

Paralegals and Women Access to Justice : Making Access to Justice of Women Victims of Violence Effective

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Abstract

This study responds to the fact that the high number of violence against women (KtP) and the weakness of access to justice of women victims of violence, whereas the Government of Indonesia has issued various laws and regulations to protect women. This shows that the face of women, especially women victims of violence in law and social life in Indonesia is very complex. The main obstacle faced by women victims of domestic violence (KDRT) in Surakarta City in accessing justice is the low awareness and understanding of their legal rights. To assist the constraints faced by women victims of violence in accessing justice, the role of intermediaries in this paralegal becomes very important. Therefore, this study will explore the deepening of the role effectiveness and constraints faced by paralegals in the fulfillment of access to justice for women victims Violence in Surakarta City. The purpose of this study is to orient theoretical development on the study of violence against women and access to justice. This research uses qualitative socio-legal method that is interdisciplinary approach to law; Is an alternative approach to conduct an examination of legal studies that are doctrinal. In particular, there are three reasons why the role of paralegals is crucial in helping women victims of access to justice. First, paralegals play the role of "familiarization" of the legal system for poor and marginalized groups such as women victims of violence. Second, paralegals are more accessible to women's groups. In addition to being easy to find, legal services by paralegals are cheaper than similar services provided by lawyers or advocates. Third, paralegals influence the power relations and bargaining position of women groups that can be seen from reaction changes and other parties' responses including responses from government institutions and law enforcement agencies. In general, paralegals apply methods of empowerment, education and legal training and representatives of justice seekers. In addition to seeking justice seekers to obtain justice in a real sense, paralegals also build social movements capable of encouraging the settlement of cases and enforcement of women's rights. Constraints often faced by paralegals in assisting women victims of access to justice are the absence of formal legitimacy for paralegals in terms of legislation, the lack of funds owned by institutions where paralegals are sheltered and formal education level problems for uneven paralegals.

Keywords: Access justice, Women victims of violence, Paralegal.



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1. Introduction

Studies show that women's access to justice is still very weak (UNDP, 2007), (Asia, 2001), (Deepa, 2000). Similarly, women's access to justice in Indonesia. Indonesia has a long history of accessing women to justice. History notes that the first Indonesian Women's Congress on December 22, 1928 was able to invite over a thousand women to discuss issues of women's rights enforcement in marriage and divorce, marriage of minors, women's education, and vision of the future women's movement (Blackburn, 2007). However, the women's movement to increase women's access to justice has surfaced since the last two decades as the growth of various women's organizations. The establishment of several women's organizations such as Solidaritas Perempuan (SP), the Legal Aid Institute of the Indonesian Women for Justice (LBH APIK), and the National Commission on Violence Against Women (Komnas Perempuan) became the momentum that encouraged the realization of access to justice for women in Indonesia.

Talks on women's access to justice are particularly relevant because up to now Indonesian women still face many obstacles in accessing justice through legal and justice mechanisms. This lack of access to justice further leads women to be further trapped in poverty (Dewi, 2005). This is because, among other things, women often lose their rights to assets and resources when they have legal cases, especially when they can not get a fair cases.

Various studies and reports have revealed various obstacles facing women in accessing justice. The main obstacles are generally the low awareness and understanding of their legal rights (UNDP, 2007). Meanwhile, Dewi (2005) outlines three main challenges of women in seeking justice, namely legal awareness and women's rights, limited capacity of state and non-state legal mechanisms and the role of mediators.

To assist the constraints faced by women in accessing justice, the role of intermediaries such as paralegals, local elites, local activists and even organizations such as NGOs that provide assistance, support and services to women is essential. Particularly in Indonesia, where trained lawyers are very expensive and transportation is often a hindrance, paralegals are an important tool for improving women's access to justice. In general, paralegals are people who provide assistance to fight for justice in society. This paper describes the effectiveness of roles and constraints faced by paralegals in the fulfillment of access to justice for women victims of violence in the city of Surakarta.

2. Literature Review

How can the issue of violence against women be approached with the approach of access to justice? Theoretically, this study entered the realm of Legal Development discourse followed by the Rule of Law Orthodoxy Movement, which for decades quite dominated. The failure of both movements is criticized. Departing from the standpoint of legal reform, a new paradigm: the Rule of Law linked to legal empowerment and Access to Justice for women victims of violence will be offered through this study.

Access to justice is an issue that is widely discussed by various circles and attracts the attention of epistemic society throughout the world. This issue arose as a result of the failure of the "Law and Development Movement" which was socialized to Third World countries around the 1960s by lawyers and donors from the United States. The goal is to create democracy in newly independent countries by applying new economic and legal models that were once applied in Western countries.¹

The movement was followed by a movement called "Rule of Law"² (State of Law) after the end of the Cold War. Unfortunately, this movement again experienced the same failure. The development program under the Rule of Law Movement failed because it was designed top down with state-centered, and too much attention was paid to the official legal institutions.³ This Western legal model does not fit the context of developing countries. Learning from the mistakes, the new program was re-introduced, namely "Access to Justice" - or often associated with another terminology "Legal Empowerment". The program is designed to invite more community participation and a range of expertise with an interdisciplinary background. Many theories about access to justice are now evolving, both in academic context, in the interests of projects and development programs⁴.

Access to justice is known as a method of legal reform with a bottom-up approach or an approach that begins with community experience at the grassroots level (Von, 2009). Before the seventies, access to justice focused more on legal aid (Bedner et al., 2009). Until now, most of the research on the issue of access to justice is also still discussing the topic⁵. Nevertheless, much experience has shown that access to justice not only focuses on justice or legal institutions, other mechanisms and channels have been recognized to help open access to justice. The prime position of the state courts as the sole means of 'obtaining justice' is in fact not supported by empirical facts. For justice is not only obtained through state institutions and lawyers is not the only access to justice. With the increasing variety of recovery mechanisms in modern countries the concept of access to justice has been expanded by incorporating other forms of justice. Hezel Genn, among others, discussed media and mediation mechanisms that became an alternative to access to justice outside the court mechanism⁶. However, for the Indonesian people, access to justice involves a broader set of challenges. In the Indonesian context, the combination of the state law and justice system (court) and non-state (customary mechanisms or other local mechanisms), many indigenous mechanisms have more role in resolving disputes at the local level⁷. At least, some studies show that the majority of cases and disputes brought to previous state (court) law mechanisms have been through non-state justice mechanisms such as deliberation or mediation⁸.

Moreover, Sen. (1995) asserted that access to justice in general also implies the existence of "freedom to achieve something" and specifically "the ability to function". Thus, access to justice is not merely meant as access to the settlement of cases, but also related to the rights and abilities of a person to determine his or her life and future, namely human rights as human.

In the context of Indonesia, access to justice is generally guaranteed in the 1945 Constitution of the Republic of Indonesia through Article 1 (3), Article 27 (1), Article 28D (1) and Article 28I (1), as a form of human rights that must be met. Furthermore, there is a strong legal basis in the legislation in Indonesia for the development of a national strategy of access to justice and law:

1. The Indonesian 1945 Constitution - Article 28D (1) stating "everyone is entitled to the recognition, guarantee, protection and legal certainty and equality before the law."

¹Thomas Charother argues that the problem lies in the imbalance of adequate knowledge about the roots of legal culture in the developing world. See also Benda-Beckman, David Trubek and Marc Galanter.

²Carother defines the Rule of Law as a system in which the law is public knowledge, are clear in meaning, and apply equally to everyone. The Rule of Law movement aims to build a business- and investment-friendly legal system. Because of the failure of the Rule of Law, Stephen Golub cites his programs as the Orthodox Rule of Law (2005, 2006).

³Because of the failure of the Rule of Law, Stephen Golub cites his programs as the Orthodox Rule of Law (2005, 2006). The circumstances in which the actors involved in the program design do not fully realize that the program is not supported and not rooted in the recipient community, likened to "a house without foundation" by Golub,(2006)

⁴See Bappenas, UNDP, Justice for the Poor and Bedner.

⁵As example.

⁶See in Genn,(1999)

⁷Keebet,(1986) The Broken Starways to Concensus, Dordrecht, Foris.

⁸See Justice for Poor, Social Development Unit, World Bank Indonesia May 2008, Forging the Middle Ground, World Bank Indonesia, Jakarta.

2. Law No 12 of 2005 which affirms the international convention on Civil and Political Rights, serves as a legal umbrella for fair trials, equal treatment before the courts, the right to legal aid, the right of appeal and so on.
3. Law No 7 of 1984, which affirms the international convention on the Reduction of All Forms of Discrimination against Women, guarantees legal protection and freedom of discrimination against women.
4. Government Regulation No 7 of 2005 on the Medium-Term Development Plan (2004-2009) confirms the important role of legal access and justice in bridging economic interests and national social development, highlighting Indonesia's "justice and democracy" as one of three development agendas.

Unfortunately, the existing studies generally still see the general poor's access to justice. There are still very limited studies focusing specifically on women as the most vulnerable groups in the category of the poor as seekers of justice (see, for example, (UNDP, 2007), (Asia, 2001).

Women's access to justice is closely linked to the specificity of issues and issues faced by women. Women's issues were chosen as a component of access to justice because of the general presence of women as part of disadvantaged groups. Much of the thinking of women's studies in the last decade has approved the existence of women as part of a disadvantaged / marginalized group. This is not due to their sexuality as women, but more complicated because women have been placed in intersexual relationships of race, class, colonialism, and naturism (Tong, 1998); (Sandra, 1987); (Henrieta, 1988); (Shiva, 1993). Women belong to disadvantaged groups, because they are poor, backward, racial, ethnic, and religious minorities. The explanation of the marginalization of women in the literature above focuses on the absence of women's power in the relationships between themselves and those around them, including husbands, relatives (traditional authorities) to the elite of power in government.

This study focuses more on the access of women victims of violence against justice. In general, violence against women is the result of women's "vulnerable positions" due to the still strong "discriminative-subordinative patriarchal culture" and "lame power relations" in relationships between men and women, husbands and wives, children and parents, laborers and employers, people and countries, teachers and students, as well as between subordinates and superiors.

Violence against women is often unrecognized, even victims do not consider violence as a form of violence against women. Patriarchal society places violence against women as a natural thing. This is influenced by the interpretation of religious teachings, legal culture and customs that perpetuate the patriarchal system.

The patriarchal system inhibits women victims of violence finds an awareness that they are experiencing violence. A false understanding of violence against women affects the victim in making decisions. Women victims feel embarrassed and consider the violence that they experienced as a disgrace that must be closed tightly. Although the victim knows that herself, friends, neighbors, other family members and even her mother experience violence, the victims and other members of society have not seen violence against women as a structural problem in society. The imbalance between women and men is often not considered the root cause of violence against women. As a result, women victims feel violence as a destiny to be received and a proper punishment for women.

As victims of violence, women often experience psychological trauma; the victim feels powerless to face the violence she experiences, and even gets caught up in a cycle of violence that prevents her from tackling or seeking help over the violence she experiences. In such a volatile and traumatized position, the victim has not been able to make the best decision for himself.

The absence of power impedes access to justice for women victims of violence, they are hindered by lack of legal knowledge of their rights to be treated justly before the law, obtain adequate legal services and assistance when they need, often unfairly treated in the judicial process (Sulistiyowati *et al.*, 2006).

The absence of equal access to women's justice is also linked to issues of upholding the principle of "equality before the law" in legal practice. Ideally this principle can only be effective if everyone has equal access to resources and justice. How the principle of equality before the law will be applied in this unequal situation. Women who are in the marginalized and unprofitable position will most likely lose. It has never been thought of fundamentally that poverty and "marginalizedness" are due to political and economic constructs endorsed by various (legal) policies, which distance women from access to justice and resources.

The knowledge of women victims in accessing justice that put the position and condition of women in the patriarchal society as an object, became an awareness of their rights as women and as citizens. Women's knowledge of their rights not to be subjected to persecution, no cruel, off-the-ground acts or punishments is a culmination point that motivates victims to escape violence. This is in accordance with the obligations contained in Article 5 letter (a) of Law No 7 of 1984 on Ratification of CEDAW, regarding the obligation to abolish customs, prejudices and mindsets of superior behavior over men and women.

It is in this context that strengthening the knowledge of women victims with the support of family, companion, and community is needed. This awareness of justice is the basic foundation of decisions taken for women victims.

The description shows the importance of women victims of violence advocated to gain access to justice because gaining access to justice is a women's right, where women's human rights are part of human rights, which can not be separated from the history of human rights development.

3. Methodology

This research is theoretical with socio-legal approach. socio-legal studies are an interdisciplinary approach to law; is an alternative approach to conduct an examination of legal studies that are doctrinal. More specifically this research uses qualitative socio-legal methods. This research will be carried out in two stages. The first stage of the

researcher conducts field research activities through a socio-legal approach. Here, the researchers go directly to the target of women victims of violence (survivors) and paralegal who are members of the Paralegal Forum of Kota Surakarta and women victims of violence with informants who are selected by purposive with the number between 15-30 informants. At this early stage, field data is needed in order to deepen the role of paralegals in the fulfillment of access to justice for women victims of violence. The data collection techniques chosen were through indepth interview, focus group discussion (FGD), and documentary study. Data analysis is done through two ways, namely content analysis technique and interactive analytical technique. Phase Two, based on field research results, a community-based paralegal strategy will be developed to fulfill access to justice for women victims of violence. This strategy will be used as a means of prevention when women victims of violence have difficulty accessing justice. In subsequent developments, paralegals strategy in the fulfillment of access to justice can also be adopted by certain paralegal forums or multi stake holder forums (MSF) that have intermediary function.

4. Results and Findings

Poor and marginalized groups, including women victims of violence, are often marginalized and even victimized by positive law. The formulation of positive law made as if 'neutral' often just implicate unjust in practice, because society is in fact not homogeneous. There is a lame power relation due to social differences (class, gender, race, ethnicity, etc.). The interests of powerless groups are often unaccommodated in the existing legal formulation. Even if there are laws that regulate, often inadequate. In such a situation, the role of paralegal becomes significant.

More specifically, women's experience of violence and discussion on the definition of access to justice shows that women victims of violence face challenges in seeking justice. This makes the role of paralegal important. The role of paralegals in Surakarta and the obstacles they face in improving women's access to violence against justice will be discussed in this section in more depth.

Black's Law Dictionary (Black, 1979:1001), paralegal adalah "a person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer or no is otherwise authorized by law to use those legal skills. Based on this understanding, the so-called paralegal is someone who has legal skills but is not a legal counselor (professional) and works under the guidance of an advocate or who is judged to have the legal capacity to use his or her skills.

Meanwhile, the definition of paralegal among perpetrators of Legal Empowerment for example used by (Golub, 2006). Golub, "paralegals are laypersons, often drawn from the group they serve, who receive specialized legal training and who provide various forms of legal education, advice, and assistance to the disadvantaged" (Golub, 2006). Vivek Maru provides a formula that is not much different based on his experience developing paralegal program in Sierra Lion. It offers the definition of paralegal as, 'laypeople with basic training in law and formal government who assist poor and otherwise disempowered communities to remedy breaches of fundamental rights and freedom' (Vivek, 2006).

Ravrindan (1989) formulates the definition of paralegal as follows:

"a person who has basic knowledge of law, both formal and formal law and the motives, attitudes and skills to: implement educational programs so that disadvantaged people are aware of their rights; facilitate the formation of popular organizations so that they can prosecute and fight for their rights; assist in mediation and reconciliation in the event of a dispute; conducting preliminary investigations into cases that occurred before being handled by lawyers; assist lawyers in making statements (lawsuits / pleadings), collecting necessary evidence and other information relevant to the case at hand" (Ravrindan, 1989).

It can be concluded that a paralegal is someone who specifically helps the community (the poor and the marginal), who because of special skills and have legal knowledge (basic) and able to provide services, legal education, guidance to the community. The term paralegal describes a person who has received special training in the field of legal knowledge and skills to provide information and assistance to resolve legal issues. Paralegals are a name that emerges as a reaction to the powerlessness of law and the legal profession to understand, capture and fulfill various social needs (community rights).

There are several characteristics of paralegals that distinguish them from advocates, among others:

1. Paralegals are more voluntary and not profit-oriented;
2. Their status is non-formal because it is outside the components of the criminal justice system;
3. Their targets are marginalized people.

In general paralegal recruitment can be divided into two ways, namely:

1. Publicly announced usually through leaflets in public places such as in the media or campus, after several applications of institutional entries (usually NGOs and LBH), begin selecting candidates for paralegals based on education, motivation, commitment, etc. Afterwards, there are several tests, including written test and interview, to know their insight and commitment, then those who pass the selection will be included in legal education and training for paralegals, because not all have legal background. This paralegal will be deployed in various handling, consultation, etc. In this type of recruitment, the institution usually looks for paralegals from students.
2. Paralegals are recruited when an NGO (Non Government Organization) is in the handling of a case in a particular area or community. This method of recruitment involves picking up the ball where in this case the NGO is actively visiting those communities. One example is SPEKHAM. In the PSDHM program (Community Legal Resource Development), they provide legal education and then the community is chosen by some of them to be SPEKHAM paralegals, but their role is only prioritized for their community, so that

in the event of problems, this paralegal can be a liaison from SPEKHAM to provide case handling at an early stage. Hence, this is where SPEKHAM can do two things simultaneously first they accompany the case and secondly in parallel SPEKHAM also conduct legal education in general for the community.

The results show that the role of paralegals in improving access to justice for women victims of violence in the city of Surakarta, namely:

1. Directly handling legal cases that arise in communities, especially marginalized groups (women, children, poor communities, workers, farmers, victims of environmental pollution, etc.).
2. Documenting cases up to help draft the law;
3. Striving for settlement of cases through mediation so that not all are brought to the formal / court;
4. Providing legal awareness to the community, especially women victims of violence;
5. Facilitating the community to understand the current legal and social issues and their root causes (critical thinking);
6. Mobilize self-help for the costs of victims of violence, there is even experience to involve victims in the organization by facilitating business / economic development and also in the framework of recovery and reinforcement;
7. Monitoring the occurrence of violations of human rights including the rights of women and children in the community and related to public services and at every level of case examination.

Based on the above roles, the paralegal function covers two sides, legal aid in litigation and legal aid in non litigation. In the context of non-litigation, paralegals perform the function of counseling women victims of violence. In this case paralegals provide first aid in case of violation of law. While litigation paralegals function is to support advocates in handling cases of violence against women.

Legal assistance that can be provided may include legal consultation, advocacy, legal counseling, case assistants, mediation and delegation of cases. In the context of litigation, since paralegals do not have permission to hold lawyers, the cases handed over are either handed over to LBH lawyers, law offices or NGOs, as long as the status of paralegals is still outside the criminal justice system and does not have a legal license as advocates.

Paralegal involvement in the handling of a case more because of a complaint from a prospective client to a paralegal institution shelter, after the problem is known then the agency to reduce paralegals to investigate cases and find facts useful in the defense of the client. If the case includes a collective case other than involving their paralegal, the agency also tries to involve their clients or local community leaders to become a paralegal for them. Hence, while handling their own case, they are also well educated to be paralegals for at least for themselves. In the future, they will be included in legal education and training for paralegals; so that whenever they are struck by a case they know what preliminary actions should be taken before the case is delegated to LBH or other legal office.

The practice of paralegalism in Kota Surakarta shows that it combines the focus of paralegal activities and services, namely empowerment and legal training with legal aid and case-handling services. Community-based paralegals are paralegals that are part of their own communities and are recruited by NGOs to provide services to the communities where paralegals are located. On the other hand, there are various legal aid agencies that have public lawyers' assistants who act as paralegals.

In particular, there are three reasons why the role of paralegals is crucial in helping women victims of access to justice. *First*, paralegals play the role of "familiarization" of the legal system for women victims of violence. As interpreters, paralegals make the rule of law meaningful in such a way that it can be understood by women victims of violence with a more familiar procedure (Lev, 2000); (Vivek, 2006). Similarly, paralegals make the formulation of problems, claims and common interests in line with the logic and language known in the formal legal system. *Secondly*, paralegals are more accessible to groups of women victims of violence. In addition to being easy to find, legal services by paralegals are cheaper than similar services provided by lawyers or advocates. *Thirdly*, paralegals influence power relations and bargaining position of women groups of victims of violence that can be seen from reaction changes and other parties' responses including responses from government institutions and law enforcement agencies even though each may differ.

In carrying out its role, there are some constraints faced by paralegals. *First*, there is no formal legitimacy for paralegals in terms of legislation. The Indonesian legal system does not have a single provision governing paralegals. Paralegals can exist because they fill the weakness in the implementation of the law that regulates the problem of legal aid such as Law No 18 of 2003 on Advocates jo Law No. 8 of 1981 on KUHAP jo Law No 16 of 2011 on Legal Aid in particular cannot be used as the juridical basis of the workings of paralegals at this time. Because, formally there is a clause that contains about paralegals but not clearly and firmly set about them. The Legal Aid Act only recognizes the existence of paralegals by referring to paralegals but is not further regulated and detailed regarding paralegals. Thus, the Legal Aid Law cannot legally protect paralegals.

Whereas some laws and regulations, such as Article 10 and Article 23 of the Law on Domestic Violence, allow paralegals to provide reinforcement, including the rights of victims in the legal process up to the court.⁹ The social

⁹Implicitly Paralegals appear in various other Legislation, including the Law on Environmental Management which gives the right to community groups to file Class Action, Undang-Undang No. 2 Tahun 2004 on the Settlement of Industrial Relations Disputes in Article 87 which authorizes the Trade Unions to represent workers / laborers in industrial relations courts, Undang-Undang No. 11 tahun 2012 on the Criminal Justice System of the Child Article 68 which provides authority to the Social Welfare Worker to assist the child facing the criminal justice system either as a victim, witness, or suspect / defendant. In addition, Tri Dharma Perguruan Tinggi mentioned in Article 20 paragraph (2) of 20 (2) Undang-Undang Nomor 20 Tahun 2003 on National Education System which reads "Higher Education is obliged to organize education, research, and community service, especially

workers and volunteer volunteers mentioned in the two articles above are part of the paralegal, where the work they undertake, among others, by providing legal consultation, legal awareness, and victim assistance and as a link between the victims and the criminal justice system that is the police, prosecutors and courts is partly from the scope of the paralegal work. This implies that the state recognizes that their role as paralegals is crucial to open access to justice.

The absence of juridical legitimacy against the existence of paralegals has always been an obstacle and constraint for paralegals in carrying out their roles and duties in the provision of legal aid services, both in the form of legality which is often questioned by various parties, especially law enforcement officers and the government. It tends to lead to resistance to paralegals so they cannot work optimally. The existence of juridical legitimacy of the existence of paralegals, of course, further strengthen the existence of paralegals, so that their future is expected to play a maximum role in the work of providing legal aid services.

Second, the lack of funds owned by the institutions where paralegals are sheltering, *third*, the issue of formal education level for uneven paralegals.

5. Conclusion

The Right to Justice is a contingent right of every Indonesian citizen as mandated and guaranteed in Article 27 (1) on Indonesian 1945 Constitution. Therefore, the recognition, protection and promotion and fulfillment in every policy and enactment of the law constitute basic human rights for every citizen in Indonesia including women.

Women as one of the disadvantaged groups experience difficulties in accessing justice when they face legal cases. To help the constraints faced by women in accessing justice, the role of intermediaries such as paralegals is crucial. Paralegals are an important tool for improving women's access to violence against justice.

Three reasons why the role of paralegals is crucial in helping women groups access justice. *First*, paralegals play a "familiarization role" of the legal system for women's groups. *Secondly*, paralegals are more accessible to women's groups. *Third*, paralegals influence power relations and bargaining position of women groups that can be seen from reaction changes and other parties' responses including responses from government institutions and law enforcement agencies.

In general, paralegals apply methods of empowerment, education and legal training and efforts to represent women seeking justice. In addition to trying to make women justice seekers able to obtain justice in a real sense, paralegals also build social movements that are able to encourage the settlement of cases and enforcement of women's rights.

The constraints often faced by paralegals in helping women victims of access to justice are lacking formal legitimacy for paralegals in terms of legislation. Indonesia's legal system does not have a single provision on paralegals. Paralegals can exist because they fill in the weaknesses in the implementation of Law No 18 of 2003 on Advocates jo Law No 8 of 1981 on KUHAP jo Law No 16 of 2011 and the social legitimacy of its community. Whereas the Law on PKDRT allows paralegals to accompany victims and provide strengthening, including the rights of victims in the legal process to the court. Thus, the recognition of the existence and role of paralegals is still very limited. Another obstacle is the lack of funds owned by institutions where paralegals are sheltered and the issue of formal education level for uneven paralegals.

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