

A LITERATURE REVIEW OF COERCIVE ISOMORPHISM ON CORPORATE LEGAL RESPONSIBILITY IN INDONESIA

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Abstract

This paper analyzes the effect of coercive isomorphism (legal system) in Indonesia. It is necessary to improve a kind of reform in a directed and integrated manner, both related to codification and specific legal fields, to support the development in various aspects of society. If we refer to the Law Outside the Criminal Code, there are several crucial issues, such as accountability for criminals as subjects of criminal Law. This research is a literature study as a review of corporate criminal liability by using the method juridical empirical. From a series of studies and in-depth studies conducted, the authors found several systems of corporate criminal liability, such as doctrinal Strict Liability, the doctrine of Vicarious Liability, and the doctrine of direct corporate criminal responsibility, to the teachings of the Corporate Culture Model. For example, in applying the Vicarious doctrine, liability to corporations is contained in Article 116 paragraph (2) UUPPLH. Some of the results of the studies in this study led to an evaluation and essential recommendations related to aspects of corporate criminal liability in the legal system in Indonesia.

Keywords: *Liability, Corporate Crime, Indonesian Legal System*

I. INTRODUCTION

Renewal and modernization are activities carried out to bring the Public to planned changes or desires. In-room scope natural development is changing social planning, development law has become unnecessary needs inevitable, though planning in the economy is a salient aspect. Because the law could be made backup framework for supporting current business conducted to build society, ok by the physique as well as spiritually². Needs will law in development and modernization, visible clearly in the direction of the Outlines of State Policy (MPR Decree No. II /MPR/1998). concerning development in the field of law, among other things mentioned that: " In " skeleton development law need upgraded effort update law by directed and integrated including codification and unification fields law particular for could support development in various field by demands development, as well as level awareness evolving laws and dynamics in society. "

In Indonesia, the criminalization process Keep going in progress since the proclamation of independence until now and will not stop. This thing could be

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² Satjipto Raharjo. *Hukum, Masyarakat dan Pembangunan*. (Bandung: Alumni, 1980), p. 5

understood with issued Constitution Number 1 of 1946 and its emergence laws outside the Criminal Code, among others, are: Constitution Follow Economic Crime (Law Number 7 of 1955), Law Eradication Activity Subversion (Law Number 11 PNPS of 1963), Law Narcotics (Law Number 35 of 2009), Law about conditions tree Management Environment Life (Law Number 32 of 2009)³. However, Constitution Scope Life as regulator must be suitable with principle universal law, then levels of regulations apply below The Constitution can apply or enforced, regulations that no can contrary with more law tall that⁴. In Adapted laws outside the Criminal Code tree problem in law interesting crime for highlighted and studied by deep, that is concerning crime and liability criminal legal entity whose activities are run by administrators like managers, directors of legal entities. The question is prohibited acts, people who do prohibited acts, and punishment. Because, in the process of updating law National Criminal Code (KUHP), third problem tree the have problems alone, each related close to rights primary human⁵.

In-room scope, problem accountability criminal will put legal entity issues (in the description next used term corporation) as a subject or maker or perpetrator (dader) act criminal, prohibited act for conducted corporations and problems criminal or sentencing corporation. The problem tree about error contains a problem that is not easily solved, i.e., concerning corporation as subject law criminal and maker act criminal. Because still very much circle law, ok academics nor practitioner law against the corporation as maker act criminal and can accountable because corporation impossible could do error. As in law, the known criminal principle has gone criminal without error (Geen Straf Zonder Schuld). However, according to Romli Atmasasmita, the doctrine of criminal law has simplified the problem about what you mean by human acts so that it "makes it easier" for him to request accountability for criminals and, therefore, could sentence criminal law (easing the burden of proof)⁶.

Farther in view expert criminology critical (critical criminologist), namely something deed called or classified as act criminal because Constitution mentions it as a crime; no solely because actions are considered wrong from herself alone. In general, the Indonesian Criminal Code still embraces the principle that something criminal could only be carried out by humans (natuurlijke person), so legal entity fiction (rechtspersoon) is not applied in criminal law. However, some regulation

³ Muhamad Romdoni. 2022. *The Reconstitution of Death Criminal Imposition against Persons of Criminal Actions on Narcotics Post-Decision of the Constitutional Court Number 2-3/PUU-V/2007*. LEGAL BRIEF, 11(2), 508-519. Retrieved from <http://legal.isha.or.id/index.php/legal/article/view/154>

⁴ Satya Arianto. *Politik Hukum 1*. (Jakarta: Postgraduate Program University of Indonesia, 2001) p. 16

⁵ Hamza Hatrik. *Asas Pertanggungjawaban Korporasi dalam Hukum Pidana Indonesia (Strict Liability dan Vicarious Liability)*. (Jakarta: PT RajaGrafindo Persada, 1996) p. 4.

⁶ Romli Atmasasmita. *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan (Geen Straf Zonder Schuld)*. (Jakarta: PT Gramedia Pustaka Utama, 2017) p. 160.

legislation outside the Criminal Code has started to deviate from the principle⁷. However, Article 3 of Perma No. 13/2016 states that: that;

"a criminal by a corporation is the act of punishment that can be requested accountability criminal to the corporation following Constitution who arranges about the corporation. Follow criminal by corporation this is act crimes committed by people based on connection wor or based on connection other good individually nor together to act for and above name corporation inside and outside environment corporation."

In PERMA, the judge stated that a corporation To makes errors that can be punished if:

- 1) Corporation could get profit or benefit from act criminal the or act criminal the conducted for interest corporation;
- 2) Corporations let happening act criminal;
- 3) Corporation no To do necessary steps for To do prevention, prevent more impact extensive and sure obedience to provision applicable law To use avoid happening act criminally⁸.

To corporations as perpetrators act criminal environment life not only limited placement corporation as the subject of Criminal Law but need provision special about "responsibility criminal" for the corporation. From the description background behind writer will discuss and analyze related Accountability criminal to corporations that act criminal based on Constitution Number 32 of 2009 concerning Protection and Management Environment live.

This research is library research. Library research is research on the basic rules of criminal prosecution against corporations using substitute liability (Vicarious Liability) according to laws and regulations and relates it to John Locke's thoughts on The Second of Government. The method used in understanding and approaching this research's object is juridical empirical. The juridical method (law is seen as a norm or *das solen*) uses written legal materials in discussing this research problem, then secondary legal materials—empirical approach (law as a social, cultural, and *das sein* reality). The empirical juridical approach means analyzing the problem by combining primary legal materials (secondary data) with primary data obtained in the field, namely about law enforcement against criminal liability in corporations that commit environmental crimes.

II. DISCUSSION

History of Corporations as Subjects of Criminal Law

In treasure law, Roman unity corporation called a university includes countries, municipalities, and associations or gatherings moving private in religious,

⁷ Mardjono Reksodiputro. *Kemajuan Pembangunan Ekonomi dan Kejahatan. Kumpulan Karangan Buku Kesatu*. (Jakarta: Center for Legal Services and Service, University of Indonesia, 2007), p. 69.

⁸ Regulation Supreme Court Number 13 of 2016 Regarding Procedure Handling Case Act Crime by Corporations.

political, social, and commercial fields. Term society delinquent nonpotest created by Pope Innocent IV with confirmed that no like humans, who have will and soul, which is subject sentencing God and emperor, the university is fiction that does not have a body and a soul, and therefore no could be convicted⁹. In line with the times' development, corporate crime types are often used in various contexts and naming. Anyone using white collar crime, corporate crime, organized crime, business crime, syndicate crime, etc . various name, meanings, and space scope whatever you want related to corporate crime or crime corporation, basically and in nature, crime corporation not something new stuff. What is new in packaging and shape as well as embodiment nature okay said by fundamental is identical, even the impact is worrying and felt harmful Public already known since time immemorial

In ancient times, the development of corporations was seen with the formation of the group that happened like in the people of Asia Minor, the Greeks, and Romans. In development, groups in Rome shape an organization whose function is similar to today's corporation. At the dawn of modern times, development corporations were influenced by the business nature of trade, the more complex in European countries, for example, in the UK. Sentencing dropped only to people from to law. Roman brought the French to Holland and later arrived in Indonesia¹⁰. View from side history, confession corporation as subject law that can do act punishment that can be requested accountability by criminal already in progress since 1635. Confession started when system law English confessed that a corporation could be responsible by criminal but only limited to criminal action light.

Unlike system law in England, in the United States, the existence of corporation as subject law recognized crime, could act criminal and request accountability by criminal new recognized existence in 1909 through decision court. Accountability corporation in law criminal appear not through in-depth research from the experts but is a consequence of trend formalism law (legal formalism). Doctrine accountability criminal corporation has developed without existence theory that justifies it—reception corporation as subject law like a man only through role court. A judge inside system law common law To make something analogy on subject law human, corporations also have identity law and control riches from a manager who created it.

After thinking about accountability corporation on action administrators, experts look for base justification for the need for corporation burdened accountability in criminal law. This thing is based on such a reason appearance, for example, because the corporation is perpetrator main in the world economy, so that presence law criminal considered as the most effective method for influence actions

⁹ Muladi and Diah Sulistyani RS. *Pertanggungjawaban Pidana Korporasi* (Corporate Criminal Responsibility). (Bandung: Alumni, 2013), p. 10.

¹⁰ Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. (Jakarta: PT Raja Grafindo Persada , 2005), p . 80.

administrator corporation. Besides, Placement corporation as a subject in law criminal no miss from modernization social. According to Satjipto Rahardjo, modernization social impact first must recognize that the more modern society will be, the more complex system social, economic, and political, then the needs will system control formal life will Become bigger too. Life social no could again submit to the pattern of relaxed rules but desired an increasingly organized, clear, and detailed existence. Even though ways like that are possible, Fulfill needs life to develop with many problems.

Related to history corporation as subject criminal law, Indonesia which adheres to system law Europe Continental (Civil Law) a little left behind with countries that adhere to system common law like UK and USA. In Indonesia, corporations as subject law criminals known since the year 1951 listed in Constitution hoarding stuff. However, it started known larger in Constitution Follow Economic Crime, namely Article 15 paragraph (1) of Law no. 7 Drt. 1955. Corporations are set as subject law criminal because of development and change in society, so Thing this no inevitable again. Development of the law that happened gradually becomes a receptacle for the interest of society because corporations also have rights and obligations.

Forms of Corporate Crimes against the Environment

Crime corporation concerning Public areas, one form crime that happened is on the environment live. Pollution of environmental life in the form of pollution of water, air, dust, and others, in general, is a consequence of activity corporation. This is the problem in developing countries that experience rapid development in industrialization, including our country Indonesia. Crime corporation in the field environment life forms deviation corporation in To do activity business that damages environment live. P deviation corporation could distinguish in several types shine power the damage to environment lives. John Elkington composes four types company/corporations based on power and the damage to environmental life with the use of metaphor insects four types of the corporation are:

a) Corporation Caterpillar (caterpillar)

Caterpillar is capable of insects devouring foliage in time momentarily and only leaving frame and fin. In an economy dominated by caterpillar corporations, the natural resource will devour such an appearance for the importance alone on sacrifice sustainability environment life and life so damn economy. Wibisono equates corporation caterpillar with getting a rating black

b) Corporation grasshopper (locust)

Rated company red, according to wibisono, it fits entered in type this. They exploit source power natural beyond power and Support ecological, social, and economical. The impact is very degenerative, regional, and international. This company considers CSR (corporate social responsibility) as a cost. Because of

that, they now carry out CSR when they get pressure from society.

c) Corporation Butterfly (butterfly)

This company has concern for the environment, life, and society. Rated company green enter in type this. Wibisono said several companies included rank/type this, like PT. Petrokimia Gresik, PT. Semen Gresik Tbk., and PT Riau Andalan Pulp and Paper.

d) Corporation Bee Honey (honeybee)

Different from corporation degenerative grasshopper, corporation this precisely character regenerative. Sadly until now, not yet no company can be entered in this type. In the Proper version, the company ranked gold.¹¹

From change a san this, the author gives something description that destructive company environment more many companies that get appreciation from the government in effort preservation in the field environment live. Several examples of polluted environments live in Indonesia, among others; First is the Pollution of the Tapak River in Semarang. Pollution by factories from seven companies causes a loss of population Hamlet Semarang site. Case pollution that causes a surrender population and explodes becomes an angry mass because they have 14 years harmed by the disposing company polluting waste, garbage settlements, fishponds, and shrimp, which is an eye livelihood tree During this.

Case second, the polluted water and air in Gersik metal heavy and sour. This impact threatens the economy Public local because hundreds of hectares of pond shrimp and livestock bird swallow threatened to fail harvest. Shrimp in the pond many dead, and birds swallow go from the nest. One result is astonishing research revealed by Vera Hakim¹², who said that the level of pollution in the area Kenjeran has been very worrying for inhabitants of Surabaya, specifically the government area.

Corporations as Legal Subjects

Different from legislation criminal other specials like Constitution Number 7 of 1995 concerning Follow Economic Crime and legislation criminal fiscal, criminal against legal entities or corporation possible, in Thing This is the 1971 PTPK Law following: law criminal general law (KUHP) which stipulates in Article 59,¹³ namely as following *"In punishment things determined because violation to the administrators, members a governing body or commissioner, no dropped punishment on administrator or administrator or commissioner if it turns out that he no join mix hand in To do violation that "*

Mature this, in knowledge law criminal has received good among academics

¹¹ Muhammad Topan, *Kejahatan Korporasi Di Bidang Lingkungan Hidup Perspektif Viktimologi dalam Pembeharuan Hukum Pidana Di Indonesia*, (Bandung; Nusamedia, 2009), p.122.

¹² A Researcher from the University of Indonesia in the research *Heavy Metal Contamination and Nutritional Status of Lactating Mother and Their Children in Kenjeran Surabaya Indonesia*.

¹³ Criminal Code

nor circle practitioner something crime specifically involving _ company called *corporate crime* corporate). Sometimes for crime corporation this also called the term " crime " corporatio" or *organizational crime*. Crime organization must distinguished with " crime "organized" (*organized crime*)", because with *organized crime* meant is organized crime that is crime that has syndicate crime, like the mafia. In system law civil the netherlands arrived moment this still adopted by the system law in Indonesia, known as subject law divided Becomes two form that is first, human (*person*) and second, legal entity (*rechtperson*). From division subject law the above, if corporation this is something subject law that can to do connection law, then corporation including in legal entity qualification (*rechtperson*).

A legal entity (rich person) is a subject law that has their rights and obligations alone even though no human (person), in Thing this shaped as a body or organization consisting of from group of people joining for something destination particular as well as have riches specific too. For Act in then cross law than the legal entity (rich person) represented by people who act for and above name and in the interests of legal entities it (represents it). The moment this designation, corporation, Keeps growing, many found and spread in various book essays. Even in several provision rule issued law, the government has also included the words corporation, for example in Constitution number 1 of 1995 concerning Limited Liability Companies, the law number 8 of 1999 concerning protection consumer and various rule law other.

Corporate Criminal Liability

Accountability criminal interpreted as continue objective reproach that exists in the act criminally and legally existing subjective Fulfill condition for could convict because his deed it. Basic existence act criminal is principle legality, while base could convicted maker is principle error. This means that a maker who acts criminal only will be convicted if he has an error in To do act criminally. What becomes the problem is k when somebody says they have an error concerning the problem of accountability criminal. Because of that responsibility, a criminal is accountable for his crime. Strictly speaking, that person is responsible is act the crime he committed. They were happening accountability criminal because there is an act of crime committed by a person. Accountability criminal is something mechanisms established by Criminal Law for reacting to violations or ' deal refuse ' a deed certain.

Related to the ability responsible answer corporation as a perpetrator act criminal, arise question criteria what to use to determine ability responsible answer corporation as the subject of Criminal Law remember that corporation no has nature mental as the case with man natural. According to Rolling, as quoted by Mahmud Mulyadi, a legal entity could be treated as a perpetrator act criminal when prohibited acts for which responsibility charged to legal entities (corporations) carried out in skeleton tasks and achievements legal entity goals that. According to

him, the criteria this based on offense functional. Related with Thing that, what is meant with offense functional is offenses that come from room scope or atmosphere social economy where be included terms how activity social or economy particular must implement and directed or aimed at groups functionary certain.

Besides that, Mardjono Reksodiputro stated that the method thinks civil law could be taken over by criminal law. Previously in civil law, there was a different opinion is a legal entity could do a deed as opposed to the law (*onrechtmatigedaad*). However, through principle propriety and justice as base main, then Civil Law Ilmu accept a legal entity could be considered guilty which is an action against the law, moreover in then cross economy. Teaching this is based on the thought that what is carried out by the administrator could be accountable to legal entities because the administrator does not act on the right or authority alone but on the right or the authority of the legal entity concerned. Thereby, legal entities also could not release themselves from error (intentional) or (omission) committed by the administrator. How to think in Civil Law could be taken over in Criminal Law. In development law, Criminal positions a corporation as a maker act criminal and can accountably consist of several forms, namely :

- 1) Manager corporation as responsible makers and administrators answer by a criminal;
- 2) Corporations as makers act as criminals and administrators responsible for corporation answer by a criminal;
- 3) Corporations as makers act criminal and also as responsible answer by a criminal;
- 4) Manager corporation as maker act criminals and administrators corporation is the one responsible answer by criminal

Then what becomes the base justification that could convict a corporation by Eddie OS Hiariej? There are several doctrines about system accountability criminal corporation, namely; In Thing ask accountability crimes committed by the Eddie OS Hiariej. Corporations disclose that 5 (five) theories can be used¹⁴. First, the doctrine of accountability is strict punishment according to the law (strict liability), so responsible corporations are solely based on a sound Constitution without looking at who made the error. In strict liability element error, no need proved. Second, the doctrine of accountability criminal more substitute (Vicarious Liability) emphasizes accountability by management corporation as an " agent " of action from a corporation. Doctrine this leave from the superior respondent, based on the employment and delegation principles. Doctrine this is exception accountability adhered to an individual in law criminal based on adage *Nemo furniture pro alieno delicto* (no there is no one gets punished consequence the actions of others). Third, theory identification (Directed corporate criminal liability) or doctrine

¹⁴ Eddy OS Hiariej . *Prinsip-Prinsip Hukum Pidana* . (Yogyakarta: Cahaya Atma Pustaka, 2015) p . 206

accountability criminal by straight away. According to doctrine, this company could do an amount of offense direct through related people close with a company and viewed as a company alone—strictly deed or senior officer error identified as deed or error corporation. Fourth, theory aggregation says that accountability criminal can be charged to legal entities if elements which offense between one and the other often related and do not stand up individually. Fifth, teaching corporate culture model or cultural model work. They were teaching this focus to a written legal entity. A legal entity can be held accountable by a criminal if action somebody has a rational basis that the legal entity gives authority or allow a deed to be done.

Vicarious Liability in Law No. 32 of 2009 concerning Protection and Management of the Environment

About criminal accountability corporation in Constitution Number 32 of 2009 concerning Protection and Management Environment Life set in Article 116 paragraphs (1) and (2). Article 116 paragraph (1) of Law Number 32 of 2009 concerning Protection and Management Environment Life mentions that, if act criminal environment life done by, for, or on the name of business entity, claim criminal and sanction criminal dropped to :

- 1) business entity ; and/ or
- 2) The person who gave the order for To do act criminal or the person who acts as a leader in acting criminal.

So notice provision in Article 116 paragraph (1) and paragraph (2) can be explained in the provision. Chapter the set that next to people personal, act a business entity could carry out criminal environment with thereby mention of business entity show existence subject law criminal environment is a legal entity and the form other organizations that are not legal entities¹⁵.

As for the principle of accountability, criminal law entities and other organizations not in the form of a recognized legal entity as subject law act criminal environment life, sanction or action certain worn to :

- 1) Legal entities and other non-legal entities ;
- 2) Those who give an order for To do act criminal;
- 3) Those who act as a leader in To do act criminal;
- 4) Combined good giver order nor leader in To do act criminally.

Definition those who act as leaders the not limited only to the leader in To do act criminal environment, but also interpreted leader follow the responsible answer to consequence happening pollution and destruction environment. For example, some people work for legal entities, or other organizations do something deed like a throw away waste in a place which is not allotment or without permission, so cause pollution and damage environment, then the responsible answer no only worker

¹⁵ Alvi Syahrin, *Ketentuan Pidana Dalam UU No. 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, Jakarta: PT Softmedia, *Op.cit.* , p . 64-65

that, though leader the only Act rule and lead violation that.

So inside Article 116, paragraph (1) contains the principle of vicarious liability. This matter could be seen from the clause "act" criminal environment life is done by, for, or on the name of business entity, claim criminal and sanction criminal dropped to legal entities ...". because if talk about principle vicarious liability then talk about is something corporation could get worn, law criminal. With thereby with stated that a business entity (corporation) can be punished above, k stipulation p crime in nature Constitution Number 32 of 2009 concerning Protection and Management Environment Life act criminal environment life carried out by, for and on the name of business entity. Next, Article 116 paragraph (2) of Law Number 32 of 2009 concerning Protection and Management Environment Life mentioned : "*When act criminal environment life as referred to in paragraph (1) is carried out by a person, based on connection work or based on other relationship acting in scope business entity work, sanctions criminal dropped to giver order or leader in act criminal the without notice act criminal the conducted by alone or together.*"

Principle vicarious liability exists in Article 116 paragraph (2) of the Law Number 32 of 2009 concerning Protection and Management Environment live. This is marked with the sentence "*... act criminal environment life carried out by people, based on connection work or other relationship acting in scope business entity work, sanctions criminal dropped to giver order or leader in act criminal that ...*" Based on the principle of this vicarious liability, the perpetrator's effort could sue responsible for his actions, including the actions of others but still inside the environment activity of his business or result that comes from activities that can harm others. Leader corporation that only gives Duties or orders responsible answer on actions performed by subordinates or its employees. Not quite enough answer this expanded until covers actions performed by people based on connection work nor connection another. With so, who only work and in connection what just profession that done, as long as Thing the conducted in relationship with corporation, become not quite enough answer corporation. According to Article 16 paragraph (2), UUPPLH, the party's company that gives an order or those who act as a leader, can be accountable for the convicted.

Principle vicarious liability is the principle used only to determine that corporations can also wear penalty criminal if corporation To do deed criminal as arranged _ in Constitution Number 32 of 2009 concerning Protection and Management environment Life in regulation legislation. So that if discussing the principle of vicarious liability, hal this is only limited could whether or not a corporation wore a penalty criminal. About later questions arise about burden accountability criminal like then administrator no could worn penalty criminal even though it is the administrator who does deed criminal the by physique no could be answered by essential this. Because of it appears various doctrines for perfect principle vicarious liability this like doctrine identification, doctrine perpetrator

functional and doctrines other. So that with Thus, the doctrines new in Thing about criminal accountability corporation not for remove principle vicarious liability but for perfect principle vicarious liability so that responsibility criminal corporation could walk with practical so that destination law criminal as ultimate premium could be achieved.

If we see Criminal liability according to the theory of John Locke, Before the formation of society and government, natural or in Public pre-politics, human is at in a free state same once and domiciled equals (perfectly free and equals). Because free and domiciled, no one means harmful life; freedom and wealth belong to someone else. Every man entitled get right owned by the private. In the book, The Second Treatise, especially in chapter V Locke describes his view about rights belongs to. In the beginning, he supports drafting a law in nature that man, according to nature, has the right to maintain his life and the right to maintain life people man entirely. This means that continuity life man not only is something obligation but even is right. All men have the right to live and defend their life. For that, humans are entitled to all the means that make it possible for life by being worthy as humans. There is two legitimizing argument/basis that everyone has the right to have something good in his life alone and all means to support his life.

III. CONCLUSION

There are several systems of accountability for known criminal corporations, namely: Accountability criminal corporation based on a) doctrine strict liability; b) doctrine Vicarious Liability; c) Doctrine Accountability Criminal by direct ; d) Theory Aggregation; e) Teachings Corporate Culture Model. In Indonesian Criminal Law, adhere to system accountability criminal corporation vicarious liability. According to the doctrine of vicarious liability, state corporations could sue for responsible answers to other people's actions in environmental activity efforts. Application doctrine vicarious liability to corporation there is in the Article 116 paragraph (2) UUPPLH which regulates if act criminal environment life conducted for and above name corporation carried out by people, based on connection work or other relationship acting in scope business entity work. Sanctions criminal dropped to giver order or leader in act criminal the without notice act criminal the conducted by alone or together.

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