

LEGAL POLITICS OF THE ESTABLISHMENT OF THE LAW ON ASSET FORFEITURE OF CRIMINAL OFFENSES PERSPECTIVE SIYASAH SYAR'IIYAH



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Abstract

In a democratic country, every law and regulation that will be enacted must be discussed and approved by the legislative and executive bodies. Therefore, lobbying and collaboration play a major role in every discussion of legal products. It is not surprising that there is a law that is passed super quickly, some are so long public tests and some are never discussed. This is where legal politics play out, between groups that have the authority to pay close attention to their political interests. Although still using the argumentation of the interests of the people, the interests of the nation and the state. The back and forth of the discussion of the asset seizure bill is an example, that the interests of political parties are still prioritized over the interests of the nation and state. However, it would be different if those who are authorized in the formulation and ratification of a legislative regulation really adhere to values, ethics and norms and morals by paying attention to the principles of shar'iat in making rules of life in society and the state. Which in Islam is known as siyasah syar'iiyah. With constitutional politics that is shar'i in nature, it will produce quality legal products and provide great benefits to society. The discussion becomes focused and serious.

Abstrak

Dalam negara demokrasi, setiap peraturan perundang-undangan yang akan disahkan harus melalui pembahasan dan persetujuan oleh lembaga legislatif dan eksekutif. Oleh karena itu, lobi dan kolaborasi memegang peranan penting dalam setiap pembahasan produk hukum. Tidak mengherankan jika ada suatu undang-undang yang disahkan dengan sangat cepat, ada yang begitu lama uji publiknya dan ada pula yang tidak pernah dibahas sama sekali. Di sinilah politik hukum terjadi, antara kelompok yang memiliki kewenangan dengan sangat memperhatikan kepentingan politiknya. Meskipun tetap menggunakan argumentasi kepentingan rakyat, kepentingan bangsa dan negara. Maju mundurnya pembahasan RUU perampasan aset ini menjadi contoh, bahwa kepentingan partai politik masih lebih diutamakan daripada kepentingan bangsa dan negara. Akan tetapi, akan berbeda jika mereka yang berwenang dalam perumusan dan pengesahan suatu peraturan perundang-undangan benar-benar berpegang teguh pada nilai, etika dan norma serta moral dengan memperhatikan asas-asas syar'i dalam membuat aturan-aturan kehidupan bermasyarakat dan bernegara. Yang dalam Islam dikenal dengan istilah siyasah syar'iiyah. Dengan politik ketatanegaraan yang bersifat syar'i, akan menghasilkan produk hukum yang bermutu dan memberikan manfaat yang besar bagi masyarakat. Pembahasan menjadi lebih fokus dan serius.

INTRODUCTION

Law enforcement against all criminal offenses is absolutely carried out without selective, indiscriminate. Good and correct law enforcement is expected to have an impact on the decline in criminal behavior in the community, especially criminal acts related to economic motives. However, along with the times, the forms and types of criminal acts continue to grow in new ways. While the



criminal penalties imposed on the perpetrators of crimes with economic motives do not seem to provide a deterrent effect. quality law and provide great benefits to society. The discussion becomes focused and serious.

The main objective of the perpetrators of crimes with economic motives is to obtain as much wealth as possible. Logically, wealth for the perpetrators of crime is the lifeblood of the crime, so the most effective way to eradicate and prevent crimes with economic motives is to kill the life of crime by seizing the results and instruments of the crime. This argument certainly does not diminish the meaning of corporal punishment against the perpetrators of criminal acts. However, it must be recognized that merely imposing corporal punishment has proven not to have a deterrent effect on criminal offenders.¹

Economically motivated crimes are not limited to corruption, but include various types of crimes such as people smuggling, human trafficking, terrorism, and so on.² Although the crime that causes the most financial loss is corruption. Corruption is one of the crimes categorized as an extra ordinary crime. Although there are legal instruments that provide harsh and strict penalties for perpetrators of corruption, the fact is that corruption continues to occur. The punishment given to the perpetrators of criminal acts is not enough to provide a deterrent effect. In fact, in Islamic conception, punishment ('uqubah) functions as *zawajir* and *mawani* (making the perpetrator deterred and people who have not done it become afraid to do it).³

The crime of corruption has undermined the life of the nation and state. Corruption has captured the attention of every government in various countries around the world, and Indonesia is no exception. Whoever the president is, he or she will definitely declare to eradicate corruption. Corruption has a huge impact, such as jeopardizing the stability and security of society, jeopardizing socio-economic and political development. It can even undermine democratic values and morality because of the negative potential it contains by evolving into a culture.⁴

The development of information technology allows perpetrators of crimes with economic motives to carry out their actions from anywhere, both at home and abroad. The aim is to avoid legal entanglement. And also in order to trick law enforcement officials to trace the results of their crimes, the perpetrators try to clean up their assets called money laundering or money laundering.

The predicate crime of money laundering can be in the form of corruption, bribery, narcotics, psychotropic drugs, labor smuggling, migrant smuggling, in the banking sector, in the capital market, in the insurance sector, customs, excise, trafficking in persons, illegal arms trade, terrorism, kidnapping, theft, embezzlement, fraud, and so on. These crimes are either committed in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia and the criminal offense is a criminal offense under Indonesian law.⁵ Ironically, these criminal acts are not only committed by individuals but have been jointly committed as perpetrators of corruption. The act of corruption committed jointly indicates that corruption is not only considered a culture but has even been considered as a business and business field.⁶

¹ Ramelan, Dkk, *Naskah Akademik RUU tentang Perampasan Aset Tindak Pidana*, (Jakarta, BPHN : 2012). 1

² NU Online.com

³ Keputusan Ijtima' Ulama Komisi Fatwa se-Indonesia tanggal 1 Juli 2012

⁴ Evi Hartianti, *Tindak Pidana Korupsi*, Cet I, (Jakarta: Sinar Grafika, 2007). 1.

⁵ Ismail Marzuki, Melumpuhkan Tindak Pidana Pencucian Uang Dengan Hukum Pidana Islam, *Jurnal Wajah Hukum* Volume 1 Nomor 1, Oktober 2017

⁶ Deypend Tommy Sibuea dkk, "Kebijakan Hukum Pidana dalam Perampasan Aset Hasil Tindak Pidana di Indone- sia", *Diponegoro Law Review*, Volume 5, Nomor 2, 2016

The ineffectiveness of imposing prison sentences for corruption convicts and the large state losses caused by corruption require academics to provide solutions to the nation's problems.⁷ The solution provided is a special regulation on the confiscation of criminal assets, both corruption and other economic crimes as a form of additional punishment to provide a deterrent effect. By applying these sanctions as the main punishment, it is hoped that it will be able to prevent and reduce cases of corruption and other economic crimes that occur in Indonesia.

Currently, there are still many problems regarding the handling of assets from criminal offenses. De jure, law enforcement carried out by law enforcement officials to carry out asset forfeiture is still very constrained because Indonesia does not specifically have a law-level regulation regarding asset forfeiture without going through legal proceedings.⁸ President Joko Widodo sent a presidential letter (surpres) related to the discussion of the Asset Forfeiture Bill (RUU) along with the draft bill to the leadership of the House of Representatives on May 4, 2023. In the letter, the President assigned Coordinating Minister for Political, Legal and Security Affairs Mahfud MD, Minister of Law and Human Rights Yasonna Laoly, Attorney General ST Burhanuddin, and National Police Chief Listyo Sigit Prabowo to represent the government in discussing the bill.⁹

Until the end of President Joko Widodo's term of office, the DPR did not discuss the bill. The dynamics of legal politics that occur in the DPR make the discussion of the Asset Forfeiture Bill go back and forth. All DPR members seem to be waiting for orders from their respective party leaders. Based on the descriptions and problems listed in the preface above, the author considers it necessary to explore this issue in depth as outlined in a scientific journal with the title "Legal Politics of the Establishment of the Law on the Deprivation of Criminal Assets from the Perspective of Siyasa Shar'iyah" to examine the dynamics of legal politics that occur in the legislature and legal politics between the legislature and the executive. And also analyze how Islamic law views this matter.

METHODS

This research method uses secondary data, namely non-binding data collection techniques that provide explanations that can be used as sources of data obtained such as draft laws, reading books, research results, and works from Islamic law circles. The method used in this research is descriptive method and comparative analysis (analytical - comparative method). In this discussion and research and data collection, the author uses material collection techniques through the library research method, namely by collecting data and materials from books relevant to this discussion, by reading, studying, and analyzing to be understood.

RESULT AND DISCUSSION

LEGAL POLITICS

Every discussion of legislation in the legislature is always colored by various points of view. This leads to debates among members of parliament and between factions in parliament. Members of parliament, although directly elected by the people, cannot be independent in their behavior. They are highly dependent on the decisions of their political parties. Differing attitudes in decision-making with the party can risk recall as a member of parliament. The game of legal politics is not only between institutions (legislative, executive and political parties) but also between personal members of parliament and their political parties in the process of forming legal products.

⁷ "Fatwa Majelis Ulama Indonesia Nomor: 10/Munas iVII/MUI/14/2005 tentang Hukuman Mati dalam Tindak Pidana Tertentu"

⁸ Kartika, Shanti Dwi & Saputra, Noverdi Puja. 2021. *Tanggung Jawab Negara dalam Penanganan Aset Tindak Pidana*, (Jakarta, Publica Indonesia Utama : 2021). V

⁹ Kompas.id, 10/5/2023

Law, or more specifically legislation, is a political product.¹⁰ As a political product, law is the end result of a long process. The process that ultimately produces a product called law begins with an idea in society in the form of a desire for a problem to be regulated by law. Such a stage is called initiation stage. This stage then becomes a public discourse (public discourse) which received various responses from the public and finally there was a testing of the idea through discussions that take place in the community, until finally it is the community that determines its own in the community, until in the end it is the community that determines itself the idea passes or does not pass to be regulated by law. This stage is a socio-political stage with the output in the form of an idea that has been sharpened, so that it is ready to enter the law. sharpened, so that it is ready to enter the next stage, namely the juridical technical stage. It is in this juridical technical stage that an idea is formulated by lawmakers in a political forum, by lawmakers in a political forum until it takes the form of law as a law as a law.¹¹

C.F.G. Sunaryati Hartono argues that the politics of law is described as a process of interplay (mutual influence) in social and political social and political fields, among the various pressure groups that exist in society in determining the form and style of national law. The existence of a mutual influence process is because the law is formed through a political process carried out by state institutions, such as the state institutions, such as the People's Consultative Assembly, the People's Representatives, the Regional Representatives Council, and the president. All institutions are determined by the people through general elections. Therefore, it is not wrong if the existence of pressure groups determines the formation of law (in the sense of law).¹²

Good legal politics will give birth to legal products that reflect the wishes of the community. So that a legal system can be created from the people, by the people and for the people. This legal system will bring progress to the nation and state.

Esmi Warassih in her inaugural speech as a professor said; "The application of a legal system that does not originate or grow from the content of society is a problem, especially in countries that are changing because there is a mismatch between the values that support the legal system of another country and the values that are lived by members of the legal system. the values that support the legal system of other countries with the values that are lived by members of the community itself". society itself".¹³

CRIMINAL ASSET FORFEITURE LAW

The perpetrators of criminal acts are increasingly sophisticated in carrying out their actions. They no longer use conventional methods, but have followed the times by utilizing information technology. For example, the crime of online gambling, by using robot technology the bookmakers managed to extract money from the middle to lower class people. Likewise, other crimes cannot be separated from the use of technology. This includes how they hide assets from the proceeds of crime, because the assets hidden are tangible and intangible assets. One way to minimize crimes with economic motives is to confiscate the assets of the perpetrators, and if necessary impoverish them. So that there is no more opportunity to repeat their crimes, and make others not dare to do the same.

Before defining asset forfeiture, it is first necessary to define the word asset, as it is key. Asset is capital or wealth.¹⁴ Hafiluddin, as quoted by Paku Utama¹⁵, defines assets as goods/items or things that

¹⁰ Moh. Mahfud MD, *Politik Hukum di Indonesia*, Jakarta: Raja Grafindo Persada, 2009, h. 4-6

¹¹ Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 1991, h.174-175

¹² Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Alumni, Bandung, 1991. 27

¹³ Esmi Warassih Pujirahayu, *Pemberdayaan Masyarakat Dalam Mewujudkan Tujuan Hukum (Proses Penegakan Hukum dan Persoalan Keadilan)*, Pidato Pengukuhan Guru Besar Fakultas Hukum Undip, Semarang, 14 April 2001

¹⁴ Tim Penyusun, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1990). 52

¹⁵ Paku Utama, *Memahami Asset Recovery & Gatekeeper* (Jakarta: Indonesia Legal Roundtable, 2013). 100

can be owned and that have economic value, commercial value or exchange value that is owned or used by an individual, a business entity, or an institution. Thus, assets can be both movable and immovable objects. It is wealth in any form, whether material or immaterial, movable or immovable, tangible or intangible, and documents or legal instruments that prove the existence of rights to or interests in them.

Due to the importance of the Asset Forfeiture Law to help restore the State's economy and prosper the lives of the people. The new President should start proactive and strategic steps to seriousize the discussion of the bill that has been submitted to parliament by the previous government. So that it is hoped that in the future a clean nation and state life will be created, away from cases of corruption, collusion and nepotism.

In simple terms, the Asset Forfeiture Bill aims to provide a way to recover state losses (recovery assets) so that the losses suffered by the state are not significant. This bill has gone through a long journey since the beginning of 2010. In the 2015-2019 Prolegnas period, this bill was included in the national legislation program, but was never discussed because it was not included in the priority list of bills. Then, in the 2020-2024 Prolegnas period, the Asset Forfeiture Bill was re-included and the Government proposed that this bill be included in the 2020 Prolegnas, unfortunately the proposal was not approved by the DPR RI. In 2023, the government and DPR RI reached an agreement to include the Asset Forfeiture Bill in the 2023 National Legislation Program. In the author's opinion, the obstacles to the implementation of asset forfeiture itself cannot be separated from two important things, the lack of state legal politics and the existence of assets located abroad.¹⁶ State assets are used to stabilize the condition of the country so that the prosperity of the people is fulfilled and the authority of the country is respected.¹⁷

The Asset Forfeiture Law is urgently needed by the Indonesian people because the ratification of the Asset Forfeiture Law can facilitate the state's efforts to save and restore the losses suffered by the state as a result of criminal acts. The content material in the Asset Forfeiture Law must also be made carefully by taking into account the interests of the community, as well as the state itself.¹⁸

The scholars of ushul fiqh are unanimous in stating that every law enacted by Allah contains a benefit for human beings, be it a worldly benefit or an ukhrawi benefit. In fact, the benefit contained in every law enacted by Allah is *ḍarūrī*. This means that the benefit is something that must be realized and realized. Allah Himself has no interest in the commands and prohibitions He has enjoined upon people except for their benefit.¹⁹

Without considering the purpose of the imposition of punishment in Islamic criminal law, the punishment loses the essence and substance of the purpose of the imposition of punishment. In fact, the purpose of the imposition of punishment in Islamic criminal law is for the benefit of society. Ibrahim Shalih stated that the purpose of determining the punishment in a criminal offense in Islamic law is as a form of retribution for criminal acts that have been committed for the benefit of society.²⁰

PERSPECTIVE OF SIYASAH SHAR'IYAH

Islam as a religion is seen as having a very clear political conception. Therefore, democracy brought by the West has actually also been regulated in Islam. Although, of course, in practice it is different from the Western democracy. For example, such as *musawarah* (shura), equality (*musa'wah*),

¹⁶ antikorupsi.org, 12 Oktober 2023

¹⁷ Yuana Tri utomo, Kisah Sukses Pengelolaan Keuangan Publik Islam (Perspektif Historis), *Jurnal Ekonomi Islam At Tauqif*, vol 17 : Desember 2017

¹⁸ Noverdi Puja Saputra, Politik Hukum Dan Muatan Pengaturan Dalam Pembentukan Undang-Undang Perampasan Aset, *Jurnal Info Singkat*, Vol XV No.10, Mei 2023

¹⁹ Hamka Haq, *Al Syatibi: Aspek Teologis Konsep Maslahah dalam Kitab al Mumafaqat*, (Surabaya: Erlangga, 2007). 90

²⁰ Abd al Ghafar Ibrahim Shalih, *Al-Qiṣaṣ fī al-Nafsi fī al-Syar'ah al-Islāmiyyah: Dirāṣah Muqāranah*, (Kairo: Al- Nahḍah al Misriyyah, 1989/1409). 10

justice (adl), and so on. It's just that in order to accept democracy, some Muslims are suspicious beforehand. In fact, not a few of them strongly reject the concept of democracy which is considered very liberal. In the study of Islamic political thought, the issue of Islam and democracy is part of the discussion of religion (al-din) and politics (al-siyasah). This issue has become a long debate among various groups which until now has not found a meeting point. This issue, as said by Bakhtiar Efendi, is an issue that will always arise in the lives of Muslims because fundamentally Islam, Muslims or Islamic regions can never be separated from political issues.²¹

In Islamic political thought, the term siyasah syar'iyah is known, namely "the regulation of human welfare based on shara".²² In his book "Al Siyasah al shar'iyyah" Al Qaradhawy says there are two forms of siyasah meaning according to the scholars, namely the general meaning and specific meaning. In general, siyasah refers to the regulation of various human affairs in accordance with Islamic religious law. While in a special sense, siyasah is the policies and regulations issued by the ruler to overcome the problems that arise or as a solution to certain circumstances.²³

While the definition of Siyasah Shar'iyyah according to Ahmad Fathi Bahansi, siyasah is the concept of regulating the welfare of mankind in accordance with the principles of Shara'.²⁴ Siyasah shari'iyah can be understood as a comprehensively regulated policy framework that covers various aspects including governance, political, social and economic systems. And all of them aim to improve the welfare of individuals and society as a whole.²⁵ Abdul Wahab Khallaf defines that Siyâsah is "legislative arrangements created to maintain order and benefit and regulate the public interest for the Islamic state by ensuring the realization of benefits and rejecting misfortunes by not exceeding the limits of syar'iyah and the principles of syar'iyah kully, although not in accordance with the opinions of the mujtahid scholars."²⁶

From the explanation and understanding above, it can be drawn that Islam also regulates politics and government. Islam directs every policy or political product to be oriented towards the benefit of society as a whole. Thus it is expected that policies and legal products will emerge that aim to improve the welfare of the community and strengthen the country's economy.

Siyasah syar'iyah according to Ibn 'Aqail's view contains several meanings. *First*, that the action or policy of siyasah is for the benefit of many people. This shows that siyasah is carried out in the context of society and its policy makers must be people who have authority in directing the public. *Second*, the policy taken and followed by the public is an alternative to several options whose consideration is to look for what is closer to the common good and prevent harm. This is indeed one of the characteristics of siyasah which is full of branches and choices. *Third*, siyasah is in the ijthadi area, that is, in public affairs for which there is no qath'i evidence from the Qur'an and Sunnah but within the authority of the imam of the Muslims. As an area of ijthadi then in siyasah which is often used is the approach of qiyas and maslahat mursalah. Therefore, the main basis of the existence of siyasah Shar'iyyah is the belief that Islamic law was revealed for the benefit of mankind in the world

²¹ Bakhtiar Efendi, *Disartikulasi Pemikiran Politik Islam, Pengantar dalam Oliver Roy, Gagalnya Islam Politik*, (Jakarta : Serambi Ilmu Semesta, 1996) Cet ke-1, 35.

²² H. A. Djazuli, *Fiqh Siyasah; Implementasi Kemaslahatan Umat dalam Rambu-rambu Syari'ah*, (Kencana, Jakarta. 2003). 1

²³ Akram, Kassab. Al-siyasah al syariyah, mabadi wa mafhim Dawabith wa Mashadir. *Jurnal Online Internasional Union Form Muslim Scholar*.

²⁴ Ahmad, Fathi Bahansi. Al-Siyasah aljinayah fi Al-Syariyyah al-islamiyah (Beirut: Dar al Arubah. 2001). 61

²⁵ Irwansyah, Zenal Setiawan, Prinsip-Prinsip Fiqh Siyasah, *Jurnal Cerdas Hukum*, Volume 2. Nomor 1. November. 2023

²⁶ Abd al-Wahhâb Khallâf, al-Siyâsah al-Syarî'ah (Kairo: Dar al-Anshar, 1977), 15

and the hereafter by enforcing the law as fair as possible even though the method taken is not contained in the Qur'an and Sunnah explicitly.²⁷

By analyzing the definitions put forward by the experts above, the essence of Siyâsah Shar'iyah can be found, namely:

1. That Siyâsah Shar'iyah deals with the management and regulation of human life
2. That this management and regulation is carried out by the holder of power (*ulu al amri*)
3. That the purpose of the regulation is to create benefits and reject misfortunes (*jalb al-masalih wa daf' al masalih wa daf' al-mafasid*).
4. That such arrangements must not be contrary to the spirit of the universal Islamic Shari'a.²⁸

Asset forfeiture laws are philosophically, sociologically and juridically aimed at the benefit of saving state assets. Restore state and community assets taken by a person or group of people against the law. So it can be ascertained that the existence of asset forfeiture laws is in line with the principles of Siyâsah Shar'iyah.

Referring to the decision of the Bahtsul Masail of the Central Java Regional Board of Nahdlatul Ulama Waqi'iyah Commission at Ponpes Al Inaroh, Batang Regency on Monday, 27 Muharram 1445/14 August 2023, the law of the state to seize assets is permissible, even obligatory. The confiscation of assets resulting from criminal acts, such as corruption, narcotics crimes, human trafficking and others is part of the act of returning property resulting from criminal acts (*raddul mazhalim*) to its owner, in this case individuals or institutions and the state.

Then further quoted from the book *Al-Fiqhul Islami wa Adillatuhu* by Sheikh Wahbah az-Zuhaili, meaning: "As for illegal and unauthorized ownership, then the state has the right to intervene in dealing with it to return the property to its rightful owner. Even further than that, the state has the right to confiscate the illegal ownership, whether it is in the form of movable or immovable property, as was done by Umar bin Khathab r.a. in dividing into two parts (*musyaatharah*) the property brought by some of his governors that was not theirs, for the sake of a public benefit, namely keeping the office of governor away from various things that are not good and so that the office is not used as a means of accumulating wealth. This is because ownership is limited to good and permissible wealth. As for unlawful wealth that is acquired through illegal means, such as bribery, fraud, usury, cheating in measuring and weighing, hoarding and monopolizing, and using influence, position and power to accumulate wealth, these cannot be legal causes of ownership."²⁹

For this reason, in the author's opinion, the draft law on asset forfeiture is very urgent to be passed. One politician from the PDI-P faction, Bambang Wuryanto, openly said that to accelerate the discussion and ratification of the draft law on asset forfeiture, there was no need to lobby the parliament. Simply go to all the chairmen of political parties that have seats in parliament. Ask them to order their members in parliament to immediately discuss the draft and have it passed. Then all members of parliament will obey and comply with the orders of their chairmen. That is the key.

We hope that the Prabowo Subianto administration will resolve this issue, which was never resolved during the previous administration. This economically-motivated crime is already very worrying, and a prison sentence is not enough to stop the crime. If the discussion with the parliament is deadlocked, then the government can issue a government regulation in lieu of law as was done to accelerate the enactment of the labor copyright law.

CONCLUSION

²⁷ A.Djazuli, *Fiqh Siyâsah*, edisi revisi, (Jakarta: Kencana Prenada Media Group, 2003). 29

²⁸ Muhammad Iqbal, *Fiqh Siyasah*. 6.

²⁹ Syekh Wahbah az-Zhuayli, *Al-Fiqhul Islami wa Adillatuhu*, (Beirut: Darul Fikr, t.t.), jilid VI . 377

Asset forfeiture laws are urgently needed in this country. Do not let its protracted discussion raise suspicions from the public that the government is not serious about eradicating crimes with economic motives. Such as criminal acts of corruption, criminal acts of terrorism, criminal acts of trafficking in persons, criminal acts of drugs, criminal acts of gambling and so on. While the people live in hardship, the criminals live in splendor.

Seizing the assets of perpetrators of crimes with economic motives is not against Islamic law. In fact, it is highly recommended, so that new types of crimes do not arise. And the booty can be redistributed to the people through pro-people welfare programs. Upholding justice and realizing a safe and secure life are the obligations of the ruler. This is the legal politics that should be carried out by the government by always prioritizing the interests of the people, the interests of the nation and the state.

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