



Understanding and Implementation of Islamic Law: Study of the Unrecorded Polygyny Phenomenon in Karawang Regency

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Citation (APA):

Waluyo, K. E., Syafe'i, R., Aen, I. N., Saebani, B. A. (2024). Understanding and Implementation of Islamic Law: Study of the Unrecorded Polygyny Phenomenon in Karawang Regency. *International Journal Ihya' 'Ulum al-Din*, 26(1), 132-142. <https://doi.org/10.21580/ihya.26.1.18918>

Submitted: 05 Dec 2023

Revised: 23 May 2024

Accepted: 03 Jun 2024

Published: 20 Jun 2024

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Abstract: The practice of polygamy is still a polemic to this day, with pros and cons both from human rights activists and from polygamy practitioners themselves. This research aims to examine the phenomenon of polygyny in Karawang Regency from the perspective of Islamic law and laws for justice; the social conditions that occur in Karawang further impact family welfare, such as household harmony, economic conditions, early marriage, and even polygamy. Polygamy has increased in Karawang in the form of polygyny. A lack of understanding about fairness in polygynous marriages in Karawang society supports the problems that arise from the occurrence of polygyny. The approach used in this research is an empirical juridical approach, or field research, examining applicable legal provisions and what happens in society. The results of the research show that the understanding of husbands and wives who practice polygyny in Karawang regarding Law No. 1 of 1974 regarding marriage varies, and some need help understanding the law, especially those relating to polygynous marriages. Some need help understanding law no. 1 of 1974, limited public understanding of Law no. 1 1974 concerning marriage is due to a lack of public interest. Also, because socialization regarding this law is uneven, especially regarding polygynous marriages, the public is more interested in using Islamic law.

Keywords: Polygamy, Polygyny, Principles of Justice, Understanding Husband and Wife

Abstrak: Praktik poligami masih menjadi polemik hingga saat ini, dengan pro dan kontra baik dari aktivis HAM maupun dari praktisi poligami sendiri. Penelitian ini bertujuan untuk mengkaji fenomena poligami di Kabupaten Karawang dari perspektif hukum Islam dan hukum keadilan, Kondisi sosial yang terjadi di Karawang selanjutnya berdampak pada kesejahteraan keluarga, seperti keharmonisan rumah tangga, kondisi ekonomi, pernikahan dini, bahkan poligami. Poligami telah meningkat di Karawang dalam bentuk poligini. Kurangnya pemahaman tentang keadilan dalam perkawinan poligami di masyarakat

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Karawang mendukung permasalahan yang muncul dari terjadinya poligini. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan yuridis empiris, atau penelitian lapangan, mengkaji ketentuan hukum yang berlaku dan apa yang terjadi di masyarakat. Hasil penelitian menunjukkan pemahaman suami istri yang mempraktikkan poligami di Karawang mengenai Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan bervariasi, dan ada pula yang memerlukan bantuan untuk memahami hukum, terutama yang berkaitan dengan perkawinan poligini. Ada yang perlu bantuan memahami UU No. 1 Tahun 1974, terbatasnya pemahaman masyarakat terhadap UU No. 1 Tahun 1974 tentang perkawinan adalah karena kurangnya kepentingan umum. Juga, karena sosialisasi mengenai hukum ini tidak merata, terutama mengenai perkawinan poligini, masyarakat lebih tertarik untuk menggunakan hukum Islam.

Kata Kunci: Poligini, Prinsip Keadilan, Memahami Suami dan Istri

Introduction

Marriage law in Indonesia adheres to the principle of open monogamy, meaning that in a marriage, a man can only have one wife, and a woman can only have one husband (Rizki et al., 2020; Siti Nursanti, 2015; Wardiansyah, 2021). However, the religious court can allow a husband to have more than one wife if the parties wish. Various administrative and substantive requirements are required to obtain permission from the court to practice polygamy. Polygamy is divided into two, namely polygyny and polyandry; polygyny is the marriage of a man to many women at one time, while polyandry is the marriage of a woman to many men at one time (see: Abdurrohman, 2022; Maghfiroh, 2022; Siti Nursanti, 2015). To assess the feasibility of these polygamy requirements, judges in court play a key role in approving or disallowing them.

Marriage is the most important principle of life in society and religion, according to the Sunnah of the Prophet (Ilhamudin, 2021; Wibisana, 2016). Marriage is not only a noble way of organizing household life and offspring; Marriage is also a way to introduce someone to other people with cultural and geographical differences (Khalimi et al., 2021). The purpose of marriage is to channel human needs in a way that Allah SWT permits and to control lust as well as possible, which is related to improving human morals as servants of Allah, as well as raising the honor and dignity of women (Muhajarah, 2015; Widodo & Nurhasim, 2020). During the Jahiliyyah era, when women's position was nothing more than merchandise that could be bought and sold at any time, even girls were killed alive because they were considered economically useless (Ariziq, 2022). The principle of marriage in Islam is to strengthen the marital bond.

Polygyny is part of history and cannot be separated from the dynamics of world civilization thousands of years ago when Islam came with a mission of gender justice, as was the custom of Arab society (Bariah et al., 2018). Having more than one wife has become a culture in Arab society, which even knew about this culture of polygyny long before the arrival of Islam (Hermanto, 2015); women at that time were the second sex at every level of society. Unlimited polygyny was reformed into limited polygyny (limited and with some special requirements) (Meidina, 2022). Islam made this breakthrough to reform all forms of injustice against women during the Jahiliyyah era. Because the basic goals of Islam

are equality and social justice, this breakthrough is seen by the majority of classical scholars as a normative provision so that the polygyny provisions in the Qur'an apply throughout time. Meanwhile, the reality of the practice of polygyny still deviates from the wishes of sacred texts.

Karawang Regency is one of the areas where people migrate, as well as being a buffer area for the capital city (Muhammad Farhan et al., 2021). Developing industrial areas is directly related to the socio-economic life of the community around the area where the industry operates. Besides being able to realize large economic benefits, the existence of industrial areas can also have negative effects on social life due to urbanization and causing problems of unemployment and poverty (Toni et al., 2023).

The social conditions that occur in Karawang further impact family welfare, such as household harmony, economic conditions, early marriage, and even polygamy. Polygamy has increased in Karawang in the form of polygyny. A lack of understanding about fairness in polygynous marriages in Karawang society supports the problems that arise from the occurrence of polygyny. The understanding of justice is only limited to being able to provide for the first and second wives, while the concept of justice in polygyny implemented by Rasulullah SAW and also according to the ulama is not like that.

Justice for husbands in cases of polygyny includes justice in the distribution of physical and spiritual welfare to their wives (Nagarajan & Sahoo, 2021). Regarding the requirements for fair play, this is often a long debate among legal experts and society. Therefore, the meaning of justice becomes a fundamental question in polygyny. Some scholars interpret the justice of polygyny only in material terms (quantitative), and some interpret the justice of polygyny in immaterial terms (qualitative) (Imron, 2017). Still, some interpret the justice of polygyny to include both material and immaterial terms (quantitative and qualitative). In Ibn Hazm, in his book *al-Muhalla*, he said that justice between wives is obligatory, especially when it comes to the division of the night; there should be no superiority between the wives, whether free, slaves, Muslims or dhimmi who have been married and when dividing In terms of income, it must be the same. Of course, the distribution regarding overnight shifts must also be the same.

The practice of polygyny is still a polemic to this day, with pros and cons both from human rights activists and polygyny practitioners; they express various arguments to strengthen their opinions, and both the pros and cons issue arguments from legal sources (Meidina, 2022; Mustari, 2014; Wahid, 2013). Islam in Indonesia, especially in Karawang Regency, polygyny is a marriage that many people have done, both legally and by obtaining permission from the court and permission from the first wife; there is also the practice of underhanded polygyny without prior permission from the court and obtaining permission from the first wife. Some practice polygyny under their own hands without getting permission from the court or not getting permission from their first wife.

The practice of underhanded polygyny in Karawang Regency is interesting to examine and use as material for study because remember that the practice of polygyny in Karawang Regency is based on existing conditions in the law. Some carry out polygyny based on men's desires. High, and some are based on the wishes of women who want to be honeyed and also based on economic pressure. The novelty value of this research is that the research locus is different from other research, it tries to explore the principles of justice in polygyny from the perspective of polygyny perpetrators, which is then linked to law number 1 of 1974 concerning marriage, then reexamines the practice of polygyny which is not

recorded in the views of the people of Karawang Regency which were then linked to polygynous marriages not being registered according to religion and Law Number 1 of 1974. This was explored using an empirical juridical approach. Based on this idea, polygyny needs to be added with new articles or other legal regulations, at least a supreme court regulation or supreme court circular, so that it can help the goal of implementing one of the Islamic laws related to polygyny. It tries to explore the principles of justice in polygyny from the perspective of polygyny perpetrators, which is then linked to law number 1 of 1974 concerning marriage, then reexamines the practice of polygyny, which is not recorded in The views of the people of Karawang Regency which were then linked to polygynous marriages not being registered according to religion and Law Number 1 of 1974 (Nazwah, 2022).

The approach used in this research is an empirical juridical approach, or field research, examining applicable legal provisions and what happens in reality in society (Fadhlika & Sofiani, 2021). Empirical juridical research is legal research regarding applying or implementing normative legal provisions in action at each specific legal event that occurs in society (Santoso, 2023). Data collection techniques in this research used observation, interviews, and documentation. In other words, it is research carried out on the actual situation or real conditions that occur in society to know and find the facts and data needed; after the required data is collected, it leads to problem identification, ultimately leading to solving the problem.

Results and Discussion

Household and Polygynous Overview

Violence, according to the KBBI (Big Indonesian Dictionary), is an act of violence, an act committed by a person or group of people and resulting in injury or death to another person or causing physical damage to another person's property or possessions, as well as coercion. According to Law Number 23 of 2004 Article 1 number 1, domestic violence is any act against a wife or husband, especially women, which results in physical, sexual, psychological and bodily harm or suffering (Muhajarah, 2017).

Violence can also take the form of domestic neglect, including threats to commit unlawful acts, coercion, or deprivation of freedom in the household (Farid, 2019; Muhajarah, 2017; Rofiah, 2017; Saraswati, 2009). Apart from physical violence, the Law on the Elimination of Domestic Violence is also referred to as psychological violence, as seen in Article 7 of the Law on the Elimination of Violence, which reads, "Acts that result in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and psychological suffering. that's serious for someone."

Exposure to domestic violence in a psychological form can occur when a husband is polygynous and cannot act fairly. What's more, if polygyny occurs without the permission of a legally valid wife, that is an unregistered marriage. Sirri marriage occurs in compliance with the pillars and conditions set by religion but is not recognized or recorded by the KUA (Religious Affairs Office) (Farid, 2019; Gunawan, 2013; Yusuf, 2020). The requirements for permission to practice polygyny are quite long. Many people who want to practice polygyny look for other ways to carry out polygyny, one of which is by committing polygyny under the hand or polygyny by sirri, whether the sirri is not recorded in the civil registry or the sirri without the knowledge of the first wife (Aminah, 2014; Siti Nursanti, 2015). Sirri marriages to be the same as the equivalent of hidden marriages, sirri marriages are valid according to Islamic law because the

conditions have been fulfilled, and many other terms are in harmony, which are essentially the same as unregistered marriages (Sugianto et al., 2022).

Having more than one wife even though there is no express prohibition in Islam and the Prophet SAW also had more than one wife. It will remain because marriage in Islam is based on monogamy; both men and women can only have one partner for life, and having more than one wife must meet the terms and conditions that must be fulfilled. These provisions are regulated by the law where the person lives. The many practices of polygyny that are carried out in society are based on the lack of understanding of the law regarding marriage, both from the man and the woman.

Regarding permission to carry out polygynous marriages in Indonesia, it is regulated in Article 4 paragraph (2) and Article 5 paragraph (1) of Law Number 1 of 1974, namely: Article 4 paragraph (2) - The court referred to in section (1) of this article only grants permit to a husband who will marry more than one wife if:

- 1) The wife cannot carry out her obligations as a wife
- 2) The wife has a physical disability or an incurable disease
- 3) The wife cannot give birth to children.

This could be an alternative or facultative reason; when one of them is present in a wife, the husband can apply for permission for polygyny. Article 5 paragraph (1) – To involve the bench as planned in Article 4 section (1) of this law, the following conditions must be met:

- 1) There is consent from the wife/wives
- 2) There is assurance that the groom is capable of securing the living requirements of his wives and kids
- 3) There is a promise that husbands will feast on their wives and children moderately.

While these requirements are cumulative, when these requirements have been met, the court can grant permission to practice polygyny. Permission for polygyny by the Religious Court can be granted if the husband's reasons fulfill the alternative causes in accord with the requirements of Article 4 section (2) and the cumulative needs said in Article 5 section (1) of Law Number 1 of 1974 as noted overhead. The legal, juridical conditions which form the legal basis for giving tickets for polygyny are held in Law Number 1 of 1974 regarding marriage, in conjunction with Government Regulation in No. 9 of 1975, in conjunction with Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Law No. 1 of 1974 Article 3 section (2) junto Article 43 Government Regulation No. 9 of 1975 states that the court can permit a husband to get more than one wife if the parties concerned wish.

Apart from that, Article 4 section (1) states that if a husband has more than one wife, as stated in Article 3 section (2) of this law, he is obliged to submit an application to the court in the area where he lives. Government Regulation Number 9 of 1975 regulates the implementation provisions for granting permits for polygyny in Article 43, which states that if the court thinks that there are sufficient reasons for the applicant to have more than one wife, then the court will give a judgment in the condition of approval to have more than one wife.

Presidential Instruction No. 1 of 1991 regarding the Compilation of Islamic Law provides the legal basis for granting permits for polygyny through Article 56 paragraph (3), which states that marriages entered into with a second, third, or fourth wife without permission from the Religious Court have no

legal force (Hambarrukmi & Sofiani, 2017). The provisions in the Compilation of Islamic law are essentially Islamic law, which in the narrow sense is local jurisprudence with Indonesian characteristics. It is said that because the Compilation of Islamic Law is extracted from the sources and postulates of Islamic law through *ijtihad* and contemporary legal thought.

Understanding of Husband and Wife Who Practice Polygyny Regarding Law Number 1 of 1974 Concerning Marriage

Based on the results of interviews with unregistered polygyny perpetrators in Karawang Regency, husband and wife's understanding of polygynous marriages that are carried out unregistered is very varied, and most assume that the marriage is legal because marriages that are carried out unregistered or secretly are legally valid as long as they meet the requirements and harmony of marriage. Furthermore, the issue of unregistered polygynous marriages is more focused on the requirements for polygynous marriages according to religion; apart from being able, they must also be fair and have no more than four wives. The public's understanding of fairness in polygynous marriages in a private manner is equated with fairness in polygynous marriages that have permission from the court.

As stated by Mr. WHD, who entered into an unregistered or secret polygynous marriage, fairness in a polygynous marriage is more about being able to divide time between the first wife and the second wife than also being able to provide for both of them physically and mentally. In line with Mr. WHD, Mr. YY also said that fairness in polygyny is being able to provide support for polygynous wives. Mr. Koman's explanation about fairness in polygynous marriages is more about providing a living and dividing time between the first wife when returning to her homeland and the second wife. Then Mr AKM is of the opinion that a polygynous marriage is fair in terms of providing birth support because in matters of feeling, as an ordinary human being, you cannot be deceived; you will love the second and younger wife more. From the respondents' statements regarding the meaning of fairness in a polygynous marriage, it is equated with fairness in a polygynous marriage that has permission, either from the court or from the first wife. As follows, it is fair in a polygynous marriage to provide physical support to the first wife and the second wife as well as to their children, while for matters of mental support and affection, it is more for the second and younger wife than you can divide the overnight time between the first wife and the second wife, for those who carry out polygynous marriages under the hand by getting permission from the first wife, while for couples who commit polygyny under the hand without getting permission from the first wife or without the knowledge of the first wife, how to divide their time during the day with the second wife and the night with the first wife, except at certain times.

The principle of marriage adopted by Indonesia is the principle of monogamy, but the principle of monogamy is not absolute (Sugianto et al., 2022; Wardiansyah, 2021). In this case, it does not close the door on polygynous marriages, but those who wish to have a polygynous marriage must fulfill the terms and conditions set by the marriage law. Among the conditions that must be fulfilled in a polygynous marriage is a fair attitude; the polygynous perpetrators in Karawang understand the meaning of fairness in being able to divide equally between the first wife and the second wife in terms of living, which is what the polygynous perpetrators in Karawang do in being fair in accordance with several opinions—scholars about fairness in polygynous marriages. A fair attitude in carrying out polygyny is an absolute requirement that must exist, and this is clear in the Qur'an. Suppose you cannot act fairly or are afraid of not being able to act fairly. In that case, just having one wife is enough, and monogamous marriage is the

principle of marriage used in Indonesia. Many scholars have different views regarding justice in Surah an-Nisa verse 3 (Bakhtiar, 2015; Mahfudin & Wardani, 2018; Rosyada, 2017).

The public's various understandings about Law No.1 of 1974 on Marriage, especially the people of Karawang Regency, more specifically for perpetrators of unregistered polygynous marriages, public knowledge about Law No.1 of 1974 on Marriage is the main factor in many people breaking the rules. It could be due to a lack of socialization or because people don't want to know about these regulations, people tend to use the rules they know so far, especially regarding the issue of polygyny. Polygyny practitioners adhere more to religious regulations than to regulations set by the government. Various reasons have been put forward by the community, starting from the regulations governing polygyny being too complicated; it's just an administrative order. Then, some compare people who understand more about religion (kayak) to have more than one wife, and their marriages are carried out without permission from the court.

Contribution of Unregistered Polygynous Marriages to the Development of the National Legal System

The regulations regarding marriage are standard in Law Number 1 of 1974, and couples who marry after this law comes into force must follow the applicable regulations. And if a marriage does not comply with the legal regulations, then the marriage has no force. Law or is legally flawed, then the marriage cannot be protected by law, such as polygynous marriages are not registered, and the marriage is legal according to religion, whereas according to state law, the marriage is legally flawed because the problem of marriage registration is contained in Law no. 1 of 1974 regarding Marriage article 2 section 2 which contains, "Every marriage is recorded according to the applicable laws and regulations"

Article 3 of Government Regulation no. 9 of 1975 regarding the Performance of the Marriage Law stated:

1. Every person going to get married shall notify their wishes at the place where the marriage will take place.
2. The notification in paragraph (1) is created at least ten days before the marriage is carried out.
3. The abnormality in the time directed to in paragraph (2) is due to an important reason given by the sub-district head (on behalf of) the local regional regent.

Meanwhile, article 5 of the Compilation of Islamic Law explains marriage registration, namely:

1. To ensure orderly marriages in Islamic communities, every marriage must be recorded.
2. As stated in section (1), marriage registration is taken out by a wedding registrar, as held in Law Number 22 of 1946 jo. Law Number 32 of 1954.

Consent from the wife is optional if the wife can't ask for approval, cannot be a party to the agreement, has been no news for at least two years, or other conditions that require assessment by the court.

Based on the guidelines for the duties of religious courts contained in the Handbook of Duties and Administration of Religious Courts (Book II), if in the process of examining the application for the legalization of marriage, it is discovered that the husband is still in a valid marriage with another woman,

then the previous wife must be made a party in the case. If the applicant is unwilling to amend his petition to include his previous wife as a party, the petition must be declared inadmissible.

The provisions in Book II above have been revised with the results of the 2018 Religious Chamber Plenary Meeting, enforced by the Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2018 (from now on referred to as SEMA). Based on the SEMA, applications for the legalization of polygamous marriages based on unregistered marriages must be declared inadmissible, even for reasons of interest for the child, because it is in the interests of the child that a request for determining the origin of the child can be submitted. The phenomenon of polygynous marriages not being registered in society, especially among the people of Karawang Regency, still occurs frequently; based on the results of interviews with polygynists, polygyny often occurs in Karawang Regency for various reasons; some argue that polygynous marriages are not registered because permits are difficult to fulfill. Regarding permission to carry out polygynous marriages, it is very strict because it is to maintain the benefit of the marriage.

Men who wish to have more than one wife, contrary to government regulations that require polygynous marriages, must obtain permission from the first wife and also obtain permission from the court. In contrast, based on findings in the field, permission from the court is considered burdensome for the husband because many conditions must be met, and only certain people can fulfill these requirements as contained in Article 5 of the marriage law. In contrast, in Islam, the requirement for carrying out a polygynous marriage is to obtain permission from the wife, as was done by Rasulullah Saw when he wanted to marry another woman. Hence, Rasulullah Saw first permitted the wife. -His. Based on this, the permissions stipulated by law must be more relaxed for husbands who want to commit polygyny with separate records in carrying out polygynous marriages, for example, a man carrying out a polygynous marriage for the reason of saving the economy of a less fortunate woman for the reason of helping the economy and or entering into a polygynous marriage for the reason of helping women in certain conditions.

Based on the results of interviews with perpetrators of underhanded polygyny, the licensing of polygynous marriages in the courts is very strict, giving rise to the rebellious nature of a husband who wants to commit polygyny so that he looks for other ways to commit polygyny, namely using underhanded or unregistered polygyny. The problems that arise due to strict polygyny permits vary; therefore, the law should provide leniency or leniency for husbands who want to practice polygyny; the requirements for polygyny are contained in Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 regarding the reasons Those who are allowed to carry out polygynous marriages need to be reconstructed so that they do not lead to husbands' behavior that deviates from the main goal of building a household by Islamic law, namely *sakinah mawadah wa rahmah*.

Deviations that will occur if the regulations regarding polygyny are not reconstructed include encouraging husbands to lie to first wives about their polygynous marriage continuously, then children's civil rights are not protected by law. They can hurt second wives who do not have authentic evidence in the form of a marriage certificate. So, if the husband does not fulfill his obligations as a husband and wife, he cannot legally sue the husband. There is much misery that arises from unregistered polygynous marriages, whether it is against the wife or children born from unregistered polygynous marriages. Meanwhile, what is called evil must be eliminated to maintain welfare. The reconstruction is to add reasons for allowing husbands to enter into polygynous marriages, including:

- 1) Carrying out polygyny against women who need economic support
- 2) Allows polygyny for widows who have orphans

A husband may enter into a polygynous marriage without obtaining permission from the court, provided that the woman he is marrying needs help, not a polygynous marriage based on lust or social status. So, the state must provide facilities for community empowerment specifically related to polygyny. In some cases, polygynous marriages can provide protection and financial support to women who may be facing economic or social hardship. This can reduce the risk of poverty or economic dependence on others. In societies where unmarried women face stigma or social difficulties, polygynous marriages are a way to help women get married and have social support.

The practice of polygyny exemplified by the Prophet SAW was marrying widows who needed economic assistance and also widows who had orphans, so based on findings in the field, especially in Karawang Regency, the existence of unregistered polygynous marriages was the impact of the strict regulations regarding polygyny so that husbands who wanted to commit polygyny You have to think again, so it would be better if the reasons or conditions for polygyny are made light as long as this polygyny is by the example set by the Prophet SAW and does not deviate from Islamic law.

Seeing the phenomenon that occurs in society regarding marriage issues, especially in unregistered polygynous marriages, the consequences of which will be detrimental to both parties, not only material but also non-material losses (Taufiq et al., 2023). So researchers try to offer simple ideas for the practice of unregistered polygamy, either hidden, not recorded in the records, or unknown to the first wife. The ideas offered are as follows:

- 1) Allowing polygyny for husbands towards women who need economic assistance.
- 2) Allowing polygyny for widows who have orphans and need help without obtaining permission from the first wife.

With this idea, it is hoped that a pious wife will permit because Rasulullah Saw has carried out polygyny with this pattern to maintain the value of worship.

Conclusion

Based on findings in the field regarding unregistered polygyny that occurred in Karawang Regency understanding of husband and wife who practice polygyny in Karawang regarding Law no. 1 of 1974 regarding marriage varies; some need help understanding the law, especially those relating to polygynous marriages, and some need help understanding law no. 1 of 1974, limited public understanding of Law no. 1 1974 concerning marriage is due to a lack of public interest. Also, because socialization regarding this law is uneven, especially regarding polygynous marriages, the public is more interested in using Islamic law.

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