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ARTICLE

Rethinking Justice: The Urgent Need to Simplify Legal Appeals and Cassation for Faster Administrative Court Decisions

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Abstract

The efficiency of procedural examinations in Indonesia's state administrative courts is essential for ensuring timely justice, especially in cases requiring urgent resolution. However, the current appeals and cassation processes often extend the overall timeline, undermining the court's ability to address urgent matters swiftly. While the initial procedural examination may be expedited, the subsequent appeal and cassation stages follow the same cumbersome steps as ordinary procedures, leading to significant delays—sometimes spanning several months. This prolonged timeline is particularly concerning when quick resolution is critical, as it can hinder the effective administration of justice. This study examines the necessity of simplifying the legal appeals and cassation processes to ensure faster and more efficient case resolutions in state administrative courts. Using a normative juridical research method, the paper assesses the inefficiencies of the current system, highlighting the urgent need for reform. It draws on Lawrence M. Friedman's legal system theory to identify gaps within the existing framework that contribute to delays and proposes strategic interventions to streamline these processes. The findings suggest that, in addition to simplifying procedural measures, the integration of technology—such as an e-court system—could significantly expedite the appeal and cassation processes. By embracing digital solutions, administrative courts can reduce case backlogs and enhance efficiency, thus improving the overall responsiveness of the judicial system.

This research contributes novel insights into how legal procedures can be reformed to better meet the demands of urgent cases. The study emphasizes the critical importance of judicial efficiency and technological innovation, offering actionable recommendations for policymakers to improve administrative justice in Indonesia.

Keywords
Swift Legal Process, Administrative Courts, Simplifying, Legal Appeals, Cassation

Introduction

Disputes in state administrative affairs can arise when individuals or civil law business entities encounter conflicts with state administrative bodies or officials. These disputes often stem from administrative decisions that result in financial losses or violate established laws and regulations, including the General Principles of Good Governance.[1] To address these disputes, initial efforts should focus on administrative remedies. This typically involves engaging in dialogue with the relevant administrative body to seek clarification, negotiate a settlement, or request a reconsideration of the decision in question. Such efforts may include submitting formal complaints or appeals to the appropriate authorities. If, after exploring all reasonable administrative avenues, no resolution has been reached, the affected parties can escalate the matter to the State Administrative Court. This legal pathway enables individuals or entities who believe their rights have been infringed to seek judicial intervention. To initiate this process, the aggrieved party must file a detailed written lawsuit that outlines the nature of the dispute, the specific losses incurred, and the legal grounds for the claim. The court will subsequently review the case and determine an appropriate course of action based on the applicable laws and regulations.

The State Administrative Court (PTUN) is tasked with resolving disputes related to state administration once all administrative remedies have been exhausted. The court holds the authority to examine, decide, and

[1] Harsya Mahdi, Yohanes G Tuba Helan and Dhey W Tadeus, 'Redesain Penyelesaian Sengketa Pemilihan Kepala Desa Di Peradilan Tata Usaha Negara' (2023) 6 247.

adjudicate these matters. In fulfilling its responsibilities, the PTUN employs various forms of procedural law, specifically through ordinary, expedited, and summary proceedings.[2] Prior to initiating the examination process, certain procedural steps must be completed within the PTUN. These steps include filing a lawsuit, conducting administrative research, and convening deliberation meetings. The examination of ordinary cases occurs subsequent to the deliberation meeting, contingent upon the acceptance of the lawsuit. This examination proceeds in a standard manner, without any extraordinary circumstances. The process comprises several phases: preparatory examinations, reading the lawsuit and the response, conducting replication and rebuttals, presenting evidence, and ultimately reading the decision. In addition to the standard examination process, the PTUN also provides an expedited procedure for cases requiring quicker resolution named fast procedure examination.

Basically, the examination of quick events and ordinary events is almost the same, but the grace period in quick events is more limited and is carried out not only in the examination but also in the decision.[3] The examination of this fast event is regulated in Articles 98 and 99 of Law Number 5 of 1986 concerning State Administrative Courts. Examination of a quick event is one of the flows in the settlement of cases in the state administrative court which is carried out in an accelerated manner due to urgent reasons.[4] Urgent reasons in the explanation of Article 98 Paragraph (1) of Law 5/1986 are intended when the interests of the applicant requesting a speedy procedural examination are related to a state administrative decision, for example, containing an order to demolish an occupied house or building. Based on this explanation, it is known that there are no specific indicators governing the requirements for the implementation of a speedy trial, so the consideration of whether or not to grant a request for the implementation of a speedy trial is purely at the discretion of the court chairperson.

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[2] Pratama Herry Herlambang, *Pengantar Hukum Acara Peradilan Tata Usaha Negara* (Rajawali Pers 2024).

[3] Cindyva Thalia Mustika and Nisa Amalina Adlina, 'Teori Efektivitas Pada Prosedur Pemeriksaan Perkara Di Pengadilan Tata Usaha Negara' (2024) 16 Al-Adl : Jurnal Hukum 1.

[4] Rosemary Elsye and Muslim Muslim, *Modul Mata Kuliah Hukum Tata Usaha Negara* (2020).

As explained above, an expedited examination is carried out by submitting a request in advance, which is included in the lawsuit so that if the request is granted, the expedited examination process is only carried out until the judge at the first level of state administrative court gives a decision. However, if other legal remedies, such as appellations and cassations, are filed, the process will be the same as usual; there is no expedited appeal or cassation. Based on this, the problem can be formulated are How effective is the implementation of further legal remedies at the appeal and cassation levels in resolving state administrative disputes? How can steps be taken to simplify other legal remedies to obtain a quicker decision in a fast procedural examination? One of the indicators used in this research is the theory of the legal system put forward by Lawrence M. Friedman. This theory states that the legal system consists of three main elements, those are structure, substance, and culture.

This research adopts a normative legal research approach, utilizing a library research method as its primary data collection strategy. Consequently, the data amassed is classified as secondary data, sourced from a variety of library materials. Within the framework of normative legal research, several normative approaches are employed, prominently including the Conceptual Approach and the Statutory Approach. The Conceptual Approach focuses on examining the various perspectives and doctrines prevalent in legal scholarship. This is achieved through an extensive literature review, gathering insights from secondary data sources, including academic books, journal articles, and legal commentaries.[5] Such literature studies allow for a nuanced understanding of the theoretical underpinnings of legal principles and norms. Conversely, the Statutory Approach involves a systematic analysis of positive legal norms and existing regulations that pertain to the legal phenomena under investigation. This analysis is likewise grounded in literature studies, ensuring a thorough exploration of the legal frameworks in question. As part of this methodological process, primary legal materials are identified[6], specifically focusing on binding legal texts that provide the foundation for this research.

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[5] Ajie Prasetya, Yulia Emma Sigalingging and Aris Prio Agus Santoso, 'Peran Hukum Dalam Pembangunan Dengan Pendekatan Economic Analysis Of Law' (2023) 7 JISIP (Jurnal Ilmu Sosial dan Pendidikan) 211.

[6] Soerjono Soekanto, *Pengantar Penelitian Hukum* (UI Publishing 2020).

The primary legal materials referenced in this study include the Law Number 5 of 1986 concerning State Administrative Courts[7], along with its subsequent amendments.[8] Additionally, the research examines Law Number 14 of 1985, which pertains to the Supreme Court, identified in this context as the Supreme Court Law[9] and its amendments.[10] These laws form the core of the legal analysis, offering vital insights into the enforcement and adjudication processes within the respective courts. Further contributing to the depth of research, secondary legal materials are utilized to contextualize and elucidate the primary sources. These materials consist of writings from prominent legal scholars, textbooks, and scholarly articles published in reputable academic journals. Moreover, the study integrates findings from prior research efforts, which may include thesis and dissertation projects that explore the examination of expedited procedures within the PTUN. To complement the analysis, tertiary legal materials are consulted, providing additional guidance and explanations pertinent to the primary and secondary sources. These materials often come from reliable online news publications and other relevant internet resources, enriching the research framework with current perspectives on legal matters. After employing the aforementioned approaches, the research results are subjected to qualitative analysis. In legal research, the qualitative approach is integral in dissecting complex legal events, facilitating an indepth study of the phenomena under scrutiny. This qualitative analysis involves systematic processes such as data reduction or filtering, rigorous data processing, thoughtful presentation, and comprehensive analysis. Through these meticulous methods, the research culminates in a robust conclusion that

[7] Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara 1986.

[8] Undang-undang Nomor 5 Tahun 2004 tentang Perubahan atas Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung 2004; Undang-Undang Nomor 51 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara 2009.

[9] Undang-undang Nomor 14 Tahun 1985 tentang Mahkamah Agung 1985.

[10] Undang-undang Nomor 5 Tahun 2004 tentang Perubahan atas Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung; Undang-undang Nomor 3 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung 2009.

encapsulates the findings derived from the analytical process. Ultimately, the information and data gathered through this scholarly investigation are presented descriptively, crafting a coherent narrative that elucidates the urgency surrounding the simplification of appeal and cassation procedures in the context of expedited cases at the State Administrative Court. The insights generated from this research not only contribute to academic discourse but also serve as a valuable resource for evaluative purposes and inform future studies on the subject.

Why Simplifying Appeals and Cassation Is Key to Swift Administrative Justice

As a system, the implementation of state administrative judiciary cannot be separated from Friedman's legal system theory. This theory is often used as an indicator to assess the effectiveness and efficiency of the applicable law in society, especially in Indonesia.[11] Lawrence Meir Friedman is a legal historian and legal sociologist from Stanford University in America. Friedman introduced an idea of law that is inseparable from social, cultural, and political developments. The idea is known as legal systems theory, which is explained in his published writings. According to Friedman, law is a set of rules consisting of both written and unwritten norms, which contain truth, wrongdoing, behaviour, duties, responsibilities, and rights attached to legal subjects that cannot be separated from the social order and society that is always experiencing developments arranged in a sustainable order.

From the basic concept of law, it is then formulated about the legal system which in his book entitled "*The Legal System: A Social Science Perspective*" explained that "*A legal system in actual operation is a complex organism in which structure, substance, and culture interact. A legal system is the union of 'primary rules' and 'secondary rules.' Primary rules are norms of behaviour; secondary rules are norms about those norms - how to decide whether they are valid, how to enforce them, and et cetera*". A legal system is a complex arrangement of interacting

[11] Anang Shophan Tornado, *Reformasi Peradilan Di Indonesia: Tinjauan Teori, Praktek Dan Perkembangan Pemikiran* (Nusamedia 2019) <https://books.google.co.id/books?id=mnBUEAAAQBAJ>.

structure, substance and culture. The legal system is a combination of 'primary rules' and 'secondary rules'. Primary rules are norms of behaviour while secondary rules are the enforcement of these norms.[12] "*Social change, culture (attitudes), and legal structure are bound together in so many ways that we cannot ever really disentangle them*".[13] One of the first parts of the legal system is the legal structure, which is the framework of bodies in a system that has a permanent nature. The structure of a judicial system comes to mind when talking about the number of judges, the jurisdiction of the courts, how higher courts are above lower courts, and the people associated with different types of courts.

The second legal system mentioned in Friedman's book is legal substance. This legal substance has the meaning of all written and unwritten legal rules from laws, customs and habits, treaties or international agreements and conventions, jurisprudence, as well as doctrine and legal expert opinions as well as legal principles and norms. Through this theory, Friedman also argues that law cannot be separated from the social, cultural, and political context that develops, so that is the reason that the substance and structure of the law does not yet have movement and truth because to move requires culture. He also argued that the law should be able to adapt to the changes that occur in society in order to meet the needs and demands of the times. Friedman emphasises the importance of transparency, integrity and accountability in the implementation of the legal system to maintain its dignity so that a third element is needed, namely legal culture or legal culture in its enforcement in society.[14] In his book, Friedman divides legal culture into two parts, namely Internal and External Legal Culture. Internal legal culture refers to the legal culture that arises due to the actions of law enforcers such as judges, prosecutors, investigators, and attorneys while external legal culture refers to the legal culture that arises in the

[12] Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation 1975).

[13] Lawrence M Friedman and Grant M Hayden, *American Law an Introduction*, vol 11 (Oxford University Press 2017).

[14] Mustafa 'Afifi Ab Halim, Shabrina Zata Amni and Mufti Maulana, 'Legal System in the Perspectives of H . L . A Hart and Lawrence M. Friedman' (2023) 2 Peradaban Journal Law and Society 51.

wider community so that legal culture is one of the important variables in the legal system so that law enforcement can arise.[15]

Effectiveness of the Implementation of Appeal and Cassation Legal Remedies in the Settlement of Administrative Disputes

The implementation of an expedited procedural examination begins with filing a lawsuit similar to the implementation of an ordinary procedural examination, but based on Article 98 paragraph (1) of the State Administrative Court Law in the reasons for the request contained in the lawsuit must be explained in writing and clearly regarding the request for the implementation of an expedited procedure and the reasons. After the lawsuit is filed and received by the court registrar, administrative research is then carried out by the court registrar, his deputy, and the young case registrar in the same way as in the examination of ordinary procedures. After that, the lawsuit is submitted to the chairman of the court for a deliberation meeting to determine whether the lawsuit can be accepted or not, if the lawsuit is not accepted the plaintiff can file an objection first and if it is accepted, the chairman of the court must issue a determination of whether or not the application for the implementation of the fast event is granted no later than 14 days after receipt of the application, this is stated in Article 98 Paragraph (2) of the State Administrative Court Law. If granted, the resolution of the state administrative dispute will be carried out with a speedy procedure. If it is not granted, the dispute resolution will be carried out with the usual procedure. There are no other legal remedies that can be taken, such as filing an appeal, cassation, or filing an objection to any results determined by the court chairman in relation to the request for a speedy procedure. Therefore, if the request is rejected or accepted, it must be carried out in accordance with the existing provisions.

Requests for the implementation of rapid procedural examinations that are approved are then carried out in accordance with the procedures for rapid

[15] Suyatno Suyatno, 'Kelemahan Teori Sistem Hukum Menurut Lawrence M.Friedman Dalam Hukum Indonesia' (2019) 2 Ius Facti: Jurnal Berkala Fakultas Hukum Universitas Bung Karno Hal. 199.

procedures, namely carried out with a single judge, without going through the preparatory examination procedure, the deadline for each party to provide answers and provide evidence is a maximum of 14 working days, and the determination of the implementation of the first hearing is made by the court chairman a maximum of seven working days after the application is granted. This is stated in Article 99 of the State Administrative Court Law. When compared to the ordinary examination which is conducted by three judges, and carried out through a mandatory examination procedure as mentioned in Article 63 of the PTUN Law, of course, the speedy examination is carried out concisely to speed up the process. There are not many decisions that decide state administrative disputes with a speedy examination. This is because in order for a request for a speedy examination to be accepted, the plaintiff must explain the urgent reasons for the object of the dispute. The reasons deemed urgent by the plaintiff and the discretion of the Chairman of the State Administrative Court may differ, which may cause the application to be rejected.

A decision of an administrative court may be appealed to a higher court, namely the High Administrative Court, pursuant to Article 122 of Law 5/1986, so that this article also applies to administrative court decisions made through a speedy trial. According to Articles 123 to 130 of Law 5/1986, an appeal is made by submitting a written request no later than 14 days after the decision is legally pronounced in the court of first instance, accompanied by an advance payment of the appeal court costs. Then, the clerk must record it in the main case register and appeal register.[16] In addition, the clerk also notifies the appellant at least seven days after the appeal is recorded without waiting for the appeal memorandum. Both parties may study the file for 30 days after the appeal is recorded and no later than 60 days after the appeal is recorded, the parties' files must be sent to the High Administrative Court. The Registrar must provide a copy of the decision to the parties no later than 30 days after the appeal decision is issued. Thus, the total time required to conduct an appeal to resolve a state administrative dispute is 104 working days. This timeframe and process applies to appeals against first instance court decisions examined under

[16] PTUN Manado, 'Banding' (*PTUN Manado*, 2020) <https://ptun-manado.go.id/banding-2/> accessed 18 December 2024.

ordinary or expedited procedures.[17] An appeal may be dismissed before the decision of the Court of Appeal and cannot be refiled..

The decision of the High Administrative Court may be appealed in cassation based on Article 51 of Law 5/1986 and may be appealed to the Supreme Court based on Article 131 of Law 5/1986. The Supreme Court decides cassation requests for appeal decisions from all judicial circles, including state administrative cases based on Article 29 of Law 14/1985 except for state administrative cases whose object is a decision of a regional official whose scope of decision applies in the region concerned based on Article 45A of Law 5/2004. The application for cassation is regulated in Articles 43 to 55 of Law 14/1985 and Law 5/2004. This cassation petition can only be filed once after using the appeal legal remedy within 14 days after the decision of the superior court is read out. Filing this petition also requires the payment of a fee which, once paid, is recorded as a cassation petition. The Registrar shall notify the opposing party of the cassation request within seven calendar days after the cassation request is recorded.[18] The applicant must submit a cassation memorandum no later than 14 working days from the declaration of the cassation and the clerk must provide a receipt for the cassation memorandum. After that, the clerk shall deliver a copy of the cassation memory to the opposing party no later than 30 days after the cassation memory is received. The respondent to the cassation provides a countercase memorandum no later than 14 days after receiving the copy of the cassation memorandum from the registrar. The Registrar must submit the documents to the Supreme Court for review within 30 days. The Supreme Court only conducts its examination based on the case file and only if necessary hears the parties or witnesses or orders the court below to decide the case to hear the parties or witnesses. Each judge of the Supreme Court is required to provide written comments or views on the issues during deliberations which are set out in the final judgement. If the Supreme Court decides on a request for judicial review, the Supreme Court's decision is copied and delivered to the president of the lower court and

[17] Benny B A, 'Pemeriksaan Dengan Acara Cepat' (*PTUN Samarinda*, 2023) <https://ptun-samarinda.go.id/layanan-hukum/alur-proses-perkara/acara-cepat> accessed 18 December 2024.

[18] PTUN Manado, 'Kasasi' (*PTUN Manado*, 2020) <https://ptun-manado.go.id/kasasi-3/> accessed 18 December 2024.

the Court of First Instance is obliged to deliver the decision to the parties within 30 days. Thus, it takes approximately 139 working days to complete the cassation process.

When viewed from Friedman's legal system theory, the effectiveness of the implementation of further legal remedies both at the appellate and cassation levels in resolving state administrative disputes is seen from the legal structure, which has been built with a clear hierarchy and authority, starting from the first level court to the cassation at the Supreme Court. However, there are often problems such as the accumulation of cases at the Supreme Court and the limited capacity of judges in handling the increasing volume of cases. Case resolution times, especially at the cassation level, are often too long, raising questions about the effectiveness of the legal structure system. In terms of the substance of the law, Law 5/1986 and Law 14/1985 regulate this, but they do not stipulate how long judges at the banding and cassation levels should take to deliver their decisions, which creates legal ambiguity. In addition, there is no specific regulation for urgent cases where the court of first instance uses a speedy procedural process so that if the appeal and cassation processes are equalised, the justice received by plaintiffs in urgent circumstances is not provided. In terms of legal culture, there are still regions that directly use the litigation route in the process of resolving state administrative disputes and the perception that appeals and cassations are mandatory, even though their cases do not actually require re-examination at a higher level. This leads to case overload.

Simplification of Appeals and Cassations in Fast Trial Cases

It is crucial to enhance the efficiency of legal remedies, specifically appeals and cassations, for cases that are handled under expedited procedures at the first judicial level. This enhancement is intended to expedite decision-making and ensure that justice is served promptly for plaintiffs seeking redress. A significant initiative aimed at simplifying this process is the adoption of Supreme Court Regulation No. 3/2018, which focuses on Electronic Court Administration. This regulation facilitates the integration of technology into the legal framework, allowing for a more streamlined and accessible legal process. By

utilizing electronic systems, the court can minimize bureaucratic delays and improve communication between all parties involved. This technological advancement enables participants to engage in proceedings from their own locations, eliminating the need for unnecessary travel and reducing associated costs. Furthermore, the use of electronic court administration contributes to a more equitable legal process by ensuring that all parties, regardless of their geographical location or socioeconomic status, can access the justice system more easily. Ultimately, these reforms aim to create a more efficient and fair legal environment[19] that better serves the needs of those seeking justice.

"*Penetapan Pengadilan yang telah mengabulkan permohonan penggugat untuk bersengketa dengan cuma-cuma di tingkat pertama, juga berlaku di tingkat banding dan kasasi*". Implementing simplification in legal procedures can adopt the language found in the current article, which indicates that when a court approves the applicants' request for a fee waiver at the first instance level, this approval extends to both the appeal and cassation levels. This concept can be further refined by stating that the court grants the plaintiff's request for an expedited trial process at the initial level, with the understanding that this expedited procedure similarly applies to the subsequent appeal and cassation stages. Moreover, to enhance the efficiency of the judicial process, it is proposed to reduce the maximum timeframes set for appeals and cassation procedures. For instance, the standard period for filing an appeal could be shortened from 30 days to 14 days, while the timeframe for subsequent actions could be further condensed from 14 days to just 7 days. These adjustments aim to streamline the process and ensure that cases are resolved more swiftly, while maintaining the principles of fairness and thorough consideration. It is essential that the same criteria for expediting trials be uniformly applied in state administrative courts to ensure consistency across different judicial levels.

[19] Pratama Herry Herlambang, Yos Johan Utama and Aju Putrijanti, 'Harmonisasi Hukum UU Peratun Dan UU ITE Dalam Ketentuan Alat Bukti Elektronik Sebagai Alat Bukti Tambahan Dalam Sistem Peradilan Tata Usaha Negara' (2024) 6 Jurnal Pembangunan Hukum Indonesia 61.

Conclusion

The implementation of speedy procedural examination in state administrative courts in Indonesia can be carried out if there are urgent circumstances by accelerating the flow and period of implementation. However, the appeals and cassations that are made against the decision of the examination use the same steps as the ordinary procedural examination which can take months, which is certainly not appropriate if it is carried out in an urgent situation. When viewed from Friedman's legal system theory, the effectiveness of the implementation of further legal remedies both at the appellate and cassation levels in resolving state administrative disputes is seen from the legal structure, which has been built with a clear hierarchy and authority, starting from the first level court to the cassation at the Supreme Court. However, there are often problems such as the accumulation of cases at the Supreme Court and the limited capacity of judges in handling the increasing volume of cases. Case resolution times, especially at the cassation level, are often too long, raising questions about the effectiveness of the legal structure system. In terms of the substance of the law, Law 5/1986 and Law 14/1985 regulate this, but they do not stipulate how long judges at the banding and cassation levels should take to deliver their decisions, which creates legal ambiguity. In addition, there is no specific regulation for urgent cases where the court of first instance uses a speedy procedural process so that if the appeal and cassation processes are equalised, the justice received by plaintiffs in urgent circumstances is not provided. In terms of legal culture, there are still regions that directly use the litigation route in the process of resolving state administrative disputes and the perception that appeals and cassations are mandatory, even though their cases do not actually require re-examination at a higher level. This leads to case overload.

A significant initiative aimed at simplifying this process is the adoption of Supreme Court Regulation No. 3/2018, which focuses on Electronic Court Administration. This regulation facilitates the integration of technology into the legal framework, allowing for a more streamlined and accessible legal process. By utilizing electronic systems, the court can minimize bureaucratic delays and improve communication between all parties involved. It can also be done by stating that the court grants the plaintiff's request for an expedited trial process at the initial level, with the understanding that this expedited procedure

similarly applies to the subsequent appeal and cassation stages. Moreover, to enhance the efficiency of the judicial process, it is proposed to reduce the maximum timeframes set for appeals and cassation procedures. For instance, the standard period for filing an appeal could be shortened from 30 days to 14 days, while the timeframe for subsequent actions could be further condensed from 14 days to just 7 days. These adjustments aim to streamline the process and ensure that cases are resolved more swiftly, while maintaining the principles of fairness and thorough consideration.

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