MANAGEMENT OF HAJJ FUNDS IN INDONESIA

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ABSTRACT

One of the problems in the Hajj is the management of pilgrim funds that raises the question of how law and the legitimacy of profit for the result of Hajj savings that are utilized without permission from pilgrims candidates who until now Hajj funds reached 98.34 trillion Rupiah. So the purpose of this article is to analyse the pattern of contracts made by Hajj pilgrims with Sharia Financial Institutions and BPKH (Hajj Financial Management Agency/Ministry of Religious Affairs) as a manager of Hajj funds. The conclusion of this article is that financial management of Hajj can be invested to support infrastructure financing and other investments because Hajj pilgrims have filled out and signed the wakalah contract form when paying the initial deposit of BPIH (Hajj Operation Fee). In the wakalah contract form, the Hajj pilgrim candidate as Muwakkil gives power to BPKH (Hajj Financial Management Agency) as Wakil (the Vice). So it is possible for the manager (BPKH) to do the optimization of the value of the Hajj funds and still prioritize the security/integrity of the pilgrims. Based on Law Number 34 Year 2014, the Government of Indonesia established Hajj Financial Management Agency (BPKH) which has the function to manage and supervise the investment of Hajj funds used in infrastructure and other investment financing in order to obtain optimal benefit value for the improvement of Hajj pilgrimage services by giving priority to security or the integrity of the pilgrim's fund.

Keywords: Hajj Funds, BPKH, Management, *Wakalah*, Hajj Pilgrims

INTRODUCTION

In terminology, pilgrimage is a journey of worship visiting the *Ka'bah* and its surroundings in the city of Mecca to perform various rituals such as *thawaf*, *sa'i*, *wukuf* in Arafat and so on. Hajj must be fulfilled by every capable Muslim (*istitha'ah*), once in a lifetime (Basri, 2005). Hajj is a special service. Not surprisingly, almost all capable Muslims, want to implement it. No exception, Muslim Indonesia. In the historical record, has not been found who and how many Indonesian Muslims who first travelled to Mecca for the pilgrimage (Abimanyu, 2013).

The available notes explained since the beginning of the 16th century, Indonesian Muslims have travelled to trade to Hejaz and then have the opportunity to perform the pilgrimage. Data Ministry of Religious Affairs explained since 1949 this ministry has dispatched as many as 9,892 pilgrims through the sea. Until now, the number of Indonesian Muslim community who want to perform the pilgrimage continues to increase, even the number of Hajj registrants greater than the number of quota given by the Government of Saudi Arabia to Indonesia (Shaleh, 2007).

Hajj is the culmination of the ritual of the pillars of Islam. The pilgrimage also integrates the entire *Shari'ah* level in it, even the pilgrimage is a great investment and the power of Islam. This is reflected in the procession of *wukuf*, *thawaf*, *sa'i* and *jamarat*. State/Government is

responsible for the implementation of Hajj based on the mandate of the 1945 Constitution (Burhanuddin, 2014).

Hajj as the fifth pillar of Islam turns out not only aimed to increase the piety and spiritual values of the culprit, but also save the great economic potential. So there is great hope through the management of pilgrim funds to encourage the growth of national Islamic banking as well as contribute also in national development (Inderst, 2006).

Currently, the waiting list of pilgrims to date has reached approximately 3,305,207 regular pilgrims and 104,941 special pilgrims with an average number of pilgrims enrolling 500,000 people per year, while the annual Indonesian Hajj quota is only 211,000 people, the waiting list for the Hajj departure is with the average waiting period of 17 years. Therefore, the Government has requested to be given an additional quota of 30,000 people to the Government of Saudi Arabia each year.

Until now, there are still a number of actual issues that are still felt in the management of pilgrim funds, one of which is the problem relating to the issue of profit sharing for the savings of pilgrim funds. Backed by the fact that the savings of pilgrimage funds from the initial deposit of pilgrims who now reaches around Rp98, 34 trillion with profit-sharing average of Rp2-Rp3 trillion in each year is controlled by the Ministry of Religious Affairs and used to subsidize pilgrims who pilgrims still waiting to subsidize pilgrims who go to perform the pilgrimage. This raises the question of whether the law and the legitimacy of profit for the results of Hajj savings that are utilized without permission from pilgrims. In addition, the large profit-sharing gains are potentially vulnerable to deviations and misappropriation, as examined by the Corruption Eradication Commission (KPK). Based on this, this article aims to analyse the pattern of contracts made by Hajj pilgrims with Islamic Financial Institutions and the Ministry of Religious Affairs as the manager of pilgrim funds.

Fatwa DSN-MUI (National Sharia Board-Indonesian Council of Ulama Fatwa) about Hajji Handling Financing

DSN-MUI adopted Fatwa Number: 29/DSN-MUI/VI/2002 concerning Financing of Hajj Management of Islamic Financial Institutions. This fatwa is the answer to the request of the financial industry that wants to improve the quality of service in the form of more variety of methods of financing to the community. Fatwa DSN Number 29/DSN-MUI/VI/2002 concerning Financing of Hajj Management of Islamic Financial Institutions, stipulates that: First, in the management of Hajj for customers, Islamic Financial Institutions (LKS) can obtain benefits (*ujrah*) using *al-ijârah* according to the Fatwa DSN-MUI Number 9/DSN-MUI/IV/2000. Secondly, if necessary, Islamic Financial Institutions may assist in bailing out the payment of the customer's BPIH (Hajj Operation Fee) by using *al-qardh* principles in accordance with the Fatwa DSN-MUI Number: 19/DSN-MUI/IV/2001. Third, Hajj management services conducted by Islamic Financial Institutions should not be required with the provision of bailouts. Fourth, the great rewards of *al-ijārah* services should not be based on the amount of *al-qardh* bailouts given by Islamic Financial Institutions to customers.

The fatwa implements two contracts in parallel: *ijârah* contract and *qardh* contract as supporting contract. The Islamic Financial Institutions that administers and helps the customers to obtain the Hajj portion of the authority is entitled to get *ujrah* on the work in the form of the

service (Mubarok and Hasanudin, 2013). Therefore, *ijârah* norms apply as it is contained in the DSN-MUI fatwa, i.e.:

First, the provisions of the *ijârah* objects are: (1) The object of *ijârah* is the benefit of the use of goods and/or services; (2) The benefits of goods or services should be assessable and applicable in the contract; (3) The benefit of goods or services shall be of a permissible nature (not prohibited); (4) Ability to meet the benefits must be real and in accordance with sharia; (5) Benefits must be identified specifically in such a way as to eliminate *jahâlah* (ignorance) which would result in a dispute; (6) The benefits specification should be clearly stated, including the time period. Can also be recognized by specification or physical identification; (7) Rental or wage is something promised and paid by the customer to Islamic Financial Institutions as benefit payment. Something that can be used as a price in buying and selling can also be used as rent or wage in *ijârah*; (8) The payment of rent or wage may be in the form of services (other benefits) of the same type as the object of the contract; (9) Flexibility in determining rent or wage can be realized in terms of time, place and distance.

Second, the obligation of Islamic Financial Institutions as a beneficiary of goods or services: (1) providing leased goods or services provided; (2) bear the cost of maintenance of goods; (3) guarantee if there is a defect in the leased goods.

Third, the obligations of customers as beneficiaries of goods or services are: (1) pay rent or wage and be responsible for maintaining the integrity of goods and use them according to contract; (2) bear the cost of maintenance of goods that are lightweight (not material); (3) if the leased item is damaged, not because of a violation of the permissible use, nor the negligence of the beneficiary in the maintenance of it, he is not liable for such damage (Judul, 2006). *Qardh* contract between Islamic Financial Institutions with customers in the form of financing is done to support services provided by Islamic Financial Institutions to customers in order to help customers get the portion of Hajj as intended above.

For this purpose, the provisions concerning the financing of *qardh*, namely: (1) Customers of *al-qardh* shall return the principal amount received at the time mutually agreed upon; (2) Administrative costs shall be borne by the customer; (3) Islamic Financial Institutions may request guarantees to customers when deemed necessary; (4) *al-qard* customers may provide voluntary donations to Islamic Financial Institutions as long as they are not promised in the contract; (5) if the customer is unable to return part or all of its obligations at the agreed time and the Islamic Financial Institutions has confirmed its inability, the Islamic Financial Institutions may extend the repayment period or write off some or all of its liabilities.

Fatwa Provisions on *Ijarah*

DSN-MUI has issued a fatwa number: 09/DSN-MUI/IV/2000 on *ijarah* financing. The substance of the fatwa consists of three parts: (1) harmonies and *ijarah* requirements; (2) Provisions on *ijarah* objects; (3) provisions concerning Islamic Financial Institutions and client obligations in *ijarah* financing.

The provisions concerning the pillars and the requirements of *ijarah* are: (1) *Sighat ijarah*, ie, *ijab* and *qabul* strive for statements from both parties acting (contracted), either verbally or in other forms; (2) the intentional parties; consisting of the lessor/service provider and the tenant/user of the service; (3) *IJARAH* contract object is the benefit of goods and rents or benefits of services and wages.

The provisions of *ijarah* objects are: (1) Objective *ijarah* is the benefit of the user of goods and services; (2) The benefits of goods or services should be assessable and applicable in the contract; (3) The benefit of goods or services shall be of a permissible nature (not prohibited); (4) Ability to meet the benefits must be real and in accordance with sharia; (5) Benefits must be specifically identified in such a way as to eliminate the ignorance that will result in a dispute; (6) The specification of benefits shall be clearly stated, including the time period. Can also be recognized by specification or physical identification; (7) Rental or wage is something promised and paid by the customer to Islamic Financial Institutions as benefit payment. Something that can be used as a price in buying and selling can also be used as lease or wages in *ijarah*; (8) The payment of rent or wage may be in the form of services (other benefits) of the same type as the object of the contract; (9) flexibility in determining rent or wage can be realized in time, place and distance.

Islamic Financial Institutions obligations and clients in financing *ijârah* are: (1) Islamic Financial Institutions obligations as the beneficiaries of goods or services are: a) providing leased goods or services provided, b) bear the cost of maintaining the goods, and c) guaranteeing any defects in goods leased; (2) The obligation of the customer as the beneficiary of the goods or services is: a) to pay rent or wage and be responsible for maintaining the integrity of the goods and to use them in accordance with the contract, b) bear the cost of maintenance of goods which are light (not material); c) hired is damaged, not because of a violation of the permissible use, nor is it due to the negligence of the beneficiary in guarding it, it is not liable for such damages.

Fatwas Provisions on Qardh

Qardh contract contained in Fatwa Number: 29/DSN-MUI/VI/2002 concerning Financing of Hajj Management of Islamic Financial Institutions, relating to Fatwa DSN-MUI Number: 19/DSN-MUI/IV/2001 on al-qardh. The provisions of the fatwa contained in the Fatwa DSN-MUI Number 19/DSN-MUI/IV/2001 consist of three parts: (1) general provisions on al-qardh, (2) provisions on sanctions, and (3) provisions on sources of funds.

General provisions on *qardh* are: (1) *Qardh* is a loan granted to the requiring customer (*muqtaridh*); (2) The *qardh* customer shall return the principal amount received at the mutually agreed time; (3) Administrative costs shall be borne by the customer; (4) Islamic Financial Institutions may request assurance to the customer when deemed necessary; (5) The *al-qardh* customer may provide voluntary contributions to the Islamic Financial Institutions as long as they are not agreed upon in the contract; (6) If the customer is unable to return part or all of its obligations at the agreed time and the Islamic Financial Institutions has confirmed its inability, the Islamic Financial Institutions may: a) extend the repayment period, or b) write off some or all of its liabilities.

The provisions on sanctions are: (1) In the event that the customer does not indicate the intention to return part or all of his obligations and not because of his inability, the Islamic Financial Institutions may impose sanctions on the customer; (2) The sanctions imposed on such customers may be in the form of and are not limited to the sale of warranties; (3) If the guarantee goods is insufficient, the customer must still fulfil its obligations in full. The provisions concerning the source of funds are that the *qard* funds may be sourced from: a) part of Islamic Financial Institutions capital, b) Islamic Financial Institutions provisions set aside, c) other

institutions or individuals entrusting the distribution of the *infaq* to the Islamic Financial Institutions.

MANAGEMENT OF HAJJ FUNDS

One of the religious activities that require financial ability for the Muslim community is to perform the pilgrimage. The number of candidates for pilgrims continues to grow from year to year. In December 2017, the number of applicants for pilgrims has reached 2.2 million people and the quota of Indonesian pilgrims around 211,000 people, the average departure period of 17 years.

In 2004, the Ministry of Religious Affairs began to apply Hajj registration by using the initial deposit. In 2010, the Government established a regular initial Hajj deposit of Rp25 Million. The high spirit of Indonesian Muslims to register is not balanced with the quota of Hajj pilgrims who are dispatched each year so as to make the waiting list of Hajj departures getting longer (Dhany, 2017). This creates the accumulation of initial deposit funds of pilgrims who settle in the accounts of the Ministry of Religious Affairs continue to increase.

Increased accumulation of Hajj money deposits prompted the policy of Hajj funds to be extended from current accounts to deposits, purchases of Government Sharia Securities (SBSN) or *Sukuk* (securities of equal denomination representing individual ownership interests in a portfolio of eligible existing or future assets), and investments in Bank Muamalat Indonesia (Ministry of Religious Affairs, 2015). Data from the Ministry of Religious Affairs states that the balance of the initial deposit funds on December 31, 2017 reached Rp98.34 Trillion. Funds amounting to Rp39.336 trillion deposited in *Sukuk*, deposits Rp49.17 Trillion and current accounts Rp9.834 trillion.

Currently, Indonesia is faced with the challenge of providing infrastructure. RPJMN (National Medium Term Development Plan) 2015-2019 mentions a financing gap of Rp922 trillion. Therefore, the government needs various sources of financing to cover the gap of infrastructure financing needs. The amount of accumulated early Hajj fund deposits raises challenges in financial management of Hajj. In order to meet the financing needs, some parties propose the use of Hajj funds as a source of infrastructure financing. On the other hand, the quality of Hajj pilgrimage for the current year is also confronted with obstacles as reflected in the Central Bureau of Statistics survey. The satisfaction level of Hajj satisfaction in 2017 still shows 82 percent.

Large amounts of Hajj funds can be utilized productively will bring benefits to pilgrims in the form of a decrease in the cost of Hajj and improvement of service (Agama, 2014). Some argue that Hajj funds can be developed through infrastructure financing instruments so as to obtain greater benefits. Some argue that Hajj fund investments in infrastructure financing are at high risk. Although the potential returns on investment returns on infrastructure financing investments are greater, Hajj funds should be prioritized on safer investment instruments (Mannan, 1996).

Plans for utilization of funds Hajj Operation Cost (BPIH) for investment in infrastructure development are controversial. Some argue that the Government or the Hajj Financial Management Agency (BPKH) should seek permission first to the pilgrim as the owner of the funds.

Director of Hajj Fund Management and Integrated Hajj Information System of the Ministry of Religious Affairs, Ramadan Harisman said that the use of Hajj Operation Cost (BPIH) for development and other investment does not need to ask permission again to the congregation. For, during this time, when the management of pilgrim funds conducted by the Ministry of Religious Affairs, the pilgrims have filled out and signed the contract form *wakalah* when paying the initial deposit BPIH. The provisions concerning the filling and signing of the *wakalah* contract are stipulated in a Cooperation Agreement between the Directorate General of Hajj and *Umrah* Implementation, Ministry of Religious Affairs, with Hajj Operation Cost (BPIH) Recipient Banks regarding receipt and payment of Hajj Operation Cost (Ministry of Religious Affairs, 2017).

In the *wakalah* contract form, Hajj pilgrims as *Muwakkil* authorize the Ministry of Religious Affairs as the *Wakil* (Deputy), to receive and manage the initial deposit funds of Hajj Operation Cost (BPIH) that have been deposited through Hajj Operation Cost (BPIH) Deposit Receiving Bank (BPS) in accordance with applicable laws and regulations. The application of *wakalah* contract is also regulated when Hajj finances are managed by BPKH (Hajj Financial Management Agency). Law Number 34 of 2014 on *Hajj* Financial Management and the Draft Government Regulation on the implementation of the Act stipulates that BPKH (Hajj Financial Management Agency) as the Deputy will receive mandate from the Hajj pilgrims as *Muwakkil* to receive and manage the deposit funds of Hajj Operation Cost (BPIH).

Law Number 34 of 2014 mandates financial management of pilgrimage carried out by BPKH (Hajj Financial Management Agency), a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH (Hajj Financial Management Agency) consists of the executing agency and the supervisory board responsible for managing the acceptance, development, expenditure, and financial accountability of the pilgrimage.

Based on Law Number 34 of 2014 Article 22, BPKH (Hajj Financial Management Agency) is in charge of managing Hajj Finance which includes acceptance, development, expenditure and accountability of Hajj Finance. Then article 23 explains that in carrying out the duties referred to in Article 22, BPKH (Hajj Financial Management Agency) performs the functions of: (a) planning of receipt, development and expenditure of Hajj Finance; (b) implementation of Hajj's revenue, development and expenditure; (c) control and supervision of acceptance, development and expenditure of Hajj Finance; and (d) reporting and accounting for the implementation of Hajj's revenue, development and expenditure. Whereas the authority of BPKH (Hajj Financial Management Agency) is stipulated in article 24 which in performing the duties as referred to in Article 22, BPKH (Hajj Financial Management Agency) has the authority to: (a) place and invest Hajj Finance in accordance with sharia principles, prudence, security, and benefit value; and (b) cooperate with other institutions for the management of Hajj Finance.

The value of benefits (returns) on the results of Hajj financial management by BPKH (Hajj Financial Management Agency) is intended for the greatest importance of pilgrims. Such interests are among others in the form of improving the quality of Hajj, rationality and efficiency of BPIH (Hajj Operation Cost) and the benefit of Muslims. In performing its duties and functions, BPKH (Hajj Financial Management Agency) is authorized to place and invest Hajj finances. As regulated in the provisions of the implementation of Law Number 34 of 2014, Hajj financial development options by BPKH (Hajj Financial Management Agency) can be done in the form of banking products, securities, gold, direct investment and other investments.

However, in placing and/or pilgrim financial investments, BPKH (Hajj Financial Management Agency) should always consider the security, prudence, benefit, and liquidity aspects and conformity with sharia principles. This is considering the pilgrimage fund is a community fund that will carry out the pilgrimage. The members of the executing body and members of the supervisory board are jointly and severally liable for any loss of placement and/or Hajj investment overall as a result of errors and/or negligence in its management.

BPKH (Hajj Financial Management Agency) is also required to prepare a strategic plan for a period of 5 (five) years. Based on the Strategic Plan, BPKH (Hajj Financial Management Agency) then drafted a work plan and annual budget which is a detailed description of how the pilgrim funds will be managed in that period, including policies on how much Hajj funds will be placed in banking products and/or invested in securities, gold, direct investment and other investments. Strategic plan as well as the annual work plan and budget of BPKH (Hajj Financial Management Agency) which will become the reference of BPKH (Hajj Financial Management Agency) in the implementation of Hajj financial management, will be determined by the implementing agency of BPKH (Hajj Financial Management Agency) after first discussed and got approval from DPR (parliament). This is in accordance with Article 45 paragraph 4 of Law Number 34 of 2014 on the management of Hajj finance.

Wakalah Contract Implementation in the Management of Hajj Funds

One of the contracts used by BPKH (Hajj Financial Management Agency) in managing the financial of Hajj pilgrims fund is the *Wakalah* contract. *Wakalah* (representative) is the submission, delegation, or granting of a mandate or power of attorney contract of power by one party to the other in matters which may be represented. *Wakalah* contract is usually used by banks or non-banks such as insurance companies. In the world of financial institutions in practice requires the existence of *muwakil* or representing, representatives in respect of this bank and *taukil* or object or authority represented.

Wakalah requirements are (1) the person who gives power (al-muwakil); (2) Persons authorized (al-wakil); (3) Case/matter authorized (al-taukil); (4) Statement of Agreement (ijab and Qabul). The requirements of Wakalah are: (1) Legitimate owners who can act on something that is represented; (2) People mukallaf or mumayyiz within certain limits i.e. in things that are beneficial to him such as representing to receive grants, receive alms and so on. Terms of Representative (representing): (1) Proficient Law; (2) can perform the tasks represented to him; (3) A representative is a person who is given Amanah (trust). The things represented: (1) It is clearly known by the person representing; (2) Not contrary to Islamic Law; (3) Can be represented according to Islamic Law. If either party does not fulfil the obligation or if there is a dispute between the parties, the settlement shall be made through the Sharia Arbitration Board after no agreement has been reached through the deliberation.

The authorizer is the rightful owner who can act on something represented. And also to accept the conditions under which if either party does not fulfil the obligation or if there is a dispute between the parties, the settlement shall be made through the Sharia Arbitration Board after no agreement is reached through the deliberation. In accordance with the Terms of *Wakalah* the first form of power is clearly known by the person representing, the second Not contrary to Islamic Law, and the third can be represented according to Islamic Law.

Various kinds of Power: (1) Wakalah al-mutlaqah, which represents an absolute no time limit and for all matters; (2) Wakalah al-muqayyadah is the appointment of a representative to act on his behalf in certain affairs; (3) Wakalah al-amah is a wider representation of al-muqayyadah but simpler than al-mutlaqah.

The end of the *Wakalah* contract if a representative or representative has completed his or her duties from representative *muwakil*, the mandate given by *muwakil* to the representative has been communicated to the recipient of the mandate. While in the implementation *wakalah* contract can be cancelled if: (1) One party who committed of contract death or crazy; (2) If the intention in the *wakalah* contract is completed or the purpose of the work is terminated; (3) Disconnection of *wakalah* contract; (4) The loss of power or the right of an authority to an authorized object.

Wakalah contract in the management of Hajj funds, the status and stipulations of the parties are as follows: (1) In this contract, BPKH (Hajj Financial Management Agency) acts as the wakil (authorized) to undertake activities which become the object of wakalah on the management of pilgrim funds; (2) Prospective pilgrims as individuals in a saving product act as muwakil (proxy); (3) Candidates for Hajj as a body or group, in the tabaru account acting as muwakil (proxy); (4) The representative shall not represent the other party over the power it receives, except with the muwakkil permit (the participant); (5) Wakalah contract is a trust (yadamanah) so that the representative does not bear the risk of loss of investment by reducing the fee he has received, except for carelessness or default; (6) BPKH (Hajj Financial Management Agency) as a representative shall not be entitled to a share of the investment proceeds. Because the contract used is wakalah contract.

CONCLUSION

Utilization of Hajj funds for development or other investment does not need to ask permission again to the congregation. Because, when the management of pilgrim funds is undertaken by BPKH (Hajj Financial Management Agency), the pilgrims have filled out and signed the wakalah contract form when paying the initial deposit of BPIH (Hajj Operation Fee). Wakalah is a contract of surrender of power, which on that contract someone appoints someone else as his successor in acting. The provisions concerning the filling and signing of the wakalah contract are stipulated in a Cooperation Agreement between the Directorate General of Hajj and *Umrah* Implementation, the Ministry of Religious Affairs, with the BPIH (Hajj Operation Fee) Deposit Receiving Bank regarding receipt and payment of BPIH (Hajj Operation Fee). In the wakalah contract form, the Hajj pilgrims as muwakkil authorize BPKH (Hajj Financial Management Agency) as the wakil, to receive and manage the initial deposit fund of BPIH (Haji Operation Fee) which has been deposited through BPIH Deposit Receiving Bank (BPS) in accordance with the prevailing laws and regulations. The application of wakalah contract is also regulated when Hajj finances are managed by BPKH (Hajj Financial Management Agency). Law Number 34 of 2014 on Financial Management of Hajj stipulates that BPKH (Hajj Financial Management Agency) as the wakil will receive a mandate from the Hajj pilgrims as muwakkil to receive and manage funds deposits BPIH (Hajj Operation Fee).

The recommendation and suggestion of the presence of BPKH, the researcher has the expectation to have orientation for the people, among others: 1) BPKH is expected to increase the service quality, protection and guidance to the Indonesian pilgrims, especially the service of

transportation and lodging facilities in Mecca and Medina; 2) BPKH is expected to decrease BPIH (Hajj Operation Fee) which must be paid by candidate Hajj pilgrims; 3) BPKH is expected to apply justice to the distribution of benefit value (profit sharing) of Hajj financial management to respective Hajj pilgrims according to their waiting period; 4) BPKH is expected to encourage the realization of the Hajj pilgrimage and avoid the direction of implementation of Hajj activities that further highlight the business aspects; 5) BPKH expected financial management of pilgrimage can provide benefits for the benefit and economic improvement of the people and nation of Indonesia.

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