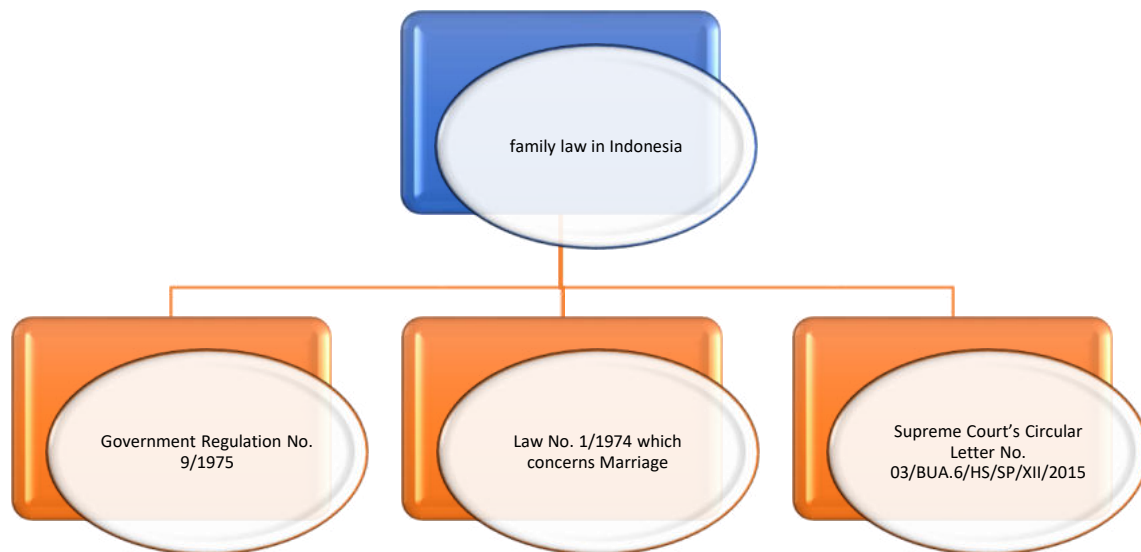


Figure 3.1. Mind map of family law in Indonesia

Therefore, two judicial systems in Indonesia handle family-related matters. The Religious tribunals are responsible for family law matters involving Muslims. In contrast, the District Courts handle family law matters involving non-Muslim parties. Each court is governed by a panel of three judges committed to resolving family law-related issues in Indonesia.

3.2 Family Law Reforms from the Criminal Law Perceptions

Family law in Indonesia encompasses a variety of legal issues about divorce, child support, inheritance, marriage, child custody, and adoption. However, criminal

perspectives on family law arise when the preceding issues are violated. Consequently, various family law reforms from the criminal law perspective are discussed below.



Figure 3.2. Mind map of family law reforms in Indonesia

- *Early Marriage/ Child Marriage in Indonesia*

In Indonesia, the marriage doctrine is not distinct from the syafi'iyah teachings, which have been well-known since the seventh-century arrival of Islam. However, certain provisions included in the first books are heavily criticized because they permit child marriage by stating that the minimum age for a man to marry is 19 and that for a woman is 16. AsySyauki, on the other hand, asserts that A'isha's marriage is exceptional (Abubakar, 2019). Nevertheless, according to the marriage law, a woman may marry at 21 without a guardian.

Following Article 7 of the Indonesian marriage law, a male may marry at 19, while a woman may marry at 16. Article 6 of this law states that if a child has not attained age 21, he or she must obtain parental consent before getting married. This article further regulates the licensing process. Likewise, people under 18 and unmarried are classified as juveniles, and their parents or guardians must represent them in all legal matters (Sumanto et al., 2021). The age restriction was established to protect the health and welfare of the wife, spouse, and their offspring. Following "Minister of Religious Affairs Regulation No. 3 of 1975," parents may also submit a marriage dispensation if their offspring are below the minimum age requirement for marriage. Following Indonesian family law, therefore, child marriage is a crime.

The "General Elucidation of Law Number 1 the Year 1974 about Marriage" (Sugiyono et al., 2021) mandates the implementation of various legally binding regulations in Indonesia to reduce the prevalence of child marriage. Various measures can be taken to prevent child marriage, such as educating the public about

the essence of marriage. However, Indonesia's marriage law does not include the 18-year age limit recommended by "International Human Rights Treaty Bodies," nor can it implement the "2002 law on child protection," which prohibits the marriage of individuals younger than 18.

- *Domestic Violence in Indonesia*

Domestic violence has become a worldwide concern in recent years. The incidence of domestic violence in Indonesia is on the rise. However, the KUHP has highlighted various crimes associated with the household; however, the KUHP has remained silent on marital rape. Article 285 of the KUHP defines rape as the illicit act of a man engaging in sexual relations with a woman who is not his wife (Arief, 2018). Consequently, the KUHP is deemed ineffectual at preventing domestic violence by implementing key provisions.

Nevertheless, even though Articles 351 and 352 of the KUHP focus on the mistreatment of women, they cannot provide justice to women who have been victims of domestic violence. Considering the deficiencies of KUHP, the 56-article "Law No. 23/2004 Concerning the Elimination of Violence in the Household (UU PKDRT)" was enacted (Alfitri, 2020). This statute has also provided effective legal protection in the context of any domestic violence offense. This legislation defines domestic violence as:

"[a]ny act against anyone, particularly a woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of the household, including any threat to commit an act, force, or the seizure of freedom in a manner against the law within the scope of the household."

Therefore, the KUHP does not criminalize domestic violence, as observed. In contrast, the UU PKDRT criminalizes domestic violence and highlights various issues concerning women's psychological, physical, and economic well-being (Cantika, 2023). In addition, the UU PKDRT explicitly defines the individuals protected by this law to avoid any legal ambiguity. This group comprises children, spouses, relatives, and assistants. This law does not promote discrimination because it recognizes male domestic violence victims. This law has also effectively emphasized the protection of housemaids from domestic violence, as this population is more susceptible to such abuse. This issue has not been addressed in the KUHP, leaving all individuals without adequate protection.

- *Child Abduction in Indonesia*

Abduction is the unlawful retention or removal of a child without the assent of the child's legal guardians and parents. The abduction offenses are governed by Articles 333 and 328 of the KUHP. Under the "Child Protection Law" (Law No. 23 of 2022 and its amendments, Law No. 35 of 2014, and Law No. 17 of 2016), child victims are protected by different regulations. In addition, the "Hague Child Abduction Convention" is deemed effective in emphasizing the rights of child victims in such circumstances (Rafsanjani, 2022). Also, a signatory to this Convention is Indonesia. Under the terms of this Convention, the legal guardian of a child who has been erroneously retained or removed has the right to pursue legal recourse for the child's return. The legal authorities in Indonesia are obligated to cooperate with the

associated authority of the child's residence in this regard. Therefore, Indonesian law is determined to safeguard the liberties of children. However, Article 328 of the KUHP also states that anyone who unlawfully removes or retains a minor under the age of 16 is guilty of a crime punishable by up to seven years in prison or a hefty fine (Panjaitan et al., 2022). This demonstrates that child kidnapping is a severe crime in Indonesia and that the government and legal authorities take stringent measures to combat it.

- *Parental Neglect in Indonesia*

In cases where parental neglect results in the endangerment or injury of a child, it is stated that there are criminal consequences. Parental neglect is the failure of a guardian or parent to provide a child with support, protection, or care, resulting in emotional, psychological, or physical harm. Various laws and regulations have been devised and implemented for parental neglect in Indonesia. Article 76 of the KUHP, for instance, imposes liability on custodians and parents who intentionally neglect their responsibilities. These responsibilities include educating and caring for their offspring. In addition, the child protection law in Indonesia guarantees the protection and well-being of children, urging parents and guardians to fulfill their responsibilities in this regard. In Indonesia, a "Child Protection Commission (KPAI)" has been established to address child protection concerns involving parental neglect or abuse (Rini Fathonah & Heni Siswanto, 2023).

- *Same-Sex Marriages in Indonesia*

In Indonesian law, civil partnerships and marriages between individuals of the same gender do not confer legal privileges. Family law in Indonesia prohibits same-sex marriages because they contradict Islamic teachings. Marriage is defined by Indonesian law as a spiritual and corporeal union between a woman and a man. Cohabitation and same-sex relationships are not illegal under Indonesian law (Fajrin et al., 2021); however, a revised draft of the KUHP is being considered to criminalize cohabitation outside of marriage and sexual relationships between individuals with the same sexual orientation.

Moreover, according to Article 2 of the Indonesian marriage law, marriages conducted following the laws and regulations of each religion are legal and valid. In addition, Article 34 of Law No. 23/2006 supports the union of a woman and a male (Diningrat et al., 2020). It also specifies that the laws and regulations must be followed for a marriage to be legal.

4. Conclusion

Almost every family-related domain in Indonesia is either directly or indirectly connected to the KUHP. Marriage, child support, inheritance, property rights, child welfare, the dissolution of a marriage, and guardianships are a few aspects of family law. This study focuses on family law reforms in Indonesia from the criminal law perspective. This study highlights various issues, including child abduction, parental neglect, same-sex marriages, domestic violence, and early marriage. This study's findings indicated that the KUHP has been ineffective in preventing early marriages, resulting in ineffective outcomes.

Nevertheless, certain reforms have been enacted stating that parents or guardians are liable for carrying out the legal activities of children under 21 who are determined to marry. The UU PKDRT later emphasized that the concept of domestic violence is largely neglected under the KUHP. In the case of child abduction, however, the associated guardian or parent is also permitted to pursue legal recourse for the child's return. In contrast, parental neglect that results in negative outcomes for the child leads to incarceration. Moreover, same-sex marriages are deemed illegal in Indonesia; however, no criminal penalties are imposed on those who engage in cohabitation before marriage or same-sex marriage; therefore, a revised draft is being considered to criminalize these issues.

5. Recommendations

With time, the need for law reform has intensified. Regarding criminal law, Indonesia has already undertaken reforms to several family laws. Nonetheless, additional reforms are required in various matters and laws. Moreover, the laws must be efficiently implemented, but the authorities have observed a sluggish implementation of these reforms due to a lack of resources, which poses a challenge. For the improvement of family law reforms, the following suggestions are made to the government, law-making institutions, policymakers, the public, etc.:

- Since a lack of resources has been observed for implementing family law reforms, the government should invest and provide more funding to acquire more relevant resources to implement the reforms within the country to protect families properly. The Indonesian legal authorities should communicate and collaborate with the international legal authorities in order to create laws, policies, and regulations that will be of much greater assistance to the citizens of the nation.
- Issues such as domestic violence, adultery, same-sex marriage, minor marriages, etc., should be properly reported on an appropriate platform. There is currently no such platform through which these incidents can be reported. Moreover, even when the cases are reported, they are sometimes not considered.
- Appropriate institutions should be established to monitor whether reforms and laws about family issues are implemented appropriately. This is because it has been observed in multiple instances that reforms exist, but their implementation is inadequate.
- From the perspective of criminal law, some family issues are still inadequately punished or require harsher punishments. These issues include preventing a partner from obtaining a divorce by coercion, gaining possession of a child by coercion after a divorce, and forced marriages of minors by their parents, among others.
- Awareness campaigns should be organized to raise awareness of these issues and reforms so that they have the appropriate guidance and knowledge about them, as most people are unaware of them.

6. Implications

The present investigation aimed to examine family law reforms from the criminal law perspective. Reforms in family law have become urgently necessary because they can help people live in harmony. For many years, Indonesia has been striving to

reform its family law. There are both theoretical and practical implications of the current research.

- *Theoretical Implications*

As the current research has discussed family law reforms from the criminal law perspective, it can be considered a significant contribution to the existing body of literature. The issues of early marriage, divorce, adultery, domestic violence, etc., were examined in depth in this research study. In addition, the research study discussed Indonesian family law reforms and laws about these issues. This can be an important contribution to the body of knowledge. These issues have been highlighted by the current research, which is a significant contribution to the theory. This research has also highlighted the family laws directly or indirectly related to the Indonesian family law reforms.

- *Practical Implications*

The current research study has emphasized the significance of family law reforms and discussed various reforms in family law. This can aid the government in determining which issues require additional consideration. Even though the country is exerting so much effort on reforms, there is still a deficiency in implementing the reforms, as revealed. This can aid Indonesia's law-making authorities and legislative institutions in gaining a better understanding of the issue. It can help them make situation-appropriate reforms and gain an overview of the issues. The present research study is also extremely advantageous for the general public. As the current research study discussed family laws about various family matters and its reforms, it will be extremely beneficial for public awareness. If necessary, the awareness of these reforms may help them manage these issues following the law. In addition, it can be useful for policymakers to identify which issues require more attention and reform.

7. Limitations and Future Directions

Even though the current research has made several significant contributions, it has several limitations and shortcomings. The current research investigation has employed only qualitative methods. However, using the quantitative method may yield more convincing empirical evidence. The current research study is founded on the analysis of secondary data. However, obtaining primary data may yield more reliable results as there will be fewer opportunities for bias. Second, the present research study is conducted exclusively in Indonesia. However, other Asian and Eastern nations, such as Oman, Qatar, etc., are also worthy of discussion. In addition, Indonesia is a developing nation, whereas the results may vary in developed nations. Because Indonesia is a country governed by civil law, there is a possibility that the results will vary in countries that use common law, such as Japan, China, etc. In addition, the current research study has only analyzed the Indonesian family law reforms from a criminal law perspective. It indicates that the data analyzed by the researcher may not be exhaustive regarding family law reforms alone. The current research study collected and analyzed data using the Judicial legal approach and Content analysis. Other techniques, such as thematic content analysis and the normative juridical research method, may also be employed.

This research has also provided direction for future research for other scholars. Future researchers can utilize the quantitative research method to obtain empirical evidence to enhance the research. Second, future research should be conducted using primary data to reduce the possibility of data bias. Thirdly, the research should be conducted in other countries, and future researchers can work in developed nations to compare results. In addition, comparative research should be conducted in common-law nations. Only in-depth research should be conducted on the reforms of family law. Future research may employ data acquisition and analysis techniques, such as thematic content analysis and normative juridical research methods.

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