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THE EMPOWERMENT OF CUSTOMARY VILLAGES IN BALI IN PREVENTIONS AND COUNTERMEASURES OF NARCOTICS CRIMES BASED ON LOCAL WISDOM

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Abstract

Narcotics crime has been categorized as transnational crime with a very sophisticated *modus operandi*, therefore in its prevention and countermeasures require an effective strategy involving various components of society. Customary village as one of the social institutions in Bali has an important role in helping the Government realize Indonesia towards a drug-free country considering that customary village has traditional rules considered effective in helping to minimize the number of narcotics abuse in the area through the application of customary sanctions. This research is an empirical legal research that uses an empirical juridical approach with descriptive analytical research specifications. The research data sourced from primary data is supported by secondary data using document study techniques, observation, and interviews. The results showed that the prohibition of narcotics abuse regulated in *awig-awig* or *pararem* of customary villages in Bali is a form of the empowerment of customary villages that aims to increase the participation of customary villages in helping the government prevent and overcome narcotics abuse and illicit trafficking. The regulation of customary sanctions for perpetrators of narcotics crimes in *awig-awig* or *pararem* and its application are reaction to actions that violate the sense of justice and propriety that live in society so as to disrupt the balance and peace of the society.

Keywords: Customary Village, Customary Sanctions, Narcotics Crimes

I. INTRODUCTION

I.1 Background Of The Problem

A crime grows and develops by following the dynamics of society and development. Regarding that, HR Abdussalam and DPM Sitompul proposed that "the more society and development increase, then the more the crimes will also increase".¹ A crime is

criminologically defined as an anti-social act that gets a conscious challenge from the state in the form of giving misery (punishment or action). The same thing was stated by Mien Rukmni who stated that "a crime is a part of social, life, and it is inseparable from daily human activities. Robbery, rape, fraud, mugging, and various forms

¹H.R. Abdussalam & DPM Sitompul, *Sistem Peradilan Pidana* (Jakarta: Restu Agung, 2007),

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of similar behavior showing social dynamics".²

Narcotics abuse crimes fall into the category of organized transnational crimes and have been regulated much more fully in three conventions regarding narcotics, before UNTOC (United Nations Convention of Transnational Organized Crime) agreement.³ Narcotics illicit trafficking as a transnational organized crime is seen as one of the serious threats to global security, because it is a threat to the state and society that can erode human security, moreover it becomes a basic obligation of the state to maintain the security and order, because narcotics abuse is no longer carried out individually, however it involves lots of people collectively, and it is in the form of an organized syndicate with an extensive network that works neatly and very confidentially.

The legal provisions regarding the prohibition of abuse and illicit trafficking of narcotics in Indonesia are regulated in the law of the Republic of Indonesia number 35 of 2009 concerning narcotics (*UU RI* Number 36 of 2009). Besides that, there are also the patterns of prevention and eradication of narcotics abuse carried out through other laws and regulations such as the law of the Republic of Indonesia number 36 of 2009

concerning health (*UU RI* Number 36 of 2009). The Government regulation of Republic of Indonesia number 25 of 2011 concerning the implementation of mandatory reporting of narcotics abusers nationwide (*PP RI* Number 25 of 2011), presidential instruction number 12 of 2011 *Pelaksanaan Kebijakan dan Strategi Nasional Pencegahan Pemberantasan Penyalahgunaan dan Peredaran Gelap Narkotika* (P4GN) and other regulations.

Although various regulations regarding the prohibition of narcotics abuse have been established, the dynamics of narcotics crimes in Indonesia seem to be growing because there is no single area in Indonesia that is clean or free from narcotics trafficking. The dynamics of narcotics crimes in Indonesia can be seen in terms of quantity, *modus operandi*, perpetrators, victims, and the level of the distribution. Currently, the spread of narcotics has occurred massively in society with an increasingly sophisticated *modus operandi*. The perpetrators of narcotics crimes also consist of various groups, including children, teenagers, parents, law enforcement officers, public figures, and government officials. The victims of narcotics abuse do not see age. The level of distribution of narcotics is still relatively high in Indonesia.⁴

The number of narcotics users in Indonesia has continued to rise in the

²Mien Rukmini, *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai)* (Bandung: PT. Alumni, 2009), 81.

³Roni Gunawan Raja Gukguk dan Nyoman Serikat Putra Jaya, "Tindak Pidana Narkotika Sebagai *Transnasional Organized Crime*", *Jurnal Pembangunan Hukum Indonesia*, Vol. 1 No. 3 (2019): 338.

⁴Dewi Iriani, "Kejahatan Narkotika: Penanggulangan, Pencegahan, dan Penerapan Hukuman Mati", *Justicia Islamica Jurnal Kajian Hukum dan Sosial*, Vol. 12 No. 2 (2015): 306.

last two years based on data compiled by *Badan Narkotika Nasional* (BNN) from 2017 to 2019. The number of narcotics abuse in Indonesia in 2017 was 3,3 million people with an age range of 10 to 59 years old. In 2019, it rose to 3,6 million people. The groups of people who are the most vulnerable for being exposed to narcotics abuse are those who are in the age range of 15 to 35 years old or the millennial generation. As many as 275 million or 5,6 percent of the world's population aged 15 to 65 years old have used drugs.⁵ Even students in Indonesia have been exposed to drugs where around 2,29 million students have used drugs in 2018.

The increasing number of narcotics abuse in Indonesia has made the Government have developed a strategy which is not only based on national law (punishment of perpetrators), but by optimizing the prevention and control through increasing the role of regional Governments. Therefore, the issuance of the Minister of Home Affairs regulation number 21 of 2013 concerning facilitation of the prevention of narcotics abuse (*Permendagri* Number 21 of 2013) mandates the regional Government to carry out the tasks of facilitating the prevention of narcotics abuse in the form of regional regulations. Follow-up to *Permendagri* number 21 of 2013 in the form of a regional regulation in Bali has been

stated in the regional regulation of Bali Province Number 7 of 2017 concerning facilitation of the prevention of narcotics abuse (*Perda Provinsi Bali* Number 7 of 2017).

Article 5 paragraph (2) letter f regional regulation of Bali Province number 7 of 2017 states that primary prevention of narcotics abuse can be done, one of which is through increasing the active role of the society and customary villages to participate in preventing narcotics abuse. This means that customary villages in Bali are currently included as one of the social institutions that are empowered in efforts to prevent narcotics abuse. For this reason, clarity on the thoughts underlying the need for facilitation arrangements for the prevention of narcotics abuse in the regional regulation of Bali Province number 7 of 2017 has its foundation on the principles of establishing good laws and regulations, precisely on the principle of the need for regulation.

The existence of regional regulation of Bali Province number 7 of 2017 in substance involves customary villages as well as calls to be regulated in *awig-awig* which is a philosophical arrangement of customary law in Bali which will have an impact on the application of customary law principles. Some *awig-awig* or *perarem* in Bali have even regulated the customary sanctions against narcotics criminals. Customary sanctions are attempts to restore the spiritual balance.

Customary sanctions are attempts to neutralize violations that occur as a result of customary violations

⁵Badan Narkotika Nasional, "Penggunaan Narkotika di Kalangan Remaja Meningkat" (On-line), tersedia di www.https://bnn.go.id/penggunaan-narkotika-kalangan-remaja-meningkat/ (12 Agustus 2019).

and serve as a counterweight to restore the balance between the external and worldly world. The form of customary sanctions are related to the values and sense of justice of the society concerned.⁶ In Bali, customary sanctions have a very important role in restoring a volatile balance. In accordance with the concept, the aim of the customary sanctions is to restore the balance of the universe, namely the balance between the external and worldly world, in order to bring a sense of peace among compatriots. In addition, punishment must be fair, it means that punishment will not be directed at a particular person or group or victim, it also will not be directed at the society, thereby there will not be an imbalance.

I.2 Research Objectives

There are some problems that can be discussed as represented below:

1. Why is it important for customary villages to be empowered in efforts of preventions and countermeasures of narcotics crimes?
2. How is the authority of customary villages in the preventions and countermeasures of narcotics crimes?
3. How is the application of customary sanctions against narcotics criminals as an effort of preventions and countermeasures

of narcotics crimes based on local wisdom?

I.3 Research Method

The method applied in formulating this paper was empirical legal method because the focus of the study departs from the gap between *das sollen* and *das sein*. Moreover, empirical juridical approach was also applied in supporting the method. The research specification used is descriptive analytical with primary data sources supported by secondary data sources. And then, the technique used in collecting the data was technique of document study, observation, and interviews.

II. DISCUSSION

2.1. The Empowerment of Customary Villages in Efforts of Preventions and Countermeasures of Narcotics Crimes

The concept of empowerment initially emphasizes the process of giving or transferring some of the power, strength, or ability to the society, organization, or individual to become more empowered. Ronald Nangoi stated that "empowerment means giving more power and responsibility". Thus, the empowerment of customary villages means striving for customary villages to have greater power (ability) than before, so that they are able to carry out their duties and responsibilities in today's global era, especially in the prevention and countermeasure of narcotics.

The problems that exist in customary villages nowadays are not only customary and religious disputes, but various problems that can disrupt the order and peace of the residents, such as problems with alcohol, drugs, clashes between groups of residents,

⁶Ni Made Widiari, I Wayan Rideng, & Luh Putu Suryani, "Penerapan Sanksi Adat Bagi Pelaku Penyalahgunaan Narkotika di Desa Adat Kesiman", *Jurnal Interpretasi Hukum*, Vol. 2 No. 2 (Agustus 2021): 289.

corruption and so on. Although the various problems that are intended to be handled are the domain of Government, but because the incidents are often in the territory of the customary villages and often the perpetrators are related to the customary village, the customary village is very necessary to anticipate it.⁷

Formulating rules that can anticipate various problems as mentioned above is an effort that really needs to be conducted, because it has become a necessity nowadays. Apart from the needs and demands of times, the various problems above have not been regulated in most of *awig-awig* in customary villages. This definitely aims to make the existence of customary village, which is often said to be the last bastion of Hindu culture and religion in Bali to be stronger. So therefore, the revitalization of *awig-awig* that has existed so far needs to be revitalized so that things that are not clear become clearer, while those that have not been regulated and have the potential to cause disorder and unrest are formulated in *awig-awig*.

The preventions and countermeasures of narcotics crimes are related to efforts to fulfill the government's basic obligations in the fields of education, health, public order and social. The reality of the influence of narcotics abuses in social life results in an increase in the number of dropouts, crime, or health problems to

death, so that a systematic and structured government policy system is needed starting from macro and micro policies, which is able to integrate all social, formal and informal institutions for becoming a structured force in dealing with and preventing the impact of the narcotics distribution pattern. The policy system must also be able to empower all elements of the state apparatus and the government as well as the society, both as institutions and individuals to be able to recognize circulation patterns and prevent narcotics abuse, both for themselves and their environment.

The involvement of social institutions in Bali through the effort of the empowerment of customary villages as one of the social institutions is acknowledged in Bali Provincial regulation number 4 of 2019 concerning customary villages in Bali (*Perda* Number 4 of 2019) as stated in the provisions concerning letter b of regional regulation number. 4 of 2019 that "customary villages as the customary law society units based on *Tri Hita Karana* philosophy which is rooted in the local wisdom of *Sad Kerthi*, inspired by Hindu religious teachings and cultural values and local wisdom that live in Bali, they have a very big role in society development, the nation and state so that they need to be nurtured, protected, fostered, developed, and empowered in order to realize the life of Balinese manners which is politically sovereign, economically independent, and, has a personality in culture".

⁷I Wayan Sudika dan I Putu Ariyasa Darmawan, "Revitalisasi Awig-Awig Untuk Pemberdayaan Desa Pakraman di Bali", *Pariks Jurnal Hukum Agama Hindu Jurusan Dharma Sastra*, Vol. 2 No. 2 (2018): 48.

Based on the autonomy of the customary villages, from the beginning of customary villages were established, it has the authority to take care of its own household, including making regulations that apply to the residents of customary villages concerned. In the state structure of the Republic of Indonesia, the existence of customary villages is legally recognized based on the constitution through article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stating that "the state recognizes and respects customary law society units and their customary rights as long as they are still alive and in accordance with the development of society and the principles of the unity of the Republic of Indonesia as regulated in the law".

Customary villages as a social institution basically have the main function of managing customs and religious (Hindu) affairs. However, with the development of the paradigm, the role of customary villages is not only to issue a system but also to become a problem solving especially the narcotics problem which the impact is increasingly widespread and very worrying in the society.⁸ The existence of the Bali Provincial regulation number. 7 of 2017 in substance involves customary villages as well as calls to be regulated in *awig-awig* which is a philosophical arrangement of customary law in Bali which will have an impact on the application of customary law

principles. Thus, it is appropriate if customary villages are empowered in efforts of preventions and countermeasures of narcotics crimes.

2.2. The Authority of The Customary Villages in Efforts of Preventions and Countermeasures of Narcotics Crimes

Authority is described as *rechtsmacht* (jurisdiction). In the public law, authority related to power has a few differences between authority (authority, *gezag*) and authority (competence, *bevoegdheid*). Authority (*authority, gezag*) is called formal power, power that comes from being granted by law or legislature. Meanwhile, authority (competence, *bevoegdheid*) only concerns a certain "onderdeel" (part) of authority. Authority in the field of judicial power is commonly called competence or jurisdiction.

Authority consists of at least three components, namely influence, legal basis, and legal conformity. The influence component is intended that the use of authority aims to control the behavior of legal subjects, The legal basis component is intended that authority must be based on clear laws, and the legal conformity component requires that authority must have clear standards (for general authority), and special standards (for certain types of authority). Juridically, authority is the ability given by laws and regulations to carry out actions that have legal consequences.⁹

Every use of authority must have a legal basis in positive law to prevent arbitrary acts. The use of

⁸I Gede Suartika, *Anatomi Konflik Adat di Desa Pakraman dan Cara Penyelesaiannya* (Denpasar: Udayana University Press, 2010), 32.

⁹Indroharto, *Usaha Memahami Peradilan Tata Usaha Negara* (Jakarta: Pustaka Sinar Harapan, 2002), 68.

government authority is always within the limits set at least by positive law. In relation to the concept of a state of law, the use of such authority is limited or always subject to written or unwritten law, which furthermore for unwritten law in government law in Indonesia is referred to as "general principles of good governance".

Based on the Balinese living unitary system, in carrying out its functions, customary villages have an autonomous position, in the sense that each customary village stands alone according to the rules (*awig-awig*) of the customary villages formulated and used as guidelines for action by every villager. The main function of the customary village is to maintain, enforce and foster the customs that apply in the customary villages and are accepted from generation to generation from their ancestors. However, in accordance with the development and progress of the community, the function of the village can be improved to cover all other aspects of society life, namely as social control where a process influences people to behave in accordance with the expectations of the people in the area.¹⁰

The authority of the customary village itself is based on article 23 Bali Provincial regulation number 4 of 2019 concerning customary villages in Bali based on origin rights and local authority on a customary village scale. The authority of the customary village based on the right of origin as referred in article 23 includes: a) the establishment of *awig-awig*, *pararem*, and other customary regulations, b) the determination of the development

planning of the customary villages, c) the determination of the revenue and expenditure budget for the customary villages, d) the implementation of government based on the original arrangement, e) the development and preservation of customary values, religion, traditions, arts and culture as well as local wisdom, f) the management of *wewidangan* and the land of *padruwen* customary villages, g) the management of *padruwen* customary villages, h) the development of customary law life in accordance with principles Bali *mawacara* and *Desa mawacara*, i) the establishment of organizational systems and development institutions for customary law, j) as well as in determining decisions and implementations in *wewidangan* customary villages, k) maintenance of peace and improvement for the villagers of customary villages, l) holding of peace hearings on customary cases/ customary speeches of a civil nature, and m) the settlement of customary cases/ customary speeches based on customary law.

Local authority on the scale of customary villages as referred in article 23 includes the management of a) sacred places and sacred area, b) customary forests, c) water sources, d) coast and beach, e) *padruwen* customary villages/ customary *ulayat* territories, f) agriculture, plantation, fishery, and animal husbandry, g) food industry and folk crafts, h) customary villages markets or tents, i) boat mooring, j) public bathing place, k) art, culture, and boarding school, l) library and reading parks, m) tourist destinations and/or attractions, and n) villagers settlements. Then it is also emphasized that the local authority on the scale of the customary villages is as long as it is the authority of customary villages and the implementation of the duties and

¹⁰I Kadek Adi Surya, "Peranan Desa Pakraman Dalam Menanggulangi Penyalahgunaan Narkoba di Kalangan Remaja di Kecamatan Kediri, Tabanan, Bali", *Jurnal Komunikasi Hukum*, Vol. 6 No. 2 (2020): 397.

authorities of customary villages in order to pay attention to the balance between order, peace, prosperity, happiness, and peace for the villagers of customary villages.

Related to the authority of customary villages in the prevention and countermeasures of narcotics abuse as mandated in article 5 paragraph (2) letter f of the Bali Provincial regulation number 7 of 2017, then the government's appeal to optimize the role of customary villages in assisting P4GN program which is also the implementation of presidential instruction number 2 of 2020 concerning the Rencana Aksi Nasional (RAN) and P4GN where all the elements are obliged to jointly implement P4GN in their customary village areas, the customary village is only authorized to take preventive measures, not take action against the perpetrators. In this case, it is necessary to limit the authority between the customary villages and law enforcement officers so that there is no overlap of authority due to the inclusion of the prohibition on narcotics abuse in awig-awig or perarem of the customary villages.

In response to the foregoing, it is necessary to have a commitment and shared understanding regarding a harmonious and integrated patterns of preventions and countermeasures so that the regulations related to the prohibition of narcotics abuse do not contain sanctions that are contrary to national law and human right values. It is necessary to carry out continuous guidance by the government, especially BNN so that it can reach all customary villages so that the empowerment of customary villages in the preventions and countermeasures of narcotics can run optimally.

2.3. The Application of Customary Sanctions Against Narcotics Criminals as An Effort of Preventions and Countermeasures of Narcotics Crimes Based on Local Wisdom

The progress of the times and technologies apparently cannot eliminate the customs in a society, but there is a process of adjustment to the progress of the times, so that the custom remains eternal and fresh. The basis for the application of customary law is divided into three, namely the philosophical basis, the sociological basis, and the juridical basis. In the customary law society in Bali, there are various acts that are considered as customary offenses, namely offenses against property, offenses against the interests of the people, offenses against someone's honor, and offenses against decency.¹¹

In essence, "criminal sanctions" are the "main/ best guarantor" or (prime guarantor) as well as the "prime threatener" or are the best tool or means in dealing with crime. The basic conclusion of Herbert L. Packer's assumptions is formulated editorially as follows:

1. The criminal sanction is indispensable; we could not, now or in the foreseeable future, get along without it.
2. The criminal sanction is the best available device are having for

¹¹Ni Made Widiari dkk, "Penerapan Sanksi Adat Bagi Penyalahgunaan Narkotika di Desa Adat Kesiman", *Jurnal Interpretasi Hukum*, Vol. 2 No. 2 (Agustus 2021): 288.

dealing with gross and immediate harm and threats of harm.

3. The criminal sanction is at once prime guarantor and at once prime threat to human freedom. It is a prime guarantor when it is used carefully and humanely; it is a prime threat if it is used indiscriminately and coercively.¹²

The Bali Provincial Government is committed to make the narcotics problem one of the action plans in the P4GN effort in its territory. Bali is included in the top 5 cities with the highest number of drug abusers in Indonesia. Several new types of narcotics are also found in Bali and most of them enter through tourism activities. *Badan Narkotika Nasional Provinsi* (BNNP) in Bali has always been active in cooperating with customary villages and service villages in the form of "volunteer inauguration" and anti-drug *pararem*. The existence of *pararem* in P4GN's efforts in Bali is very strategic. If there are people who are involved in narcotics, they will be subject to state law and binding customary sanctions.

The polarization of customary law does not distinguish between customary criminal law, customary civil law, customary constitutional law and so on. The logical consequence is that customary law does not recognize a strict separation between criminal law and civil law (private) and between the two are correlated with each other. In this regard, there is no difference in

principle in the procedure for resolving cases of violations of customary law. If there is a violation, the legal functionaries (customary rulers/heads) are authorized to take concrete actions, either on their own initiative or based on complaints from the aggrieved party.

Regarding the problems that arise with the appeal to customary villages to include materials for preventing and overcoming narcotics abuse into *awig-awig*, which dominantly regulates matters of a special nature in customary villages society in Bali, it will certainly have an impact on setting patterns or types of customary sanctions on *awig-awig* or *pararem* in customary villages due to the uncertainty of what legal norms may be included in *awig-awig* as mandated in article 29 of the Bali Provincial regulation number 7 of 2017. This will certainly have the potential to have sociological-empirical implications in the form of freedom from customary villages to regulate various narcotics abuse prevention efforts including formulating the threat of customary sanctions in *awig-awig*, where this can be seen from the authority of customary villages in Bali to regulate own household life which is based on the concept of *Tri Hita Karana* and things that are regulated can differ from one customary village to others.

The principles of customary law in efforts of preventions and countermeasures of narcotics abuse have been applied in every preparation of *awig-awig* or *pararem*. However, the regulation of the model of customary criminal sanctions in each customary

¹²Herbert L. Packer, *The Limits Criminal of Criminal Sanctions* (California: Stanford University Press, 1968), 364-366.

area/ village tends to be various. For example, in the *pararem* of *Kesiman* customary village, Denpasar city, there are types of customary sanctions in the crime of narcotics abuse which are regulated, namely:

1. *Krama Desa sane wantah ngangge keni pemedanda pamrayascita desa atau banjar* (Villagers who consume it will be subject to a fine for cleaning the village or *banjar*).
2. *Krama Desa sane ngadol Ian wenten buktinyane olih krama desa sane lianan keni pemedanda pamrayascita desa/banjar Ian nunas iwang* (Villagers who sell it and are proven by other villagers, they are subject to a fine for cleaning the village or *banjar* and asking an apology).
3. *Krama Desa sane ngangge miwah ngadol keni pamidanda pamrayascita, nun as iwang Ian pamidanda jinah agengnyane 100 kg beras kelas satu* (Villagers who consume and sell it, they are subject to a fine for cleaning, apologizing, and a fine of 100kg of first-class rice).

Then in Buleleng regency, for example, related to the development of drug prevention and distribution efforts at the *pakraman* village level, until now there are 50 customary villages in Buleleng regency that have made *pararem* on narcotics. One example is the *pararem* in Kerobokan customary village, Buleleng regency, where there is a threat of sanctions in the form of fines for villagers who are found guilty in court for being involved in drug cases. There are light, medium, and

heavy customary sanctions. Sanctions apply if villagers are found guilty by the court. It applies to all villagers, both *mipil* and *tamiu* villagers. A light sanction based on a court decision with a sentence of less than five years, such villagers are required to carry out the traditional ceremony of *pacaruan eka sata* at *catus pata*, according to the day determined by the *banjar* or customary village. Meanwhile, for moderate sanctions, based on a court decision with a sentence of more than five years, the villager is found guilty of carrying out the *pacaruan manca sata* ceremony at *catus pata* with an additional penalty of one kilogram of rice multiplied by the number of *mipil* villagers. As for heavy customary sanctions, based on a 10-year court decision, apart from having to carry out the ceremony above *manca sata*, there is also an additional sanction of giving as much as one kilogram of all villagers in customary village.

Awig-awig or *pararem* concerning the prohibition of narcotics abuse formed will bind all customary villagers in the territory of their customary villages. If there is villager involved, then the existing *awig-awig* or *pararem* is applied, the villagers involved in addition for being subject to positive legal sanctions will also be subject to customary sanctions. Broadly speaking, it can be said that *awig-awig* functions as social control in customary society. As social control, it functions to maintain the rules/values of existing relationship patterns. This can be done preventively, for example by conducting socialization, counseling,

and so on. Repressively, it aims to restore the disturbed balance by imposing negative sanctions on residents who violate or deviate from prevailing values or rules.

III. CLOSING

Conclusion

The prohibition of narcotics abuses which is regulated in *awig-awig* or *pararem* of customary villages is a form of empowerment of customary villages which aims to increase the participation of customary villages in helping the government to prevent and overcome narcotics abuse and illicit trafficking. The regulation of customary sanctions for perpetrators of narcotics crimes in *awig-awig* or *pararem* and its application are reaction to actions that violate the sense of justice and propriety that live in society so as to disrupt the balance and peace of the society.

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