

Legal Certainty in Provening Case of Cancellation of Marriage Determination at The Decision of The DKI Jakarta High Court Number 139/PDT/2020/PT. DKI

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ABSTRACT

The risk of burden can encourage the parties to compete in proving who is the most correct so they are willing to do various ways such as submitting evidence that has been falsified in order to fulfill their desire to be able to win cases in court. Problems regarding this can be found to date, one of which is in the case of the start of the determination which is still in the High Court Decision Number 139/PDT/2020/PT.DKI. The decision made by the judge was the stipulation of marriage between Mutiawa Lurin and Lukman Tjoe because Nina's side could prove that Mutiawa Lurin was not the only wife of Lukman Tjoe based on evidence that did not match reality. The problem in writing this number is how legal certainty is in proving the case for the determination of marriage in the decision of the DKI Jakarta High Court 139/PDT/2020/PT.DKI. The research method used by the author is a normative research type which has a descriptive analytical research character with a normative juridical approach, based on primary legal sources, secondary legal sources obtained from library techniques and also supported by interviews. Basically marriage for parties who adhere to Christianity cannot be considered as monogamous, if a husband commits an act of polygamy then the marriage can be said to be valid by referring to the legal requirements of marriage contained in Article 2 paragraph (1) of Law Number 1 of 1974. And, in creating a decision that can realize legal certainty and justice, the judge is obliged to always be thorough and careful in examining the cases submitted to him.

Keywords: *Legal Certainty, Evidence, Cancellation of Marriage Determination*

1. INTRODUCTION

In essence, humans were created in pairs. Aristotle stated that humans are zoon politicon which means that humans tend to have the instinct to want to always gather with each other because humans are social creatures. [1] With the instinct to continue to interact with other human beings, then foster a sense of interdependence that encourages humans to make a bond. This bond is, a marriage bond.

According to I Ketut Atardi, marriage is an institutionalized process, in which a man and a woman initiate and maintain a reciprocal relationship which is the basis for a family and can then give rise to rights and obligations both between men and women and with their children who was later born. [2] Meanwhile, in Article 1 of Law Number 1 of 1974 concerning Marriage, it is stated that the definition of marriage is as follows [3]:

“Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Supreme Godhead.”

To carry out a marriage, of course, it must first meet the existing requirements in accordance with Law Number 1 of 1974 concerning Marriage. These conditions are contained in Article 6 paragraphs up to paragraph (6) of Law Number 1 of 1974 concerning Marriage, namely [3]:

1. Marriage is based on the approval of the two prospective brides;
2. To carry out a marriage, a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents;
3. In the event that one of both parents dies or is unable to express his or her will, then the permission referred to in paragraph (2) of this article is sufficient to obtain from the parent who is still alive or from a parent who is able to express his/her will;
4. In the event that both parents have died or are in a state of being unable to express their will, then permission is obtained from the guardian of the person who maintains it or a family who has blood relations in a straight line of descent as long as they are still alive and in a state of expressing their will;
5. In the event that there is a difference between the people referred to in paragraphs (2), (3) and (4) of

this article, or one or more of them do not express their opinion, the Court in the area where the person who will be marrying is living at the request of the said person may give permission after first hearing the persons referred to in paragraphs (2), (3) and (4) in this article;

6. The provisions in paragraphs (1) to (5) of this article apply as long as the law of each religion and belief does not specify otherwise.

Based on Article 6 of Law Number 1 of 1974 concerning Marriage, a marriage must meet the requirements of an agreement by the parties involved in the marriage, and meet the requirements of being able to carry out legal relations in which the parties have the ability to be responsible for the marriage. [4] This is required because marriage is another form of agreement that binds the parties involved in it, namely the bride and groom, husband and wife, so that marriage must fulfill the legal elements of the agreement contained in Article 1320 of the Indonesian Law. Civil Law (KUHPerdata) which states [5]:

“For the validity of an agreement, 4 (four) conditions are required:

1. Agree on those who bind themselves;
2. The ability to make an engagement;
3. A certain thing;
4. A lawful cause.”

In addition to fulfilling these requirements, to obtain legal recognition that the marriage actually exists, a marriage bond must be registered with the competent authorities. The provisions regarding the registration of marriages are contained in Article 2 of Law Number 1 of 1974 concerning Marriage which contains [3]:

1. Marriage is legal if it is carried out according to the laws of each religion and belief; and
2. Each marriage is recorded according to the prevailing laws and regulations.

A marriage can be considered valid if the marriage is carried out in accordance with religious rules and beliefs held by the parties involved, namely the bride and groom. Then to fulfill the administrative requirements, the marriage must be registered. Marriage registration for the bride and groom who are Muslim can be done at the Office of Religious Affairs (KUA) and for a person of a non-Muslim religion, marriage registration can be done at the local Population and Civil Registration Office. However, if the parties or in this case the bride and groom are late in registering their marriage to the competent authority for one reason or another, then the parties must first apply for a marriage determination to the local District Court. [6]

By registering a marriage, a marriage bond becomes clear for both the parties concerned and other parties and of course can provide certainty and protection for the bride and groom. An unregistered marriage can then be considered non-existent by the State and does not receive legal certainty.

In registering a marriage bond with the authorities, the parties who register or report their marriage to the authorities must of course also include authentic or actual evidence. For the parties or the bride and groom who will register their marriage with the Population and Civil Registration Service, the parties must include a Church Blessing Letter or certificate indicating that both have carried out the actual marriage. For those who wish to report their marriage to the competent authorities, it is strictly prohibited to include evidence that is not in accordance with the existing reality or even include false information in the authentic evidence.

The evidence submitted by the parties in registering the marriage will be very useful if in the future there is a case that is very closely related to the marital relationship between the bride and groom. The evidence can then be used as legal evidence for the purpose of proof in court. This will certainly help the judge to be able to ascertain the truth of the concrete events being litigated. [7]

The existence of evidence has a very strong influence in a judge's decision. In civil cases, the disputing parties, namely the plaintiff and the defendant, have an obligation to prove based on the burden of proof ordered by the judge. As a risk of the burden of proof, if one of the parties, namely the plaintiff or the defendant who is burdened by evidence, cannot prove the truth of the evidence he submits, then that party must be defeated and vice versa. [7]

The risk to the burden of proof can then encourage the parties to compete in proving who is the most correct so they are willing to do various ways such as submitting evidence that has been falsified in order to fulfill their desire to win the case in court.

Problems regarding this can still be found today, one of which is in the case of annulment of marriage which was proposed by Nina against the marriage of Mutiawa Lurin with her husband who had died, the late. Lukman Tjoe, as contained in the High Court Decision Number 139/PDT/2020/PT.DKI.

The case in the decision begins with a husband, namely Loekman Tjoe who has married 3 (three) times. In 1979, he married Mutiawa Lurin (wife I) who then without a divorce, he re-married with Sarinah (wife II) by custom. However, in 2003 Loekman Tjoe separated from Sarinah due to incompatibility. And after that, Loekman Tjoe met Nina (Wife III) where in 2013 they finally decided to get married at the Tiberias Kana Marriage Church.

On March 26, 2015, Loekman Tjoe was declared dead due to his illness. Nina's side, as the wife who accompanied the late. Loekman Tjoe until the end of his life decided to file an Application for Marriage Determination for his marriage to the late. Loekman Tjoe to the North Jakarta District Court so that his marriage is legally recognized by the State which then at the same time fulfills the requirements for the right to inherit her husband's inheritance.

However, not long after that, Nina learned that Mutiawa Lurin had preceded her to file an Application for Marriage Determination and the application for the determination had been granted by the North Jakarta District Court. With

this, there was a case based on Nina's objection to the Marriage Determination No.140/Pdt.P/2015/PN.Jkt.Utr between Mutiawa Lurin and the late. Lukman Tjoe, as her husband, because he considered that there was a bad intention from Mutiawa Lurin to control her husband's property by submitting an application for the determination of the marriage at the time of the deceased. Lukman Tjoe has not been buried and because he thinks that Mutiawa Lurin has given false information about his marriage to the late. Lukman Tjoe, so that the judge was fooled.

Nina submitted these lawsuits to the North Jakarta District Court which was later included in the North Jakarta District Court Decision Number 148/Pdt.G/2016/PN.Jkt.Utr, in which the judge gave a verdict in favor of Nina's claim. as the plaintiff and stated that the determination of the North Jakarta District Court No.140/Pdt.P/2015/PN.Jkt.Utr has no binding law. Based on the North Jakarta District Court Decision Number 148/Pdt.G/2016/PN.Jkt.Utr, Mutiawa Lurin then filed an appeal to the DKI Jakarta High Court.

In the appeal stage, Mutiawa Lurin then submitted important points, one of which was that he strongly objected because of the evidence in the form of Certificate Number 017/6.5.1/VII/2015 dated July 25, 2015 made by Pastor Y. Purbo Tamtomo, Pr. and evidence in the form of Marriage Certificate Number 122/PGWO/WJ-VI/X/15 dated October 2, 2015 made by Pastor Manuel E. Raintung, S.Sim., MM which contains information that Nina's Marriage Certificate with the late. Lukman Tjoe's statement is just a Church Visiting Certificate, it doesn't need to be considered, it's a consideration that Mutiawa Lurin considers to be very partial.

The judge's decision at the appeal level later won Mutiawa Lurin as the comparison, but the Marriage Determination No.140/Pdt.P/2015/PN.Jkt.Utr between him and Lukman Tjoe was still annulled because the judge considered Nina's party to be able to prove that Mutiawa's party Lurin is not the only wife of Lukman Tjoe. Even so, the evidence presented by Nina's side is evidence that has been proven not to contain the truth.

From the background described by the author, the title appointed by the author is, "Legal Certainty in Proving the Case of Cancellation of Marriage Determination in the Decision of the Jakarta High Court Number 139/PDT/2020/PT.DKI".

2. METHOD

The research method used by the author is a normative research type which has a descriptive analytical research character with a normative juridical research approach. The author will examine the problem by describing the case and then linking it based on primary legal sources, namely legislation and secondary legal sources, namely books, papers, and journals in the field of law obtained from library techniques and also supported by interviews.

3. RESULT & DISCUSSION

3.1. Description of Marriage Determination

Based on the Beschikking theory, a decision or stipulation is not only made by government organs in the administrative realm, but can also be made by government organs engaged in the legislative and judicial domains.

In accordance with Article 18 of Law Number 48 of 2009 concerning Judicial Power which states that the implementation of judicial power is carried out by the Supreme Court and all judicial bodies under it along with a Constitutional Court, it can be interpreted that every case submitted to each organizer The judicial power must be resolved by him, including in the settlement of voluntary jurisdiction cases or applications.

A case with a voluntary lawsuit is a lawsuit in a civil case based on the submission of an ex parte or one-sided application with the aim of obtaining legal certainty over a problem faced by the party concerned.[8] Something that is at issue with a voluntary lawsuit usually concerns the rights of the applicant who requires legal certainty.

An order resulting from the submission of an application or a voluntary lawsuit is in the form of a court order. According to R. Subekti, a court decision can also be referred to as a declaratoir decision which in the decision is intended to grant a request from the applicant to ratify a situation. [9]

With regard to marriage events in Indonesia, there are several marriages listed in Law Number 1 of 1974 concerning Marriage which can be requested to obtain a court ruling such as regarding the age dispensation for marriage and marriage for a husband with more than one wife (polygamy). However, apart from Law Number 1 of 1974 concerning Marriage, there are also marriages that can be requested for approval in the form of a court order, namely marriages between parties who have different religions and beliefs and marriages in which one of the parties has died.

Regarding the procedures and requirements for submitting an application related to marriage as mentioned above, it is contained in Article 2 to Article 5 of the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2015 concerning Guidelines for Proceedings to Obtain a Decision on Acceptance of Applications to Obtain Decisions and/or Actions of Bodies or Officials. The government that declares [10]:

1. Submit a letter of application, which contains the identity of the applicant along with a description of the reasons for the application; and
2. Include evidence, which at least contains evidence related to the identity of the applicant, written evidence, witness list evidence, and other evidence.

3.2. Legal Certainty in Proving the Case of Annulment of Marriage in the Decision of the DKI Jakarta High Court Number 139/PDT/2020/PT.DKI

A marriage stipulation issued by the court, in essence has permanent legal force and is a declaratory decision which basically only contains confirmation or ratification of a certain matter without having a punishing nature, so it is not possible to have an execution related to the marriage stipulation. However, if it is very necessary to execute a marriage determination, it can be done through the filing of a new civil suit. [11]

To answer the formulation of the problem based on the chronology of the case of the cancellation of the marriage determination which was decided by the Decision of the DKI Jakarta High Court Number 139/PDT/2020/PT. DKI, which the author has described in the research data, the author will first dissect the marriage that was carried out when the man was still or was bound by marriage.

Marriage that is carried out when the man is bound in a marriage bond can also be referred to as a polygamous event or a situation where a husband has more than one wife at the same time. Basically, marriage in Indonesian law adheres to the principle of monogamy where the man is only allowed to have one wife and vice versa. However, this does not mean that the principle of monogamy cannot be ruled out. Law Number 1 of 1974 concerning Marriage, precisely in Article 3 paragraph (2), gives permission for a man or husband to have more than one wife by submitting an application to the competent Court. However, it is also required for the husband to fulfill the conditions stated in Article 5 paragraph (1) of Law Number 1 of 1974 concerning Marriage which consists of [3]:

1. Has obtained the approval of the wife who at that time was bound by a marital relationship with her;
2. The husband must always guarantee the necessities of life for the wife and her offspring; and
3. There is a guarantee that the husband will give the same treatment to the wives owned by him at the same time and their offspring.

However, the fulfillment of these conditions does not only make the court give a ruling that grants the request related to permission for a husband to have more than one wife. As stated in Article 4 paragraph (2), the court will only give permission for a husband to have more than one wife, if the wife who is married to the husband is in the following conditions [3]:

1. Unable to carry out her obligations as a wife;
2. There is a physical disability or is suffering from a disease that cannot be cured;
3. Cannot give birth or give offspring to the husband.

Regarding the provisions of the exclusion of the monogamy principle contained in the marriage law in Indonesia, it is also necessary to harmonize with the rules contained in the religious law and beliefs held by the parties who will carry out a marriage bond considering

Article 2 paragraph (1) of the Law. Law Number 1 of 1974 concerning Marriage which stipulates that a marriage bond can be said to be valid if it is carried out in accordance with the religious laws and beliefs of the bride and groom who are getting married.

In Islam, there is a teaching that allows a husband to have more than one wife in which the husband must meet the requirements by being fair to all the wives he has. This is manifested in the book of the Qur'an, QS. Al-Nisa [4] : 3 which states [12]:

“If you (the caregivers of orphans) are worried that you will not be able to act justly (when you want to marry them), then marry the women you like from the women (other) as many as: two, three, or four. Then if you are afraid of injustice, then only one or the slaves you have. That is closer to not committing violence.”

But in the teachings of several religions other than Islam, especially Catholic and Christian or Christian, it is very impossible for a husband to have more than one wife at the same time. The prohibition is emphasized in the news of the new covenant that in essence a husband is only allowed to have a wife as well as a wife is only allowed to have a husband in order to create a complete sense of love. Then, it is also stated in the Bible, Deuteronomy 17:17a which states [13]:

"Also, let him not have many wives, so that his heart does not deviate."

Referring to the case in the Decision of the DKI Jakarta High Court Number 139/PDT/2020/PT.DKI, an incident occurred where Lukman Tjoe's party as the husband, had been married 3 (three) times with different women, namely Mutiawa Lurin. (Wife I/Appellate/Originally Defendant), Sarinah (Wife II), and Nina (Wife III/Appellate/Originally Plaintiff). Because the litigants, namely Mutiawa Lurin (Wife I/Comparant/Originally Defendant) and Nina (Wife III/Appellate/Originally Plaintiff), including the deceased husband, Lukman Tjoe, are Christians who highly uphold the principle of monogamy. In a marital relationship, the marriage that was carried out by Lukman Tjoe to Sarinah (Wife II) and Nina (Wife III/Appellate/Originally Plaintiff) should be said to be invalid according to the religious laws and beliefs held by these parties.

If viewed not in depth, the marriage between Lukman Tjoe and Mutiawa Lurin (Wife I/Comparant/Originally Defendant) can be considered legally and religiously stronger than the marriage between Lukman Tjoe and Nina (Wife III/Complainant/Originally Plaintiff). . However, there was also negligence committed by Mutiawa Lurin (Wife I/Comparant/Originally Defendant), which was related to the reporting or registration of marriage.

Naturally, the bride and groom who organize the marriage register or report their marriage to the official or authorized agency. The registration or reporting of marriages aims to provide legal certainty for a marriage event to be recognized by the state. In accordance with Article 34 of Law Number 23 of 2006 concerning Population Administration, a marriage event must be

reported immediately to the authorized official or agency at the place where the marriage is held, no later than 60 (sixty) days after the marriage is held.

To confirm the sound of Article 34, Article 90 paragraphs (1) and (2) of Law Number 23 of 2006 concerning Population Administration stipulates that the maximum fine is Rp. 1,000,000.00 if someone has been negligent by belatedly reporting the event of his marriage to the official or authorized agency.

In connection with the case raised by the author, the litigants, namely Mutiawa Lurin (Wife I/Comparant/Originally Defendant) and Nina (Wife III/Appeal/Originally Plaintiff) just wanted to register their marriage with Lukman Tjoe as their husband, after Lukman Tjoe died. This is the background behind the occurrence of a case of cancellation of the marriage determination which was sued by Nina (Wife III/Appellate/Originally Plaintiff) against the marriage determination between Mutiawa Lurin (Wife I/Comparison/Originally Defendant) and Lukman Tjoe. Where, Nina (Wife III/Appellate/Originally Plaintiff) objected to the marriage stipulation between Mutiawa Lurin (Wife I/Comparison/Originally Defendant) and Lukman Tjoe, because she considered the relationship between Mutiawa Lurin (Wife I/Comparant/ Initially, the Defendant) and Lukman Tjoe were only limited to having lived together and were not bound by a marital relationship.

With one of the arguments of the lawsuit put forward by Nina (Wife III/Appellate/Originally Plaintiff) regarding a marriage determination, it is also worth looking at it from the perspective of the theory of stipulation or decision. Where, in order to guarantee the existence of a legal certainty over decisions or stipulations issued by government organs, basically they must go through several processes or cannot be done arbitrarily because they require considerations.

A decision or stipulation can be made by all government organs, both in the executive, legislative, and judicial domains. In relation to a marriage determination, those who have the authority to issue such decisions or stipulations are government organs in the judicial realm carried out by judicial power institutions as stated in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. (UUDNRI 1945) namely the Supreme Court and the Judicial Body under it and also the Constitutional Court.

Making decisions or stipulations in the judicial domain is the authority of a judge as an actor of judicial power. Based on the opinion of R. Subekti, a decision that is stipulating a certain situation is derived from a voluntary lawsuit or a lawsuit made by submitting an application. Because the litigants in the case appointed by the author are both registering or reporting marriages with the husband who has died, a marriage determination from the court is needed.

It has been described previously in the research data, that an application submitted to obtain a decision from the court needs to be registered with a letter of application accompanied by evidence that can reveal the facts of an

event. Just like civil cases in general, in case of application there is also a process of proof in which the applicant will show evidence related to the event he is requesting to be determined and then the judge will examine and observe the truth of the evidence submitted based on the regulations. legislation and intuition. Therefore, the applicant is strictly prohibited from submitting evidence that is not in accordance with reality or is referred to as false evidence.

Back to the case of cancellation of the marriage determination appointed by the author, in the appeal stage at the High Court, the marriage determination between Mutiawa Lurin (Wife I / Comparator / Originally Defendant) and Lukman Tjoe was decided to be canceled by the judge. The decision handed down by the judge was based on the consideration that Nina (Wife III/Comparison/Originally Defendant) could prove that Mutiawa Lurin (Wife I/Comparison/Originally Defendant) was not the only wife of Lukman Tjoe.

According to the author, in exercising the authority to make a decision regarding this case, the judge was not careful in making considerations. Because it refers to the marriage theory and is accompanied by a religious view held by the parties related to marriage, the marriages carried out by Lukman Tjoe when he was still married to Mutiawa Lurin (wife I/Comparant/Originally Defendant) were not can be considered as a legal marriage.

In the court regarding the case of the cancellation of the marriage determination, Nina's side (Wife III/Comparant/Originally Defendant) stated that she and Lukman Tjoe had married on October 12, 2013 at the Cana Tiberias Church located in Israel. However, it should be noted that the Cana Church is one of the holy pilgrimage places that must be visited on religious trips and it is very difficult to have an official marriage at the Tiberias Cana Church, so usually visitors only renew their marriage vows at the Tiberias Cana Church.

Along with the process of examining the evidence submitted by the parties, it was found that the visit of Nina (Wife III/Comparison/Originally Defendant) and Lukman Tjoe to Israel was not carried out personally with the intention of holding a marriage, but both only take a spiritual pilgrimage tour of Jerusalem-Dubai which is indeed one of the goals is to make a pilgrimage to the Church of Cana Tiberias. From the visit, a Marriage Confirmation Certificate was distributed to tour participants who renewed their marriage vows.

Based on the existing facts, it should be clear that the marriage between Nina (Wife III/Comparison/Originally Defendant) and Lukman Tjoe can be said to have never existed. This can be shown by the Certificate of Marriage Confirmation given by the Cana Tiberias Church, which accordingly is only a visit certificate and not a Marriage Certificate.

Derived from the evidentiary efforts made by Nina (Wife III/Comparison/Originally Defendant) to prove that Mutiawa Lurin (Wife I/Comparative/Originally Defendant) was not the only wife of Lukman Tjoe, then it was revealed that Nina (Wife III/Comparison/Originally Defendant) has committed a criminal act of falsifying

written evidence so that it fulfills the elements contained in Article 263 paragraph (2) of the Criminal Code (KUHP) which states that for someone who intentionally uses a forged letter or who falsified as if the contents of the letter are actually true, can be threatened with a maximum sentence of 6 (six) years. [14]

Based on the explanation above, the approval of the application for the determination of marriage with number 213/Pdt.P/2015/PN.Jkt.Utr between Nina (Wife III/Comparant/Originally Defendant) and Lukman Tjoe by the judge, is not a true thing and the application for the determination should never be granted (rejected) because it is based on evidence that does not reflect the existing facts. The decision of the High Court which gave the decision to cancel the marriage determination number 140/Pdt.P/2015/PN.Jkt.Utr between Mutiawa Lurin (Wife I/Comparant/Originally Defendant) and the late Lukman Tjoe created a legal uncertainty and the decision also harmed Mutiawa Lurin (Wife I/Comparant/Originally Defendant). By looking at the facts that have been described, it can be proven that Mutiawa Lurin (Wife I/Comparison/Originally Defendant) is actually the only wife of the late Lukman Tjoe.

In order to obtain legal certainty regarding the stipulation of an annulled marriage due to deception from the opposing party, based on Article 67 letter a of Law Number 14 of 1985 concerning the Supreme Court, it is stated that [15]:

"A review of a civil case decision that has permanent legal force can be carried out if a decision is handed down based on a lie or deception from the opposing party or based on evidence which is then declared false by a criminal judge." Due to the decision at the appeal level with number 139/PDT/2020/PT. The DKI appointed by the author has not yet obtained permanent legal force, then to obtain legal certainty regarding the event of his marriage, Mutiawa Lurin (Wife I/Comparant/Originally Defendant) needs to report a criminal act related to falsification of written evidence by Nina (Wife III). /Appellate/Originally Defendant). Then, after being processed and declared that the evidence was fake by the judge of the criminal procedure, Mutiawa Lurin (Wife I/Comparant/Originally Defendant) could file an appeal against the appeal decision.

4. CONCLUSION

Based on the results of the research and analysis of the authors above, it can be concluded that basically marriage for those who adhere to Christianity cannot rule out the principle of monogamy, where a husband can only have one wife and vice versa. So that if a husband marries another party while he is still bound by a marital relationship, then the marriage can be said to be invalid because by referring to the legal requirements of marriage contained in Article 2 paragraph (1) of Law Number 1 of 1974, Marriage is legal if it is held in accordance with the religious laws and beliefs of each party.

Regarding the cancellation of the marriage determination in the case the author adopted, there was a judge's inaccuracy in examining the evidence submitted to him which resulted in the creation of a decision that could not create legal certainty for the party that should be justified, namely the Comparator. Thus, to obtain legal certainty, the comparator needs to file a legal remedy again.

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