

## Efforts To Overcome Obstacles Faced Related To The Implementation Of Indonesia Armed Forces Authority To Confront Terrorism In Indonesia

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### Abstract

*The description of acts of terrorism as a crime against the state and is a serious threat to the sovereignty of each country. Terrorist acts in Indonesia can now be qualified as military threats, namely threats using organized armed forces that are considered to have capabilities that endanger the sovereignty of the state, the territorial integrity of the country, and the safety of the entire nation. The TNI's efforts to overcome obstacles in dealing with terrorism in Indonesia are carried out in accordance with the Perpu in dealing with it. Through the role of the TNI that is shown to the community and government, showing that the TNI carries out the rights and obligations according to its position, it carries out a function. From looking at these roles, we can illustrate that roles can also be interpreted as individual behavior, which is important for the social structure of society because social beings have a tendency to live in groups. also empirical juridical research, namely conducting studies based on observations of the handling of acts of terrorism in Indonesia involving the TNI. It can be concluded that TNI institutions can be used as material for consideration in the authority to deal with acts of terrorism.*

**Keywords:** *Efforts to overcome implementation obstacles, TNI's authority to overcome acts of terrorism, Legislation.*

### 1. INTRODUCTION

The idea of a state of law based on the principles of democracy and social justice in a society united Indonesia is an idea that seems to be based on the perception of the founders of the Indonesian state against the historical fact of having experienced the Indonesian nation. The historical experience of the Indonesian nation under the rule of very oppressive feudal kings, and then the western colonizers who also oppressed and exploited natural resources and society, the Indonesian people realized the need to build a state of law based on the principle that all actions and authorities of institutions The state must be based on laws. The roles, duties and authorities of each State institution, including the roles, duties and authorities of the Indonesian National Armed Forces, must be based on the law, as a manifestation of one of the characteristics of a constitutional state.

The authority is a very important part in the Governance Law (Administrative Law), because the new government be able to function on the basis of the authority obtained. The legitimacy of government

action is measured based on the authority regulated in the legislation. Regarding authority, it can be seen from the State Constitution which gives legitimacy to Public Bodies and State Institutions in carrying out their functions. The authority is the ability to act given by the law applicable to relations and legal acts.

Indroharto stated that authority is obtained by attribution, delegation, and mandate, each of which is explained as follows: Authority obtained by "attribution", namely the granting of new government authority by a provision in the legislation. So, here are born/created a new governmental authority". In the delegation there is a delegation of an existing authority by the TUN Agency or Position that has obtained an attributive government authority to another TUN Agency or Position. So, a delegation is always preceded by an attribution of authority. In the mandate, there is no granting of new authority or delegation of authority from one TUN Agency or TUN position to another.

The description of acts of terrorism as a crime against the state and a serious threat to the sovereignty of each country can be seen from the latest developments in acts of terrorism in Indonesia, namely the Santoso armed group in the Poso region which is the East Indonesia Mujahidin group (MIT), namely the Islamic State terror group. in the homeland and establish a relationship with ISIS. In dealing with the terrorist acts of Santoso's armed group, the Tinombala operation has been held since January 10, 2016. In this case the involvement of the TNI in assisting the Police has succeeded in shooting dead the MIT leader, Santoso alias Abu Wardah and one of his subordinates, Muchtar from Palu in a shootout with the TNI. Finally, the TNI has also succeeded in arresting Jumiatus alias Umi Delima, the second wife of the late Santoso.

These events have shown that terrorism in Indonesia (armed groups Santoso) has developed, which is not only an extraordinary crime (*kejahatan luar biasa*), but the act of terrorism in Indonesia (associated with the organization ISIS) is a transnational crime (*kejahatan lintas negara*) which aims separate from the Republic of Indonesia.

Referring to the provisions of Article 7 (2) and an explanation, it is clearly and unequivocally determined that the military threat is the threat to use armed force organized assessed as having capabilities that endanger state sovereignty, territorial integrity and safety of the entire nation. One form of military threat is an armed terrorist acts as defined in the explanation of Article 7 (2) e as described above. The most important and need to be understood by all components of the nation is that the military threat, the military as a major component included in overcoming the armed terrorist acts in Indonesia.

The problem is because in the explanation of Article 7 paragraph (2) there is no limitation on when the TNI is given the authority to directly handle the armed terrorism act, including the forms of armed terrorism that can be handled by the TNI, so that if an armed terror act occurs, the role of

the TNI is still limited to providing assistance to the Police as the Tinombala operation in Poso.

Furthermore, Article 7 paragraph (2) letter b number 3 of Law Number 34 of 2004 concerning the TNI states "(2) The main tasks as referred to in paragraph (1) are carried out by "b. military operations other than war" and point 3. "Overcoming acts of terrorism". Thus, if we refer to the provisions of Article 7 paragraph (2) letter b number 3 above, it is clearly stated that one of the main tasks of the military in Military Operations Other Than War, "to overcome terrorism". This means that the TNI's authority in dealing with acts of terrorism can be exercised through a request or without a request from the Police as formulated in Article 7 paragraph (2) lift 10 of the TNI Law. In other words, the TNI "could" have the "authority" to deal directly with acts of terrorism, especially armed terror acts that occurred in Indonesia without going through a request for assistance.

The question is "whether the authority of the TNI as stipulated in Article 7 paragraph (2) letter b number 3 can be implemented without waiting for other laws and regulations or implementing regulations?". To answer this question, we need to look at the formulation of Article 7 paragraph (3) of the TNI Law which states "(3) The provisions as referred to in paragraph (2) are implemented based on state political policies and decisions". The formulation of the article above explicitly stipulates that the duties of the TNI in OMSP, including the TNI's authority in "overcoming acts of terrorism", can only be carried out if there are state policies and political decisions". According to the Elucidation of Article 5 of Law Number 34 of 2004 concerning the TNI that "What is meant by state political policies and decisions are the political policies of the government together with the House of Representatives which are formulated through a working relationship mechanism between the government and the House of Representatives, such as consultation meetings and working meeting in accordance with the laws and regulations".

Thus, the TNI can handle acts of terrorism directly without going through a

request if a state policy and political decision is issued between the Government/President and the DPR RI. The next problem is until now there is no state policy and political decisions of the President and the Parliament, related to military duty tackle terrorism, so that the provisions as defined in Article 7 Paragraph (2) Letter b number 3 can not be executed.

The concept of *rechtstaat* and the rule of law are both conceptions of the rule of law in the sense of our language in Indonesia. *Rechtstaat* is the concept of the rule of law according to the European version and tradition. However, the notion as it is understood today is different from the classical period. Likewise, the concept of the rule of law, which is more or less also a conception of the rule of law according to the Anglo-American version and tradition, has also developed its meaning from time to time. If we look at the rule of law in Indonesia, it is related to the ideas and inspiration of the founders of the Republic of Indonesia, it has its own peculiarity, that the Indonesian rule of law is built on the principles of democracy and social justice in a unified Indonesian society. This can be seen clearly when we read the main ideas contained in the Preamble to the 1945 Constitution, which contain the following main ideas: a) The state protects the entire Indonesian nation and the entire homeland of Indonesia based on unity by realizing social justice for all Indonesian people. b) A sovereign state of the people, which is a state based on populist and representative deliberation.

Furthermore, in the Elucidation of the 1945 Constitution, when it was not yet amended, it stated that Indonesia was a state based on law (*Rechtstaat*), not based on mere power (*machtsstaat*). This is explicitly stipulated in Article 1 paragraph (3) of the 4th amendment of the 1945 Constitution which states "The State of Indonesia is a state of law." The provisions of the article are the constitutional basis that Indonesia is a country based on law and the law is placed as the only rule of the game in the life of society, nation and state (supremacy of law). According to Oemar Seno Adji (1977:74) that "The rule of

law is our system of government, this is explained by our Constitution. It contains "safe guards" regarding the human personality so that it should not be violated, in addition to showing the desire to balance the interests of the protected community as well. He aspires that "dignity of men" can be enjoyed by everyone, he upholds human rights among which "free opinion" and "free expression" are fundamental and essential for a democratic life in a state of law. Therefore, all aspects of life both in the social, political, cultural, economic, and so on are regulated and regulated by law, so that all problems or problems that arise in people's lives are resolved according to applicable law.

From the various definitions of authority as mentioned above, the researcher concludes that authority has a different meaning from competence. Authority is a formal power that comes from law, while authority is a specification of authority, meaning that whoever (legal subject) is given authority by law, then he is authorized to do something that is within that authority. The authority possessed by government organs (institutions) in carrying out real actions (*perbuatan nyata*), making arrangements or issuing decisions is always based on the authority obtained from the constitution by attribution, delegation, and mandate.

In addition to attribution, delegation and mandate as sources of authority, other sources of authority are also known, namely "Discretion" which is a decision and/or action that is determined and/or carried out by government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations. which provides choices, does not regulate, is incomplete or unclear, and/or there is stagnation of government". The need for discretion is due to the development of society, so that there are often certain urgent circumstances that make Government Officials/Administration Agencies unable to use their authority, especially those that are bound (*gebonden bevoegheid*) in carrying out legal and factual actions normally.

## 2. METHOD

This research was conducted using a normative juridical research method by conducting a comprehensive study based on legislation and empirical juridical research, namely conducting an assessment based on observations of the handling of acts of terrorism in Indonesia involving the TNI. The research method can be described as follows: 1) data collection methods include literature study in order to obtain materials and information needed in accordance with the subject matter with data material from primary law and secondary law, then the interview method, interview techniques are carried out directly to the research sample, namely officials who are competent in the field of forming legislation within the ministry of defense of the republic of Indonesia, the ministry of law and human rights and the TNI Headquarters, interviews were conducted with a guideline/guideline for questions so as not to deviate from the problems studied. 2) data analysis method, in which the data has been obtained from the results of the study and then continued with quantitative data analysis, namely analyzing data based on its quality and then described so that it becomes an understandable sentence form.

And lastly, using the approach method used, in legal research there are several approaches and with this approach the researcher will get information from various aspects regarding the problem that is being tried to find the answer. The approaches used in this research is to use the approach of legislation. Normative juridical research is research that explains the legal principles contained in the provisions of the legislation.

## 3. RESULTS AND DISCUSSION

### Results

In an interview with Anang Puji Utama as Director of Legislation, the Director General of Stronghold, emphasized that if you look at the formulation of Article 7 paragraph (2) of the TNI Law, it is unusual for the mandate as regulated in paragraph (3) because the delegation should be concrete. He suggested that a government regulation be

formed to implement the provisions of Article 7 paragraph (2) letter b number 3 on the grounds that it is in line with the spirit of the constitution, whereas if it is in the form of a presidential regulation it is considered not in line with the constitution in Article 5 paragraph (2) of the 1945 Constitution.

Meanwhile, the results of interviews with members of the Indonesian House of Representatives from Commission III of the PPP faction, confirmed that to implement the provisions of Article 7 paragraph (2) letter b number 3 it is more appropriate if it is made in the form of a Presidential Regulation. The reason is because the TNI Law does not regulate the delegation of OMSP tasks through the PP as mandated in Article 5 paragraph (2).

The same thing was conveyed by Muhammad Syafei as Chair of the special committee on the Terrorism Bill from the DPR RI who emphasized that to implement the provisions of Article 7 paragraph (2) letter b number is through the establishment of a Presidential Regulation as an attribution of Article 4 paragraph (1) of the 1945 Constitution.

### Discussion

There are several discussions in this discussion which consists of sections, for the first we will discuss the restructuring of the role of various state institutions, especially the TNI, the role of the Indonesian military as a pioneer, stabilizer and dynamist of nation building which for 32 years of the New Order's rule seemed untouched, it became a debate. Crowded from various circles of society, especially from the college community and civil political elites.

The debates that are based on lawsuits even tend to blaspheme and corner, among others, as the biggest human rights violator in Indonesia, dominating the role in the political field, and there are many other claims which if not handled wisely and wisely by the TNI leadership will cause new problems. The emergence of blasphemous lawsuits from various circles of society against the TNI so far, which considers that the TNI is less professional in managing and dealing with every problem faced by the nation and state,



both in its role in the field of defense and security and socio-politics. In the context of a complete understanding of the role of the TNI in the present and in the future, it includes firstly, defending the country's sovereignty from external threats, secondly, maintaining domestic security from internal threats, and thirdly, making an active contribution to nation building. Fourth, encouraging the development of democracy and civil society, fifth, helping to improve people's welfare in the broadest sense and sixth, playing an active role in peacekeeping tasks in the context of efforts to realize world peace.

Flowing from the dynamics of the strategic environment, the possible threats to be faced are as follows: potential. Water security issues in the region, border areas, territorial violations, human rights (HAM), and environmental pollution and natural disasters. Which is factual, security of the Malacca Strait and outer islands, terrorism, separatism, various kinds of illegal activities, horizontal conflicts and energy scarcity.

In an effort to respond to the geographical constellation of the country and possible threats as well as being faced with the roles and tasks of the TNI, it is felt that there is a need for restructuring or realigning the roles, functions and duties of institutions, especially the TNI so that it is hoped that in the future the TNI will become a professional, effective, efficient and modern defense force. And always ready to secure and maintain the sovereignty of the State, territorial integrity and safety of the entire Indonesian nation.

It is hoped that in the future the role of the TNI as regulated in Article 10 paragraph (1) of the TNI Law which states that the Indonesian National Army acts as a tool for the defense of the Unitary State of the Republic of Indonesia, "is no longer interpreted narrowly or limitedly" in an effort to deal with threats or attacks from outside countries (Invasion of (aggression), but much more broadly, namely that national defense as one of the functions of the state government which is an effort to realize a unified national defense in order to achieve national goals, namely to protect the entire nation and the entire homeland of Indonesia, promote public

welfare, educate people's lives. nation and participate in carrying out world order based on freedom, eternal peace and social justice.

The main tasks as formulated in Article 7 paragraph (1) are carried out through OMP and OMSP whose implementation must be through state political policies and decisions. The use of TNI forces in OMSP is carried out in accordance with state policies and political decisions with a priority in deploying TNI forces to carry out border security with neighboring countries in the form of coordinated patrols (Patkor); deploying TNI forces in conflict-prone areas and prone to lawlessness at sea and in the air; provide security for the President and Vice President and their families; alerting TNI forces to carry out operations to overcome armed separatist movements, overcome armed insurgencies, overcome acts of terrorism, secure strategic national vital objects, carry out world peace tasks, empower defense areas, assist local government tasks, assist the Indonesian National Police, help secure guests the state, helping to cope with the consequences of disasters, SAR, assisting the Government in securing shipping and aviation; build military cooperation with other countries, guided by the three substances of the military cooperation framework established by the Ministry of Defense, in order to build mutual trust, prevent conflict, and jointly seek the best solution, in the form of coordinated patrols, joint exercises, exchange of soldiers, visits/goodwill and other military cooperation forums, optimizing the role of the TNI in the form of TNI Service in order to support national development and improve the welfare of the community, especially remote and disadvantaged areas.

The existence of a narrow meaning of the role of the TNI as a means of state defense which is only tasked with dealing with threats or attacks from outside countries has resulted in the involvement of the TNI in dealing with various problems of the nation which always gets the spotlight and criticism from various circles of society. One of them is the implementation of the TNI's duties in OMSP to deal with acts of terrorism, getting rejection from various NGOs, human rights observers

and other community groups. In general, the reason for the refusal is that acts of terrorism are the domain of the Police and the TNI have no legal basis and take over the role of the police in the field of Kamtibmas and law enforcement.

According to Purnomo Sucipto, an observer of laws and regulations in his article "what you need to know to make laws and regulations" emphasized that in drafting laws and regulations, the use of language is very important. If the language used in the legislation can be understood by the public, it can be expected that the legislation will be implemented. On the other hand, if the language cannot be understood, it will be difficult to expect the objectives of the legislation to be achieved. The language in laws and regulations should be easily understood by the general public (ordinary person), not only by the makers, legal scholars, or legal practitioners. The language of laws and regulations is basically subject to the rules of Indonesian grammar, both word formations, sentence structure, writing techniques, and spelling. However, the language of laws and regulations has its own style which is characterized by clarity or clarity of understanding, straightforwardness, standardization, harmony, and adherence to principles in accordance with legal requirements, both in the formulation and the way of writing. In relation to the realignment of the role of the TNI in regulation, it is necessary to avoid mistakes in the narrow meaning of the role of the TNI. The substance of the role of the TNI in legislation must be formulated firmly and clearly so that the limits of the formulation of the role of the TNI as a State tool in the defense sector do not only face threats or attacks from outside (traditional threats) but also face threats and disturbances from within (non-traditional threats) through OMSP.

Role is a dynamic aspect of the position (status) owned by a person, while status is a set of rights and obligations that a person has if a person performs the rights and obligations according to his position, then he carries out a function. In essence, the role can also be formulated as a series of certain

behaviors caused by a certain position. A person's personality also affects how that role should be carried out. The roles played are essentially no different, whether those played by top, middle or lower level leaders will have the same role.

Role is a concept of what behavior can be carried out by individuals in society as an organization. Role can also be said as individual behavior, which is important for the social structure of society. A role is an orderly sequence that results from a position. Humans as social beings have a tendency to live in groups. In group life, there will be interaction between members of one community with other community members. The growing interaction between them there is interdependence. In social life, what is called a role emerges. The role is a dynamic aspect of a person's position, if a person carries out his rights and obligations according to his position; the person concerned carries out a role. To provide a clearer understanding, it is better to first understand the meaning of the role, (Miftah Thoha, 1997). From some of the definitions above, the researcher can conclude that the role is an attitude or behavior that is expected by many people or groups of people towards someone who has a certain status or position. When associated with the TNI, the role does not mean the rights and obligations of individual TNI soldiers, but is the duty and authority of the TNI as an institution/institution.

Indonesia is a state of law and the main pillar in realizing the principle of the rule of law is the formation of laws and regulations and the arrangement of state institutions. In terms of role, according to the definition of experts, the definition of role is a dynamic aspect of position or status. A person carrying out rights and obligations means that he has carried out a role.

Second, regarding the improvement of laws and regulations, the formation of laws and regulations is one of the requirements in the framework of developing national laws which can only be realized if supported by definite, standard, and standard methods and

methods that bind all institutions authorized to make laws and regulations invitation.

There are two kinds of legal development strategies which ultimately have implications for the character of the legal product, namely the development of "orthodox" law and the development of "responsive" law. In the orthodox legal development strategy, the role of state institutions (government and parliament) is very dominant in determining the direction of legal development so that it is more positivist-instrumentalist, which is a powerful tool for the implementation of state ideology and programs. Meanwhile, in a responsive legal development strategy, it produces laws that are responsive to the demands of various social groups and individuals in society.

The law concerning the formation of laws and regulations is the implementation of Article 22 A of the 1945 Constitution of the Republic of Indonesia which confirms that further provisions regarding the procedure for the formation of laws are further regulated by law. The order has been implemented, namely with the enactment of Law Number 10 of 2004 concerning the Establishment of Legislation which was later replaced by Law Number 12 of 2011 concerning the Establishment of Legislation.

However, from the several improvements made to the Law on the formation of legislation, there is no limitation on the phrase changing the umpteenth time in the title of a law. As a result, there is confusion from law users over which arrangements are still in use and the mention of a law. Incidentally, this happened in 3 (three) laws that have been revised up to the third amendment and some even up to the fourth amendment which can be seen from the title of the law. Of course this will affect the parties related to the regulation.

According to Purnomo Sucipto, an observer of laws and regulations, in his article "what you need to know to make laws and regulations" Legislation is not an opinion or academic article that is made based on opinion or theory alone. Opinions and articles do not have the power to compel others to do or not to do. On the other hand, laws and

regulations are legal documents that have sanctions consequences for the parties being regulated. Legislation is also a political document that contains the interests of various parties. Broadly speaking, several things that lawmakers need to know include: 1) knowing the theory of legislation, 2) knowing the process of making laws and regulations, 3) knowing special things, 4) knowing general things.

In relation to the formation, refinement and synchronization of legislation related to the handling/eradication of acts of terrorism, it is necessary to apply the principles of establishing laws and regulations. Based on Article 5 of Law Number 12 of 2011 concerning the Establishment of Legislations, in forming laws and regulations it must be carried out based on the principles of establishing good laws and regulations, including: a) the principle of clarity of purpose, b) the principle of institutional or official the right shaper, c) the principle of conformity between types, hierarchies, and content material, d) the principle can be implemented, e) the principle of usability and effectiveness, f) the principle of clarity of formulation, g) the principle of openness.

Several laws that need to be amended or revised include: 1) Law Number 3 of 2002 concerning National Defense (UU Hanneg), 2) Law Number 34 of 2004 concerning the Indonesian National Army (UU TNI), 3) revisions Law No. 15 of 2003 concerning the eradication of criminal acts of terrorism, 4) establishment of regulations for implementing OMSP's duties in overcoming acts of terrorism.

Meanwhile, the results of interviews with members of the Indonesian House of Representatives from Commission III of the PPP faction, confirmed that to implement the provisions of Article 7 paragraph (2) letter b number 3 it is more appropriate if it is made in the form of a Presidential Regulation. The reason is because the TNI Law does not regulate the delegation of OMSP tasks through the PP as mandated in Article 5 paragraph (2).

The same thing was expressed by Muhammad Syafei as Chair of the special committee for the Terrorism Bill from the DPR RI who emphasized that to implement the provisions of Article 7 paragraph (2) letter b number is through the establishment of a Presidential Regulation as an attribution of Article 4 paragraph (1) of the 1945 Constitution. Researchers do not agree with Dirikum Strahah Kemhan Anang Puji Utama who emphasized that if the provisions in Article 7 paragraph (2) letter b number 3 are implemented based on a Presidential Regulation, and then it is not in line with the constitution of Article 5 paragraph (2). According to the researcher, the regulation in the Government Regulation will contradict the provisions of Article 5 paragraph (2) considering that in Article 7 paragraph (2) there is no delegation of OMSP tasks regulated by PP. Meanwhile, the establishment of PP is a statutory regulation in Indonesia which is determined by the President to carry out the Act as it should.

The content of the Government Regulation is material for implementing the Law. In the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislations, it is stated that Government Regulations as "organic" rules rather than laws according to their hierarchy must not overlap or contradict. Based on the description above, the researcher can conclude that the Government Regulation which is abbreviated as PP cannot be formed if there is no law which is its parent, PP cannot include criminal sanctions if the Act which is its parent does not include criminal sanctions, PP cannot expand or reduce from the provisions of the parent law, and the PP is not intended to implement the 1945 Constitution or the MPR provisions, but the Law as stipulated in Article 10 of Law no. 12 of 2011. This is in line with the formulation in Article 1 number 5 which states "Government Regulations are laws and regulations that are stipulated by the President to carry out the Law properly.

The last one is the ratification of international conventions tied to terrorism. As a manifestation of the commitment of the

Indonesian people to fight and eradicate terrorism in the world, Indonesia needs to ratify several international conventions dealing with terrorism. This is important because Indonesia needs a legal umbrella in order to combat acts of terrorism both at home and abroad. The general regulations of the government in lieu of law Number 1 of 2002 include: 1) international conventions on terrorism, 2) international conventions relating to international conventions on terrorism.

It is hoped that the Indonesian government and the Indonesian House of Representatives will ratify all international conventions related to terrorism in order to anticipate if terrorist acts occur outside the territory of Indonesia so that they have a legal umbrella that can be used to combat acts of terrorism in various countries.

#### **4. CONCLUSSION**

Efforts to overcome obstacles related to the implementation of the TNI's authority: a) Terrorism must be redefined not limited to the form of qualifying criminal acts, but is a threat to ideology, state sovereignty, territorial integrity and the safety of the whole nation, national and international state security. b) The terrorism law must be restructured by restructuring the involvement or role of ministries, institutions and other components of the nation through prevention, prosecution and recovery. c) it is necessary to immediately establish implementing regulations from the provisions of Article 7 paragraph (2) letter b number 3 of Law Number 34 of 2004 concerning the Indonesian National Army so that there is a legal umbrella for the TNI in overcoming acts of terrorism.

Researchers also provide suggestions such as; the effort to overcome is by redefining the notion of terrorism as a crime against the State that threatens the sovereignty of the State. In addition, it is necessary to restructure the law by placing various state institutions, especially the TNI, in dealing with acts of terrorism, starting from the stages of prevention, prosecution and recovery. Immediate establishment of implementing



regulations from the provisions of Article 7 paragraph (2) letter b number 3 of Law Number 34 of 2004 concerning the Indonesian National Army, namely in the form of a Presidential Regulation whose substance contains the role of the TNI in overcoming acts of terrorism starting from the stages of prevention, prosecution and recovery.

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