Social Distrust Impact Analysis: Political Overview Competition Law

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Abstract: The purpose of this research is to reveal the contents of civil law regarding business competition and social lessons from the prohibition of unfair business competition (monopoly and other fraud) contained in Indonesian government policies. The research method used is qualitative content analysis with a normative juridical approach using the keyword 'Policy related to business competition.' The results of this study indicate two findings. First, Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is an implementation of the politics of business competition law in Indonesia. In principle, the politics of business competition law in Indonesia depends on the political will of the House of Representatives (DPR) as the legislative body together with the Government as the executive in making laws. Because Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is not yet effective enough in creating fair business competition in Indonesia because, in substance, the Law still contains weaknesses in several articles that make the performance of the Business Competition Supervisory. The commission is not maximal. Second, government policies contained in the Civil Code, KUHP, Law no. 5 of 1984 concerning Provisions for Main Industries, Law no. 8/1995 concerning Capital Market, Law no. 9 of 1995 concerning Small Businesses, and Law No. 36 of Telecommunications provide important lessons regarding the prohibition of monopolies and fraudulent practices that can hinder the economy and equitable social welfare. The expected implication is that social learning from government policies in the field of law regarding deregulation, investment, and other policies aimed at supporting business competition can promote sustainable development, particularly in industry, small businesses, capital markets, and telecommunications.

Keywords: Business Actors, Business Competition, Legal Politics.

INTRODUCTION

As a reaction to the rampant activities of conglomerates, since the 1980s in Indonesia, the public subsequently demanded the issuance of an Anti-Monopoly or Antitrust Law. Apart from that, the demands of the anti-monopoly law apparatus are due to the existence of business control over the centralism of power which is allegedly strong to contain practices of corruption, collusion, and nepotism (KKN).

Among companies, antitrust practices generally occur due to increasing demands on companies to take action in the interests of workers, the environment, and local communities. Companies sometimes feel that they have to carry out social and environmental responsibilities in collaboration with other companies (Putri, *et al.*, 2019). Unfortunately, from the point of view of a purely competitive economic interpretation law, agreements between firms can raise prices and thereby reduce consumer welfare. Business competition law has not focused on competition that can improve economic well-being or is reformed to allow cooperative action that is socially beneficial (Claassen & Gerbrandy, 2018). Whereas in fact, competitive economic development can also be done by increasing company commitment both in business agreements and in the social environment that is subject to applicable laws (Natalia & Alexandr, 2018).

According to the former Chief Justice of the Constitutional Court (MK) of the Republic of Indonesia, namely Mahfud (1998), legal politics is a "legal policy or line (policy) official regarding the law that will be enforced either by new legal actions or by replacing old laws, in order to achieve the goals of the state." The same definition has also been put forward by several other legal experts. Wahjono (1984), states that legal politics is a basic policy that determines the direction, form, and content of the law to be formed. The laws that apply in their territory and regarding the direction of development of the law that is built.

Political law as a tool or means and steps that can be used by the government to create the desired national legal system and with this national legal system the aspirations of the Indonesian people will be realized. National Law Politics includes: (1) consistent implementation of existing legal provisions; (2) legal development, which in essence is the renewal of existing legal provisions that are considered obsolete, and the creation of new legal provisions needed to meet the demands of developments occurring in society; (3) affirming the functions of law enforcement or implementing agencies and fostering their members; (4) increasing the legal awareness of the community

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according to the perceptions of the elite group of policymakers (Nusantara & Hakim, 1985).

In other words, legal politics should not be tied to "what is", but must find a way out to "what should be". Therefore, the existence of legal politics is marked by a demand to choose and take action. Political law can be permanent and temporary. Permanent legal politics are related to legal attitudes which will always be the basis for policy formation and law enforcement; for example, the existence of a national legal system with the existence of legal unification or the enactment of a legal system throughout Indonesia (Manan, 1992). It was further explained that the community also has a very important role in the formation of laws; such as customary law and other unwritten laws that are recognized as a sub-system of national law as long as they are actually alive and maintained in the community. Meanwhile, temporary legal politics are policies that are determined from time to time as needed.

In general, business competition law aims to maintain a "climate of competition" among business actors and to make competition among business actors healthy. What is clear, in this case, the achievement of business competence depends on intention, gender, attitude, and control mediation in economic activities like this (Daliman, Sulandari, & Rosyana, 2019). The potential role of business competition policy is also quite efficient in regulating the digital market in the current political era (Drexl, 2017; Drexl, 2019). In addition, business competition law aims to prevent the exploitation of consumers by certain business actors and to support the market economy system adopted by a country. The purpose of business competition law in Indonesia according to Article 3 of Law no. 5 of 1999 are: 1) maintaining general interests and increasing the efficiency of the national economy as an effort to improve people's welfare; 2) creating a conducive business climate through regulations on fair business competition, thereby ensuring certainty for equal business opportunities for large business actors, medium-sized business actors, and small business actors; 3) prevent monopolistic practices and/or unfair business competition caused by business actors; and 4) effectiveness in business activities.

In Europe, increasingly tighter competition policies have not eliminated the problem and where there appears to be considerable recidivism. European business and integration in terms of business competition policies are able to influence corporate strategy (Rollings, 2018). An important lesson from the implications of the law of healthy business competition is that it is part of the country's development (Ivanov, Kiselevich, & Shcherbakova, 2018). This is actually one of the bases that support that government policies in the business competition are able to encourage economic equality in society.

Based on this problem's background, this study specifically aims to examine the contents of civil law regarding business competition and social lessons from the prohibition of unfair business competition (monopoly and other fraud) contained in Indonesian government policies. This research aims to support business competition that can encourage sustainable development, especially in the fields of industry, small businesses, capital markets, and telecommunications.

Research Questions

Based on the research background presented, the problem formulations in this study are:

1) What is the content of the civil law on business competition based on a review of legal politics in Indonesia?

2) What are the social lessons learned from the existence of the Indonesian Government Policy on Business Competition?

METHODS

Design

This research uses qualitative content analysis or so-called 'latent content analysis' which is processed deductively. The aim is to organize and obtain meaning from the data that has been collected and draw realistic conclusions from the research (Bengtsson, 2016). Content analysis techniques understand descriptively objectively by seeing them as symbolic, oriented, and systematic as well as interrelated (Julien, 2008; Berelson, 1954). According to Krippendorff (1980), content analysis is empirically oriented, explanatory in nature, and aims at predictive of the impact of real symptoms. The content analysis design in this study aims to analyze the meaning implied in the content of civil law regarding business competition in a normative juridical approach and social learning as an empirical impact.

Referring to the normative juridical approach carried out by Rahardjo (1991), legal politics as an activity of

choosing and the means to be used to achieve a social goal with certain laws in a society whose scope includes answers to several basic questions, namely, 1) what objectives are to be achieved through the existing system; 2) what methods and which ones feel the best to use in achieving these goals; 3) when and through what means the law needs to be changed; 4) can a standardized and established pattern be formulated to assist in deciding the process of selecting objectives as well as ways to achieve these goals properly.

Data and Sources of Data

The data in this study are data on business competition policies related to the prohibition of monopolies and other fraudulent practices in economic activities in Indonesia. This covers the Law of Business Competition, regarding deregulation, foreign direct investment, and other policies aimed at supporting business competition, such as reducing restrictions on import quantification and also covering aspects of intellectual property.

The main data source comes from the Business Competition Law as stated in Presidential Regulation No.16 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Meanwhile, other primary data sources are: 1) Civil Code Article 1365 of the Civil Code related to the subject of “illegal acts”; 2) Criminal Code Article 382 of the Criminal Code which provides imprisonment threats against or for people who commit "fraudulent competition"; 3) Law No. 5 of 1984 concerning Basic Industrial Provisions; 4) Law No.8 of 1995 concerning Capital Market; 5) Law No. 9 of 1995 concerning Small Business; 6) Law No.36 of 1999 concerning Telecommunications. Meanwhile, secondary data consists of government public information data originating from the Information Center for the Business Competition Supervisory Commission (KPPU) and relevant previous articles.

Data Analysis Techniques

This research uses content analysis techniques. Starting with research planning that is carried out by looking for data sources to emphasize the credibility of the entire research process carried out. The foundation of credibility begins when study planning begins. External and internal resources are then identified. Researchers also consider the phenomena being studied. The content analysis of the deep structure (latent analysis) of civil law on business competition in Indonesia was chosen to reveal the findings and discussion. The four main stages in research are decontextualization, recontextualization, categorization, and compilation (Bengtsson, 2016). In this case the description of how the substance of business competition law can be used as social learning in society.

RESULTS AND DISCUSSION

Contents of Civil Law on Business Competition Based on the Political Review of Law in Indonesia

The legal substance referred to in the research is Law No. 5 of 1999. When viewed from the substance of the law, it turns out that there are several articles which weaken the performance of the Business Competition Supervisory Commission (KPPU). The following are several articles that need to be revised as soon as possible as a form of better business competition law politics in Indonesia in creating fair business competition, namely: 1. Article 41 paragraph 1 Law no. 5 of 1999 states that business actors and/or other parties being examined are obliged to submit evidence required in the investigation and or examination.

Business actors and or other parties who are suspected of exercising monopoly or politically unfair business competition are highly likely not to submit the evidence required in the investigation and examination. This is because it is likely to harm both companies and individuals. In this case, the Business Competition Supervisory Commission (KPPU) has the authority to confiscate evidence needed in the investigation or examination of business actors and or other parties suspected of engaging in monopolistic practices and or unfair business competition.

Article 41 paragraph 2 Law no. 5 of 1999 states that business actors are prohibited from refusing to be examined, refusing to provide the information required in the investigation and examination, or from obstructing the investigation and/or examination process. In Article 41 paragraph 3 Law no. 5 of 1999 states that violations of the provisions of paragraph (2), by the Commission, are submitted to investigators to carry out investigations in accordance with the applicable provisions.

Not only the act or criminal act as meant in paragraph (2) but also includes the subject matter which is being investigated and examined by the Commission. The delivery of the subject matter of the

case being investigated to the investigator is out of the reach of the Commission. Subsequent handling by investigators and the general court probably means that administrative action can no longer be carried out because it is no longer handled by the Commission and is limited to the main and additional crimes, while not all violations of the provisions of the law are subject to basic crimes. For example, Chapters 1-3, Chapters 10-13, and Chapters 29.

Article 41 needs an addition to paragraph (4) which states that, "If the Commission submits this case to investigators but the actions of the business actor cannot be charged with the principal and additional penalties, the Commission can impose administrative sanctions in accordance with the provisions of this Law." 3. Article 46 paragraph 1 Law no. 5 of 1999 states that if there are no objections, the Commission's decision as referred to in Article 43 paragraph (3) has permanent legal force.

Meanwhile, according to Article 46 paragraph 2 of Law no. 5 of 1999 states that the decision of the Commission as referred to in paragraph (1) requires a decision for execution to the District Court.

The procedural law that applies to the Commission is civil procedural law unless it is stipulated otherwise by law "and addition to paragraph (4) which states that, "the Commission's decision which has been requested for execution to the District Court shall be carried out according to the rules usually carried out in a civil decision." So, with the additions to paragraphs (3) and (4) Article 46 of Law no. 5 of 1999 it will be clear according to the rules of the procedure and who is implementing it so that it does not cause problems in the future.

Based on the provisions of Article 47 of Law no. 5 of 1999, the authority to impose sanctions in the form of administrative measures by the Commission is divided into a. Orders to stop something, and b. Determination of the cancellation of something, according to the nature of the provisions being violated. In my opinion, the Commission is not only not equipped with effective provisions to carry out these administrative measures by force, but also there are no effective sanctions for not fulfilling the contents of administrative actions by the Commission.

This is what makes the Commission's Decision seem like it has no legal effect and looks like a tiger on paper because it cannot be enforced against business actors and since there are no effective sanctions if the Commission does not fulfill the contents of administrative measures, the Commission seems to be handed off after deciding the case. at trial without being responsible for implementing the results of the decision.

Therefore, Article 47 (1) of Law No. 5 of 1999 needs an addition to paragraph (3) which states that "Administrative sanctions decided by the Commission can be enforced by force against the losing party in the trial," and addition to paragraph (4) which states that, "If the Commission does not implement its decision, in the form of administrative sanctions no later than 90 days (3 months) then for the sake of law such administrative sanctions are deemed never to exist." 5. Article 47 paragraph 2 letter g states that the imposition of fines of a minimum of IDR 1,000,000,000.00 (one billion rupiahs) and a maximum of IDR 25,000,000,000.00 (twenty-five billion rupiahs) needs to be revised because of the losses incurred That amount can be up to trillions. Of course, the State will be very disadvantaged with the maximum limit of the imposition of fines of only IDR. 25,000,000,000.00 (twenty-five billion rupiahs).

For example, the monopoly case conducted by PT. Tirta Investma as AQUA producer which has been written since 2016. In May 2019, this company was determined to have violated Article 15 paragraph 3 letter b and Article 19 letters a and b of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and No Business Competition. Healthy. A fine of IDR 13.8 billion must be paid by the company. PT Ballina Agung Perkasa as an AQUA distributor was also fined IDR 6.2 billion (Saputra, 2019).

Article 15 paragraph 3 letter bread, "Business Actors are prohibited from entering into agreements regarding certain prices or discounts on goods and or services, which contain requirements that they will not buy the same or similar goods and or services from other business actors who are competitors of the actors. supplier business."

Article 19 explains that, "business actors are prohibited from carrying out one or several activities, either alone or with other business actors, which may result in monopolistic practices and or unfair business competition in the form of a. Refuse and or prevent certain business actors from carrying out the same business activities in the relevant market, or b. Prevent consumers or business competitors from conducting

business relations with these business competitors."Another case determined by the Business Competition Supervisory Commission in July 2020 was the company PT. Indonesian Transportation Solution or Grab Indonesia paid a fine of IDR 29.5 billion and was found guilty of violating the principles of business competition. In the judgment of the panel, the company has violated Article 14 and 19 paragraph 4 (Santoso & Djailani, 2020).

Article 14 states that "business actors are prohibited from entering into agreements with other business actors with the aim of controlling a number of products included in the production series of certain goods and services, where each production series is the result of processing or further processing, whether in one direct or indirect series. may result in unhealthy business competitions."

Judging from the monopoly case that occurred in Indonesia indicates that it seems that Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia has not been effective enough to make business actors comply with these policies. In fact, this can affect the image of the Indonesian business world in the global market. Although so far it has no effect on investment in Indonesia. Furthermore, Hidayat (2017) explains that Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is an implementation of legal politics. In principle, this depends on the political will of the members of the People's Representative Council (DPR) together with the Government in making laws. In other words, the effective policy can occur if, from the beginning of the government regulation concerning the prohibition of monopoly in business competition, renewal is carried out in accordance with the times. To make this happen, Buuren & Loorbach (2009) explain that policy innovation and reform through the transition arena and pilot projects can be carried out. However, this can be difficult to achieve if the decision-making arrangements are not careful at the same time. In addition, rigid institutional arrangements often hinder the realization of policy breakthroughs that apply in society.

According to Sein (2013), the law is conceptualized as a law made by a legislative body, so no one can argue that competition law in Indonesia is a political product because it is a crystallization, formalization, or legalization of competing for political wills. through political compromise as well as through domination by the greatest political powers. Of course, no one can deny that Law no. 5 of 1999 is a political product produced by the House of Representatives (DPR) together with As is known, members of the DPR, apart from being members of the legislature, are also members of political parties, therefore it is not surprising that any laws made must have conditions with political interests.

There are 4 (four) political influences on the strength of civil law on business competition in Indonesia. First, it is clear that politics has an impact on the law. These two aspects of life (politics and law) can be seen from the fact that law is a product of a political process without needing to distinguish whether the process is processed by political actors who have balanced power or are carried out through the domination of a party. Third, at each point of meeting between politics and law, there are two possible political impacts on the law, namely opportunities for legal growth or negatively affecting it, either in the form of inhibiting its growth or weakening its strength. Third, the course of the political life of the Indonesian nation is marked by an increasing gap in the political role of the elite (ruler) with society and the middle class, even though everything is progressing in the same direction. This symptom is shown by the acceleration of the development of political mobilization rather than the growth of political participation. Fourth, whether or not political influence is positive on business competition law is determined by the combination of political actors, their political behavior patterns, and the elements of the law itself.

Social Learning Based on Indonesian Government Policy on Business Competition

Government policy in terms of business competition law in Indonesia prior to the enactment of Law no. 5 of 1999, which consists of: 1. In the Decrees of the People's Consultative Assembly (MPR) Efforts to prevent the occurrence of monopolistic practices and unhealthy business are contained in the MPR decrees, namely: a. RI MPR Decree No. IV/MPR/1973 concerning GBHN in the field of Economic Development; b. RI MPR Decree No. IV/MPR/1978 concerning GBHN in the field of Economic Development in the Private Business Sub-Sector and Businesses for the Economically Weak Group; c. RI MPR Decree No. II/MPR/1983 concerning GBHN in the Economic Development Sector, the National Private Business Sector, and Businesses for the Economically Weak Group; d. MPR Decree No. II/MPR/1988

concerning GBHN in the Field of Economic Development, Sub-Sector of the National Business World; e. RI MPR Decree No. II/ MPR/1993 concerning GBHN in the Economic Development Sector, the National Business Sub-Sector; f. RI MPR Decree No. IV/MPR/1999 regarding GBHN in General Conditions.

In Indonesia, business actors have legal protection in their business competition, both nationally and globally. Likewise, transactions made through online media such as e-commerce (Andreas, Andini, & Rulanda, 2019). Among the Civil Code in article 1365 which deals with 'acts of violation of the law'. It was explained that, "every party who suffers losses due to unfair competition, can sue for compensation if it can be proven that the act is an act against the law."

Article 383 (KUH Pidana) also supports legal protection in the business competition. It is explained that, "Anyone who obtains, carries out or expands the results of trading or a company owned by himself or another person, commits fraudulent acts to mislead the general public or a certain person, is threatened because of fraudulent competition with a maximum penalty of one (1) year and four months or a maximum fine. IDR 13,500.00 if it causes harm to one's own or other people's rivals."

Law No. 5 of 1984 concerning Basic Industrial Provisions in paragraph 3 states that government monopoly in the agrarian field can be held as long as it is carried out based on Law No. 5 of 1984 concerning Industry, which reads: "Article 7 contains provisions regarding the government's authority to regulate, foster and develop industries to (1) realize better industrial development, in a healthy and effective manner, (2) develop competition. which is good and healthy and prevents dishonest competition, (3) prevents termination or control of the industry by one group or individual in the form of a monopoly that harms society."

It is clear that healthy business competition in the industrial sector is also supported by government regulations. Unfortunately, in Article 12, the legalization of business competition activities does not have specific limitations. Article 12 reads, "to encourage the development of industrial branches and certain types of industry in the country, the Government can provide the necessary facilities and/or protection." Meanwhile, the explanation as referred to in this article is the facilities and/or protection provided by the Government to encourage the development of industrial branches and types of industry, among others in the fields of taxation, capital and banking, import duties and excise, export certificates and so on. This indicates that the regulation is still considered general in nature, thus allowing the unhealthy business competition involved in it.

The substance of the rules in Law No.8 of 1995 concerning the Capital Market which pertains to the issue of fair business competition in the capital market as emphasized in article 4, article 7 paragraph (1), article 10, article 14 paragraph (1) and (2). And articles 35 to 42 governing the guidelines for behavior in the capital market, including the prohibition to exert pressure on stages, disclosing personal information of customers, and colluding with affiliated parties. Article 84 states that "issuers or public companies that carry out merger, consolidation, transparency, fairness, and reporting are stipulated by the Capital Supervisory Agency and the prevailing laws and regulations." Meanwhile, CHAPTER XI describes the problems of fraud, market manipulation, and insider trading.

Based on the legal substance of capital market competition, as explained earlier, it indicates that the government has regulated capital market behavior guidelines so that capital market activities can run well. In other words, both the issuer and the stakeholders are provided with guidelines that are expected to provide support for attitudes and behavior that are in line with the objectives of the law itself. Namely to provide a sense of social justice for all Indonesian people. Plus, currently, the development of the capital market is very fast due to the influence of technology. This finding is in line with research conducted by Drexl (2017) which states that business competition policy actually plays a partial role in regulating the digital market.

Law No. 9 of 1995 concerning Small Enterprises states that the government must maintain the business climate in relation to competition by making the necessary regulations. To protect small businesses, the government must also prevent the formation of market structures that lead to the formation of monopolies, oligopolies, and monopsony.

And the last is the substance of Law No. 36 of 1999 concerning Telecommunications. Article 10 which reads, "In the operation of telecommunications it is prohibited to carry out activities that may result in monopoly practices and unhealthy business competitions, including telecommunications

operations." Meanwhile, in its explanation, article 10 is intended to promote healthy competition among telecommunications operators.

Even though KPPU faces limitations due to the COVID-19 situation, as an independent institution it continues to oversee the implementation of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and other policies related to business competition as explained. KKPU relaxes the procurement of goods and services in an emergency and notifies mergers. KPPU issued a policy of the Commission for the Supervision of Business Competition of the Republic of Indonesia No. 1 of 2020 concerning Electronic Case Handling. In this case, the object of supervision consists of four criteria, namely: business actors, regulations that have an impact on the competition index, merger or acquisition or consolidation transactions, and partnerships of Micro, Small and Medium Enterprises (MSMEs) with business actors in Indonesia (Sumarno, 2020).

Amid the increasingly high business competition, government policies are subtly able to encourage national development. Business and government integration in terms of business competition policies are able to influence corporate strategy (Rollings, 2018). It was explained that an important lesson from the implications of healthy business competition law is that it is part of the country's development (Ivanov, Kiselevich, & Shcherbakova, 2018). A healthy climate of business competition among business actors and the role of appropriate regulations make this competition even better. In addition, business competition law aims to protect consumers and certain business actors as well as support the market economy system in Indonesia.

CONCLUSION AND IMPLICATIONS

Based on the results and discussion as explained, it can be concluded that two regulations are as follows: First, that Law Number 5 the Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is an implementation of business competition law politics in Indonesia. In principle, the politics of business competition law in Indonesia depends on the political will of the members of the People's Representative Council (DPR) as the legislative along with the Government as the executive in making laws. Because Law Number 5 the Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition is not effective enough in creating fair business competition in Indonesia because the substance of the Law still has weaknesses in several articles that make the performance of the Business Competition Supervisory Commission (KPPU) not optimal.

Second, important lessons about the existence of government policies as contained in the Civil KHU, Pidana KHU, Law No. 5/1984 concerning Main Industrial Provisions, Law No. 8/1995 concerning the Capital Market, Law No. 9 1995 concerning Small Businesses, and Law No.36 concerning Telecommunications concerning the prohibition of monopoly and fraudulent practices are that these government policies provide encouragement for individuals and companies to participate in anti-monopoly as part of community participation in achieving economic development goals particularly in the industrial sector, capital market, small-scale business, and telecommunications.

The implication of this research is that DPR members as legislators together with the Government work together to make new changes in policy to be able to prevent and overcome monopolistic practices and unfair business competition in Indonesia. There needs to be an immediate revision of several articles contained in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in order to create fair business competition in Indonesia to achieve a just and prosperous society as mandated in the Preamble of the 1945 Constitution.

Based on the conclusion, this study has succeeded in revealing that it is essential to understand civil law's contents regarding business competition and social lessons from the prohibition of unfair business competition (monopoly and other fraud) contained in Indonesian government policies. From the conclusion, it is hoped that further research can add empirical studies based on primary data sources from interviews with participants (business actors) who are the object of research in business competition. Of course, with the factors and scope of a broader regulatory review. In particular, this study aims to support business competition that can encourage sustainable development, especially in the fields of industry, small business, capital markets, and telecommunications in Indonesia, to achieve development goals, namely social justice for all Indonesian people.

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