

Settlement of Land Procurement Disputes at the State Administrative Court

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Abstract

The purpose of this study is to analyze the legal protection for citizens over land acquisition disputes in determining the location of development for the public interest at the State Administrative Court. This research paper is included in the category of normative legal research. Data analysis in this type of normative legal research will use qualitative descriptive techniques. The results of this study provide an understanding of state-owned land disputes through the state administrative court. This study concludes that the implementation of the provisions of the Supreme Court Regulation Number 2 of 2016 concerning Guidelines for Proceeding in Disputes on Determining Development Locations for the Public Interest at the State Administrative Court is not effective in providing legal protection for the rights of citizens who are disadvantaged from the determination of development locations for the public interest By the Governor.

Keywords

land dispute; state
administrative court;
supreme court



I. Introduction

The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To create a just, prosperous and prosperous society, the government needs to carry out development. To ensure the implementation of growth in the public interest, the land is required whose procurement is carried out by prioritizing the principles of humanity, democracy and justice (Supriyanto, 2021b).

The procurement of land for development for the public interest in question is related to activities to obtain land by providing compensation to those who release or surrender land, buildings, plants, and objects related to land, where these activities must be placed in a balanced manner, namely the interests of the community and the interests of the government (Supriyanto, 2021a).

The implementation of development for the public interest carried out by the government requires land acquisition. Parties who need land can use state land or land controlled directly by the state. However, it is unlikely that parties who need this land will use state land or land owned by the state due to the limited supply of state land or land controlled by the state. The most fundamental problems in the practice of land acquisition can be identified as follows: First, the legal complexity related to the complexity of the implementation of land acquisition cannot be resolved by Law Number 2 of 2012 because the problem lies in the purchase of land for land acquisition from ground-controlled or owned by people—individual or business entity.

Second, conceptually deliberation is a way to find agreement in determining the form and amount of compensation. But the problem is not in the deliberation but in the value of payment which is not based on justice for the landowners. Third, the issue of land value, the problem of land value in Indonesia, is very complicated, given the unavailability of a particular institution's valid and well-managed transaction data. The existing official

transaction data, namely the sale and purchase deed, provide more information that is not following the actual transaction price. Likewise, the Sales Value of Tax Objects (NJOP) only provides information for tax purposes and is often used as a reference as official data. NJOP cannot describe the actual market value. Fourth, the institutional land acquisition committee, the membership of the land acquisition committee, which in practice is attached to public officials in the regional government, is functionally ineffective in some areas. The committee's function has been taken over by an appraiser who can assess the land sector (Sumardjono, 2001).

The enforcement of Supreme Court Regulation Number 2 of 2016, which regulates disputes over determining development locations for the public interest with a cassation decision, is the final decision without any judicial review. The review is part of the state administrative justice system, which is philosophically one of the mediums for fighting for justice.

The Supreme Court is authorized to make Supreme Court Regulations complement or perfect existing laws and regulations so that Supreme Court Regulations cannot stand alone without applicable laws and regulations.

The above has indicated that there is still a need for synchronization or alignment of laws and regulations vertically based on positive legal systematization, namely between higher laws and lower laws on the implementation of Procedural Guidelines in Disputes on Determining Development Locations for the Public Interest in State Administrative Court.

II. Research Method

This research paper is included in the category of normative legal research (Marzuki, 2017). Normative legal analysis is used because it mainly uses library materials sourced from secondary data in the form of primary law and secondary legal materials as sources of research data (Muhjad & Nuswardani, 2012).

The data collected in this thesis uses a library research technique. The library research technique is carried out by searching for data from the library. Data analysis in this type of normative legal research will use qualitative descriptive methods intended as research that presents research results in words that try to describe and interpret legal issues.

III. Results and Discussion

3.1 Legal Protection for Citizens on Land Procurement Disputes on Determination of Development Locations for Public Interest at the State Administrative Court

Legal protection for citizens against government actions in line with the concept developed by Hadjon (2008) is based on recognizing and protecting human rights in dispute resolution through repressive protection facilities by handling legal protection by the General Court. The State Administrative Court must be able to get the top place in achieving the goals of the rule of law.

The concept of the rule of law (*rechtsstaats*), according to Fletcher (1998), is based on four main elements, namely: 1) recognition and protection of human rights; 2) the state is based on the trials political theory; 3) government is held based on the law (*wetmatig bestuur*), and 4) there is a state administrative court tasked with handling cases of unlawful acts by the government (*onrechtmatige overheidsdad*). In line with the concept of the rule of law, the State Administrative Court should be held to protect every citizen's human rights.

Based on the Location Determination Permit, the Government of DI Yogyakarta has carried out land acquisition belonging to the residents. The Governor of DI Yogyakarta believes that the basis for land acquisition is the Location Determination Permit which was issued on March 31, 2015. This reality indicates an omission made by the official making the State Administrative Decision related to the Location Determination Permit that made the land acquisition process an administrative defect. The land acquisition process should be stopped by law. Ideally, State Administration officials as state administrators are obliged to provide legal counseling as part of the legal education and civilization.

Education is a very important human need because education has a duty to prepare Human Resources (HR) for the development of the nation and state (Pradana et al, 2020). According to Astuti et al (2019) Education is an obligation of every human being that must be pursued to hold responsibilities and try to produce progress in knowledge and experience for the lives of every individual. Education is one of the efforts to improve the ability of human intelligence, thus he is able to improve the quality of his life (Saleh and Mujahiddin, 2020).

The Yogyakarta State Administrative Court rejected the lawsuit for judicial review of the Supreme Court's decision because, at the beginning of 201, the Supreme Court Regulation Number 2 of 2016 was issued, which regulates the Guidelines for Proceeding in Disputes on Determining Development Locations for the Public Interest in the State Administrative Court based on in Article 19 of the Supreme Court Regulation as a legal basis that is contrary to the general legal norms that apply to regulate State Administrative Regulations as regulated in Law Number 5 of 1986 concerning State Administrative Courts.

Referring to Article 67 of Law Number 14 of 1985 concerning the Supreme Court, it can be shown that judicial review is an extraordinary legal effort that philosophically has the aim of fulfilling the right to justice because court decisions that have obtained permanent legal force do not rule out the possibility of containing or there are reasons-relevant reasons to the relevant reasons for the request for reconsideration. This is also confirmed in Article 132 paragraph (1) of the Law on State Administrative Courts, which regulates that Court decisions with permanent legal force can be submitted to the Supreme Court for judicial review.

The provisions stipulated in the Supreme Court Regulation Number 2 of 2016 are contrary to the general legal norms that guarantee and accommodate the Judicial Review as an extraordinary legal remedy so that the judicial review regulated by prevailing lawful means at the level of the law must take precedence and become a priority footing by the Court State Administration. This is because the limitation on judicial review in the Supreme Court Regulation contradicts general legal norms.

When referring to the principle of the enactment of laws and regulations, namely the principle of *lex superior derogate legi inferior*, which means that higher rules override those that are lower in the hierarchy of laws and regulations, which are in line with Stufenbau's contention proposed by Hans Kelsen related to the level of legal norms, Kelsen argues that lawful means are tiered and layered in a hierarchical structure. This principle is used if there is a conflict regarding the hierarchy of laws and regulations where the Supreme Court Regulation has a lower hierarchy degree than the general legal norms regulated in the Act.

Judging from the procedure for resolving disputes over the determination of development locations for the public interest by the Governor as regulated in Law No. 2 of 2012 concerning Land Procurement for Public Interest, the judicial process can be said to have contradicted the legal principles in proceedings in the State Administrative Court.

These deviations can be explained as follows (1) An accelerated period of proceedings, in which the Court is obliged to give a decision a maximum of 30 working days. This makes the value of disputes concerning the livelihoods of many people because they are related to the socio-economic function of the land and are related to their livelihoods. Their living space is limited, causing this issue to be made as if it was only a trial of a small matter. When viewed from the material in the proceedings at the State Administrative Court, it is related to the stipulation of a construction site permit for the public interest in the dispute, which is a significant legal issue, (2) There is no legal remedy for appeal. When viewed from the general legal norms, proceedings in the State Administrative Court are the absolute right of justice seekers, namely at the appeal level, they will make corrections or improvements if at the first level there is an error by the judge in deciding to be able to provide legal protection for citizens, especially justice seekers. To provide justice, the State Administrative Court is held on the principle of tiered justice. (3) The cassation period is limited to a maximum of 30 days from the receipt of the cassation request. The time limitation has shown that the Court, which is supposed to be a place for justice seekers, is free from interests and has independence. Still, it can be indicated that there is a relationship where the judiciary is used as a basis to support government projects for land acquisition for development in the public interest, and (4) extraordinary legal efforts in the form of reconsideration is not accommodated and even prohibited through the provisions of Article 19 of the Supreme Court Regulation, it cannot provide legal protection for citizens, especially justice seekers because in settlement of disputes regarding the determination of development locations for the public interest, only two levels are determined in resolving disputes so that judicial restrictions on disputes over Location Determination Permits are determined. Development for the Public Interest regulated in Law Number 2 of 2012 and Regulation of the Supreme Court Number 2 of 2016 cannot provide justice, certainty and legal benefits to protect every citizen from maintaining property rights to land.

In the considering section on the Supreme Court Regulation Number 2 of 2016, it is prepared based on the provisions of Article 23 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest where paragraph (3) states that parties who object to the decision of the State Administrative Court can only file an objection in the form of an appeal to the Supreme Court. However, in the article, it is not explicitly written that the application for reconsideration cannot be made for disputes regarding the determination of development locations for the public interest.

If viewed from the authority attached to the Supreme Court, there is authority to make Supreme Court Regulations as a complement or perfect existing laws and regulations. Supreme Court Regulations cannot stand alone without the applicable laws and regulations.

This authority can cause uncertainty for the Supreme Court through the Supreme Court Regulation issued which has limited the authority granted by the above regulations so that Supreme Court Regulation Number 2 of 2016 can be said to be out of sync with the rules above it so that misunderstandings can occur for the parties, which should enforce the state administrative, procedural law.

In the Big Indonesian Dictionary, it can be understood the meaning of the word synchronization is a matter of dragging. In contrast, in synchronization of laws and regulations itself, it can be interpreted as harmonizing existing and currently drafted rules and regulations. Given the hierarchy of laws and regulations, the way to find out whether a statutory code is in sync with existing and currently drafted regulations is to look at rules that are parallel in level or horizontally synchronized and look at regulations with different

groups, either higher or lower. Low or vertical synchronization, in this case, one of the laws and regulations regarding the submission of legal remedies for disputes regarding the determination of development locations for the public interest will be seen in several laws and regulations related to this matter, including the Law on State Administrative Courts, Law -Law on Land Procurement for Development in the Public Interest and Regulation of the Supreme Court Number 2 of 2016.

If examined from the horizontal synchronization, it can be seen the synchronization between the Law on State Administrative Courts and the Law on Land Procurement for Development in the Public Interest with the Supreme Court Regulation Number 2 of 2016. In terms of the formation of laws and regulations as regulated in Article 7 Law Number 12 of 2011 in Article 7 can be stated that the Regulation of the Supreme Court is not included in the hierarchy of laws and regulations, but in the provisions of Article 8 of Law Number 12 of 2011 it is stated that the regulations set by the Supreme Court, especially the Regulations of the Supreme Court, include types of laws and regulations other than those in Article 7 of Law Number 12 of 2011, and restrictions other than those in Article 7 have binding legal force as long as they are ordered by higher laws and regulations or are formed based on authority so that when viewed from the weighing section on rules n The Supreme Court Number 2 of 2016, this Supreme Court Regulation was established based on the Law on Land Procurement for Development in the Public Interest so that hierarchically the Supreme Court Regulation can be said to be lower than the Law on Land Procurement for Development in the Public Interest.

Therefore, there is a reason that court decisions with permanent legal force regarding disputes regarding the determination of development locations for the public interest can still be submitted for review even though this is not explicitly regulated in the Law on Land Procurement for Construction in the Public Interest.

In the provisions of Article 19 of the Regulation of the Supreme Court Number 2 of 2016, it is expressly stated that a decision that has permanent legal force cannot be submitted for a judicial review. When referring to the provisions of Article 79 and the explanation of Article 79 of the Supreme Court Law, the Supreme Court has the authority to draw up a regulation if there is a legal vacuum, even though with the application of the *lex specialis derogate legi general* principle, there is no legal vacuum regarding the submission of a judicial review in a dispute over the decision. Construction site for the public interest.

This condition is contrary to the principle of unity of procedure and the direction of tiered justice. Both guides have stated that with the existence of legal remedies in stages, it will reach a fair decision and approach perfection.

Therefore, based on these reasons, it can be seen that there is no synchronization regarding the provisions of the Legal Review between the three regulations. This is also shown in the law that has regulated in such a way related to the existence of a judicial review, such as the requirements for submitting a judicial review which must meet one or more points specified in Article 67 of the Law on the Supreme Court so that these requirements are the application of the principle of legal certainty for the application of the principle of justice because the Judicial Review is more oriented to the demands of justice.

The existence of differences in the regulations regarding the duration of the cassation legal action mentioned above, the Supreme Court can draw up a Supreme Court Regulation if there are legal deficiencies or vacancies (Pritangguh et al., 2019). However, the provisions regarding the period for filing a cassation have been explicitly regulated in the Law on Land Procurement for Development in the Public Interest and the Law on State Administrative Courts so that it can be said that there is no synchronization regarding the

period for submitting a cassation request in dispute resolution. Determination of the location of development for the public interest.

From the two things above, there are reasons to say that there is no synchronization between the Law on State Administrative Courts and the Law on Land Procurement for Development in the Public Interest with Supreme Court Regulation Number 2 of 2016.

Judging from the provisions of Article 132 paragraph (2) of the Law on the State Administrative Court, Article 70 paragraph (2) of the Law of the Supreme Court in terms of the implementation of the Judicial Review, the applicant may apply to the Supreme Court through the Head of the State Administrative Court who decides the case. On the first level. In addition, in terms of the provisions of Article 28 of the Law on the Supreme Court, the Supreme Court has the authority to examine and decide on applications for judicial review.

For this reason, the Supreme Court has the authority, namely the attribution authority granted by the Supreme Court Law, to examine and decide on a judicial review application where the decision contains the acceptance of the judicial review application or the rejection of the judicial review application or the inability to accept the judicial review application / *Niet ntvankelijke Verklaard* (NO) so that the State Administrative Court as the Court of the first instance does not have the authority to declare the application for reconsideration unacceptable.

Although the Supreme Court Regulation applies to the Supreme Court and the courts under the Supreme Court, including the State Administrative Court to declare that an application for judicial review cannot be accepted because it is formal because it is based on the law, the authority to declare the application for judicial review is not acceptable. Supreme Court through its decision.

3.2 The Effectiveness of Procedural Law in settlement of Disputes on the Determination of Development Locations for the Public Interest at the State Administrative Court

Disputes on the determination of development locations for the public interest have the nature of the types of disputes classified by Murad (1991). It can be said that these disputes contain practical social aspects or are strategic. Land conflicts are in line with Benhard (2014) view due to the many overlapping laws and regulations, different perspectives and interpretations of law enforcers on the legislation, and the inconsistency of law enforcers in enforcing rules related to land.

Disputes that arise in determining the location of development for the public Interest from Kencono & Supriyanto (2017) view can be categorized as vertical disputes, namely between the community as the owner of land rights and the government related to the implementation of land acquisition for development for the public interest as emphasized by Webley (2012) as cases relating to excesses in the provision of land for development.

In the dispute resolution process pursued through the state administrative court through a lawsuit where the parties litigating in the State Administrative Court are the plaintiff as the aggrieved party and the defendant is the government that issues the decision in determining the location of development for the public interest.

Based on the provisions of Article 26 paragraphs (1) and (2) of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest in determining the location of development for the public interest, the Governor and the Agencies requiring land announce the determination of the place intended to inform the public that at that location, the development will be carried out in the Public Interest. Then if there are parties who object to the decision of the State Administrative Court, following the

provisions of Article 23 paragraph (3) of the Law on Land Procurement for Development in the Public Interest, that party can directly file an appeal to the Supreme Court.

Legal problems arose when the enforcement of Supreme Court Regulation No. 2 of 2015, which regulates disputes over the determination of development locations for the public interest; in Article 19, it was emphasized that the cassation decision was a final decision without any reconsideration. The judicial review is part of the state administrative justice system, which is philosophically one of the mediums for fighting for justice.

In-Law Number 5 of 1986 concerning the State Administrative Court in Article 132 paragraph (1), it is emphasized that "Applications for judicial review of the Court which have obtained permanent legal force can be submitted to the Supreme Court."

However, there is a lack of unity in the proceedings with the provisions stipulated in Article 23 paragraph (3) of the Law on Land Procurement for the Development of the Public Interest. Basah (1989) stated that this could shake the joints of legal certainty, harm justice seekers, and create difficulties for law enforcement to resolve disputes regarding the determination of development locations for the public interest.

The provisions of Article 19 of the Regulation of the Supreme Court Number 2 of 2016 are contrary to the conditions stipulated in Article 132 paragraph (1) of Law Number 5 of 1986 concerning the State Administrative Court, stating, "Against a court decision that has obtained legal force, it can be a petition for reconsideration is submitted to the Supreme Court."

This has consequences for legal uncertainty regarding the opinion of Jan Michael Otto quoted from Iskandar (2021), one of which is due to the inconsistency between the rules stipulated in the Act and the Supreme Court Regulation, which is used as a guide for judges in resolving disputes regarding the determination of development locations for the public interest.

Legal certainty in the conceptual developed by Gustav Radburch quoted from Mertokusumo (2019) is legal certainty by law and legal certainty in or from the law. Directions that can guarantee legal certainty for the community are helpful. The functioning of the law for its effectiveness in Soekanto (2005) view is a sign that the law has achieved the legal purpose of maintaining and protecting the community in social life.

The effectiveness of the procedural law in resolving disputes regarding the determination of development locations for the public interest at the State Administrative Court, as stated by Soekanto (2014) which reveals three elements that can meet the legal rules or regulations governing the settlement of disputes regarding the determination of development locations for the public interest, namely:

- a. The law applies juridically. Suppose the determination is based on a higher-level rule. In that case, it can be seen from the Law on State Administrative Courts and the Law on Land Procurement for Development in the Public Interest against Supreme Court Regulation Number 2 of 2016, which regulates procedural law. In settlement of disputes regarding the determination of development locations for the public interest, legal remedies are limited to cassation and cannot be taken. The judicial review is not in sync with higher regulations based on *lex specialis derogate legi general*. From the authority possessed by the Supreme Court, it is not effective with the issuance of Supreme Court Regulation Number 2 of 2016 because there is no legal vacuum related to extraordinary legal remedies that can be submitted by parties who feel aggrieved in approaching perfection and obtaining justice as a form of legal protection for citizens who regard themselves harm by determining the location of development for the public interest so that the legal rules contained in the Regulation of the Supreme Court do not have legal effect.

- b. The law applies *sociologically* if the legal rules established through the Regulation of the Supreme Court Number 2 of 2016 are not in line with the principle of *lex specialis derogate legi Generali* in efforts to resolve disputes regarding the determination of development locations for the public interest, it turns out that there is no legal vacuum and extraordinary legal remedies can be taken. Through the review, the rules established in Article 19 of the Regulation of the Supreme Court Number 2 of 2019 are not effective. They can be enforced in the authorities' interests if the government's interests are acceptable to citizens who feel disadvantaged by determining development locations for the public good—review of decisions that already have permanent legal force.
- c. The law applies philosophically following legal ideals as the highest positive value through the application of procedural law in resolving disputes regarding the determination of development locations for the public interest with the issuance of Supreme Court Regulation Number 2 of 2016, which is not effective in achieving legal goals in providing justice, certainty and benefit due to the absence of protection for the rights of citizens who feel disadvantaged to be able to take legal remedies to the level of reconsideration as a form of approaching perfection in obtaining justice and benefits for justice seekers for government actions in carrying out land acquisition determined through the determination of construction location permit for public interest through the Governor.

The ineffectiveness of the procedural law in resolving disputes regarding the determination of development locations for the public interest as regulated in Supreme Court Regulation Number 2 of 2016 seen from the opinion expressed by Clarence J Dias is caused by several factors, namely:

The contents of the provisions of Article 19 of the Supreme Court Regulation Number 2 of 2016 it does not prioritize the rule of law in the application of *the principle of lex specialis derogate legi Generali and overrides* the authority of the Supreme Court, which has the power to examine and handle lawsuits until a judicial review. Construction sites for the public interest become ineffective in providing justice, certainty and benefit to the aggrieved parties.

The procedural law provisions in settlement of disputes regarding the determination of development locations for the public interest are used as guidelines for judges in handling cases at the State Administrative Court in practice in one of the events of the application for judicial review by members of the public who feel aggrieved by the determination of the location for the construction of a new airport. In Kulonprogo by the Governor, it turned out that the Yogyakarta State Administrative Court could not accept unilaterally because the Supreme Court Regulation Number 2 of 2016 had been enacted, which at the beginning of its implementation was not known by the applicants so that the contents of the regulation were not widely known by the public who felt harmed.

Inefficient and ineffective in mobilizing legal rules for the enforcement of Supreme Court Regulation Number 2 of 2016 because in terms of the authority attached to the Supreme Court, it limits the jurisdiction of the Supreme Court in providing justice for parties who feel disadvantaged in disputes over the determination of development locations for the public interest, and people who feel aggrieved cannot do legal mobilization due to the legal provisions in settlement of disputes regarding the determination of development locations for the public interest with the laws and regulations in general and the law specifically on the Law on Land Procurement for Development for the appeal. The public in taking legal remedies that can achieve the expected justice of the people who are harmed by determining the location.

The dispute resolution mechanism in the legal procedure for resolving disputes regarding the determination of development locations for the public interest is regulated in

Supreme Court Regulation Number 2 of 2016 in terms of vertical synchronization in the submission of legal remedies, the period for filing a lawsuit, and the reasons underlying the case cannot provide legal protection against citizens who feel aggrieved by the decision of the State Administrative Court regarding the determination of the location of development for the public interest so that it is not effective in resolving the dispute.

Judging from the horizontal synchronization of the request for review and the period of filing a cassation legal remedy, there is no synchronization regarding the period of submitting a cassation request in settlement of disputes regarding the determination of development locations in the public interest with the enactment of Supreme Court Regulation Number 2 of 2016 which is a formal defect because according to Law By law, the authority to declare the application for judicial review cannot be accepted is the jurisdiction of the Supreme Court through its decision so that the procedural law regulated in Supreme Court Regulation Number 2 of 2016 is not effective in resolving disputes regarding the determination of development locations for the public interest (Pritangguh et al., 2019).

The legal rules contained in the Supreme Court Regulation vertically cannot provide legal protection for citizens who feel aggrieved by the determination of development locations for the benefit of the Governor and do not synchronize horizontally with the procedural law provisions stated in the Supreme Court Regulations to be formally disabled. It can be ineffective to be enforced among community members who make extraordinary legal efforts through the Judicial Review.

Referring to the opinion expressed by Marcus Priyo Guntarto, the application of the rule of law contained in the Regulation of the Supreme Court Number 2 of 2016 becomes ineffective because there is no horizontal synchronization and does not provide legal protection for citizens who are disadvantaged by determining the location of development for the public interest. The unclear formulation of the substance of the procedural law in settlement of disputes regarding the determination of development locations for the public good becomes a formal defect which is contrary to the authority of the Supreme Court concerning the non-acceptance of the judicial review, which is determined by the decision of the Supreme Court. The procedural law that serves as a guideline for judges in handling disputes over the determination of development locations for the public interest still needs to be widely disseminated not to create conflicts with the law.

The ineffectiveness of the procedural law in resolving disputes regarding the determination of development locations for the public interest from the absence of horizontal synchronization, unable to provide legal protection for parties who feel aggrieved to file a lawsuit, and become formally disabled because they are not in line with the authority of the Supreme Court in deciding whether or not the application is accepted. The extraordinary legal effort in resolving the dispute from Soerjono Soekanto's opinion can be caused by the legal factor itself, which is not synchronized with the Law.

IV. Conclusion

The ineffectiveness of the procedural law in resolving disputes regarding the determination of development locations for the public interest from the absence of horizontal synchronization, unable to provide legal protection for parties who feel aggrieved to file a lawsuit, and become formally disabled because they are not in line with the authority of the Supreme Court in deciding whether or not the application is accepted. The extraordinary legal effort in resolving the dispute from Soerjono Soekanto's opinion can be caused by the legal factor itself, which is not synchronized with the Law.

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