



Adoption of the Restorative Justice Model within Indonesia Correctional Institutions

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Abstract— Restorative justice within correctional institutions can facilitate meetings and dialogues between inmates and victims. This offers inmates a second chance to apologize and make amends to the victims, ultimately leading to a fair resolution for both parties. The end result of such agreements does not necessarily have to be the release of inmates. Rather, it aims to raise awareness and promote reintegration among inmates, with the primary focus on the interests of the victims. This study aims to analyze the urgency of comprehensive regulations governing the implementation of restorative justice in Indonesian correctional institutions to reduce overcrowding and improve inmate rehabilitation. The research adopts a doctrinal approach by examining legal regulations, journals, web articles, and report findings related to the discussed concept of restorative justice. The results of this study show that overcrowding occurs in almost all correctional institutions in Indonesia and needs to be addressed due to the vulnerability to human rights violations and horizontal and vertical conflicts within these facilities. Additionally, this concept has been successfully implemented in several countries using various approaches, some of which have already been adopted in Indonesia. Therefore, restorative justice within correctional institutions is highly feasible for adoption in Indonesia. The Ministry of Law and Human Rights of Indonesia should promptly establish and implement relevant rules.

Keywords— *Correctional Institution; Indonesian; Prisoners; Restorative Justice*

I. INTRODUCTION

As a note, there is currently an overcrowding issue in Correctional Institutions (LAPAS) and Detention Centers (RUTAN) in Indonesia, primarily caused by the increasing number of minor cases that need to proceed to the trial stage. According to the 2023 database as of October 30, 2023, the total capacity of LAPAS and RUTAN in Indonesia is 137.079 individuals. Presently, there is an overcapacity of 269.569 individuals. North Sumatra, with the highest number of inmates in LAPAS and RUTAN, has 32.124 individuals, while the capacity of LAPAS and RUTAN is only 12.802 individuals. East Java, as the second most populated region, has 28.646 inmates, while the capacity of LAPAS and RUTAN is only 13.228 individuals. The third most populated region is West Java, with 24.451 inmates, while the capacity of LAPAS and RUTAN is 17.036 individuals [1].

Imprisonment results in negative consequences, i.e.

- dehumanization, which causes criminal offenders to become incapable of leading a productive life within the community.
- prisonization of inmates, as LAPAS contain an informal social system referred to as the inmate subculture.
- a place of contamination, where prisons have evolved into hubs of contamination.
- short-term sentences, which are highly detrimental to rehabilitation efforts.
- stigmatization, which poses the greatest detriment to criminal offenders, as it exposes them to public knowledge of their criminal status and its associated consequences [2].

The success of implementing Restorative Justice (RJ) in Indonesia is not only measured by the number of cases successfully resolved, but also by its ability to reduce the recidivism rate. We believe that the concepts of forgiveness, rehabilitation, restitution, and reintegration should be internalized by both offenders and victims. However, differences in perception among law enforcement, offenders, and victims have led to RJ being seen only as a tool to circumvent the legal process and avoid court proceedings.

The procedure for implementing RJ in recent years has been regulated in every law enforcement institution, at the investigative level, at the prosecution level, and at the judicial level [3].

In early 2022, it was not only the police, the prosecution, and the courts that prioritized RJ efforts, but also the Ministry of Law and Human Rights of Indonesia (KEMENKUMHAM) through the Directorate General of Corrections (Ditjenpas) was striving to implement restorative measures within LAPAS. Ditjenpas has become increasingly committed to implementing RJ for adult inmates, partnering with the Center for Detention Studies [4]. However, as of now, information about the implementation plans of the RJ concept for inmates has not yet been realized.

Reform of the correctional system in Indonesia is of paramount importance. Instead of merely adding to the burden of the state by constructing new LAPAS or renovating existing facilities, it is advisable to transform LAPAS using a more restorative approach. This approach aims to encourage and provide inmates with individual opportunities to mend their relationships with victims and the community, while also establishing formal mediation channels among inmates for conflict resolution

The concept has great potential when RJ implementation in Indonesian LAPAS is carried out in a transformative, comprehensive, and effective manner. This can help reduce re-victimization and recidivism rates. Within the LAPAS ecosystem, including inmates, prison management, and related organizations, effective communication, appreciation, and neutrality are expected. The aim is to ensure that the RJ process and outcomes align with the expected target indicators. Participants in this program should not be treated as government program guinea pigs. This program should be developed organically so that feelings of empathy and sympathy can shape the self-image of both inmates and victims.

The government should promptly adopt the RJ concept in LAPAS for several reasons. First, for several decades, various government and non-government organizations have collaborated intensively on this process, albeit primarily for correctional patterns. Second, this concept has been extensively applied in Europe, America, Africa, and several other countries. Third, extensive research has been conducted on this issue, although there are still debates about the effectiveness and ineffectiveness of this concept. However, it does not mean that it cannot be adopted by LAPAS in Indonesia

Based on the above explanation, this research aims to determine and analyze the significance of regulating RJ within Indonesian LAPAS to address issues of overcapacity.

II. LITERATUR REVIEW

A. *Restorative Justice Theory*

Restorative justice is an alternative or different approach to criminal justice that emphasizes integrating offenders on one side and victims/society on the other side as a unified entity to find solutions and restore positive relationships within the community. Therefore, the empowerment of each party in implementing restorative justice is crucial for its success. Thus, the keyword for restorative justice is "empowerment," and this empowerment is the heart of the restorative ideology.

B. *Correctional Institution in Indonesia*

The Correctional Institution, referred to as LAPAS, is a facility established for the purpose of rehabilitating inmates and providing correctional education for juvenile offenders, as outlined in Article 1, point 3 of Law Number 12 of 1995 concerning Correctional Institutions. Additionally, Article 1, point 1 of the same law defines correctional activities as a process aimed at rehabilitating inmates through a structured system, institutional framework, and rehabilitation methods, serving as the concluding phase of the penal system within the broader criminal justice system. The crux of correctional activities lies in the rehabilitation of inmates, with the ultimate goal of facilitating their effective reintegration into society. This rehabilitation necessitates the implementation of a specific system known as the correctional system.

C. *Rehabilitation Patterns Implemented in the Correctional Institution*

The Correctional Institution serves as a facility aimed at the rehabilitation of offenders undergoing judicial sentences. The effectiveness or ineffectiveness of criminal justice objectives can be discerned from the outcomes realized and implemented by the Correctional Institution. If these prisoners are not appropriately rehabilitated, there is a risk that, following the completion of their rehabilitation period within the correctional facility, they may revert to engaging in the same criminal activities, thereby posing an additional threat to maritime security. Conversely, the likelihood of such a recurrence diminishes when these inmates undergo rehabilitation using appropriate methods, potentially transforming them into more empowered members of society. This transformation can be achieved through the implementation of rehabilitation strategies within the Correctional Institution.

The rehabilitation provided to offenders can be categorized into two distinct types: personality development, which concentrates on mental and character rehabilitation, and the promotion of self-reliance, which is geared towards fostering talent

and skill development. Skill development encompasses various activities, including crafting, farming, gardening, animal husbandry, fisheries, and others. Consequently, the rehabilitation strategies employed must take these specific backgrounds into account.

III. RESEARCH METHOD

Given the urgency of the issue analyzed in this paper, the research adopts a doctrinal approach by examining legal regulations, journals, web articles, and report findings related to the discussed concept of RJ. In other words, the study primarily focuses on secondary data sources through the study of library materials, which include primary legal materials, secondary legal materials, and tertiary legal materials [5]. To gather and categorize legal materials and address the research questions, the research employs a legal approach, a conceptual approach, and a comparative approach about RJ in several countries that implement this concept [6].

The data underwent qualitative analysis and were subsequently presented descriptively. This qualitative analysis involved categorization aligned with the research problems and data collection process. Qualitative analysis, in this context, refers to a normative assessment aimed at evaluating data obtained through secondary means (such as literature study). The evaluation determines the extent to which the implementation aligns with established theories and rules, enabling the measurement of the effectiveness of its implementation.

IV. FINDINGS AND DISCUSSION

A. Causes of Overcrowding in Indonesian Correctional Institution

Causes of Overcrowding in Indonesian Correctional Institution The use of RJ by criminals in Indonesia is currently a traditional approach that has been practiced within customary law in Indonesia [7]. Andi Hamzah stated that the world is currently experiencing a resurgence of interest in RJ

Currently, the inhabitants of LAPAS and RUTAN consist of detainees who are either in the process of pretrial detention or have already received a judge's verdict. Detainees undergoing pre-adjudication and adjudication processes are further categorized based on the severity of their cases, e.g. light, moderate, or severe criminal offenses. Detainees falling under the category of light criminal cases still have the opportunity to engage in the RJ process, except for serious criminal offenses.

There are several factors contributing to the overpopulation of inmates in LAPAS, which in turn increases the burden on the state. Some easily identifiable examples of these factors include a growing prevalence of legal violations due to various factors, such as the offenders' family backgrounds, economic disparities, and communication breakdowns within the community. These factors are, however, solely criminogenic in nature.

From a substantive legal perspective, overcriminalization occurs in Indonesia due to the excessive number of laws containing criminal penalties. From the beginning of the reform era until 2016, there were 563 legislative regulations, with approximately 154 regulations governing criminal offenses. During this period, based on ICJR's mapping, a total of 1.601 actions were classified as criminal offenses, including 716 new criminal actions introduced into Indonesian criminal law [8].

Regarding the Law Enforcement factors, excessive Detention actions continue to dominate. In Indonesia, law enforcement officers often use detention as a tool for upholding the law, not only against adults but also against children [9]. Subjective assessments by law enforcement officers still strongly revolve around the suspects' fears of destroying evidence or escaping, and even the suspension of detention remains a subjective judgment, leaving the criteria for not detaining someone still unclear. Coordination among law enforcement agencies, such as the police, prosecution, and the judiciary, has not been functioning effectively. This has led to many individuals being detained in LAPAS and RUTAN, even when they should not have been

From the perspective of the community's legal culture, the failure of the RJ process at each level of the criminal justice system leads to criminal convictions. On the other hand, the failure of RJ can be attributed to the constraints faced by the victims who do not wish to resolve their cases through RJ due to the material and immaterial losses they have suffered. This leads the victims to desire that their cases proceed to court. Additionally, the victims' perception is that those who are at fault should be incarcerated in a LAPAS. In general, society still associates punishment with imprisonment and has not yet embraced the concept of non-custodial sentencing [10].

Not only the aforementioned issues, but also the problem of an increase in drug-related crime. The circulation of narcotics is increasingly pervasive, occurring both in urban and rural areas, involving individuals from various backgrounds. By the end of August 2021, approximately 28.640 people, or 24.5%, were users. The total number of drug-related prisoners reached 54.6% of the total LAPAS population across Indonesia [11]. The Indonesia Drugs Report 2022 indicates that at least 13 LAPAS are overcrowded with drug offenders and detainees [12].

The occurrence of overcrowding undoubtedly brings about several consequences, e.g., financial Implications for the State from a social and economic perspective, human rights issues, health concerns, security and economic implications due to illicit levies, imprisonment patterns, safety for correctional officers, debt challenges in Indonesian LAPAS, effects of overcrowding on inmates and their families [13].

B. Restorative Justice Approaches That Can be Adopted in Indonesian Correctional Institution

The punishment should not only aim to rehabilitate offenders by eliminating criminogenic factors, but in its implementation, it should be designed in such a way with a better formulation to prevent recidivism. Reforms in the context of the Alternative Dispute Resolution implementation process, with an emphasis on RJ, serve as an entry point for the renewal of criminal law and criminal procedure [9].

Discussion about the concept of RJ in the context of LAPAS and an evaluation of the experiments conducted regarding this concept indicate that there are several potential benefits to be gained. The concept of RJ within the penitentiary system is not new, as it has its roots in the history of Prison Fellowship International, founded by Charles Colson. In alignment with the principles of RJ, Colson emphasized that the relationship between offenders and victims should ideally achieve the highest level of harmony while truly understanding the basis of their relationship [14].

Through the concept of RJ in LAPAS, inmates can gain a deeper understanding of the consequences of their criminal behavior, while also developing empathy towards the individuals they have harmed. Moreover, they are provided with valuable opportunities to make amends for their past actions through symbolic gestures like restitution and rehabilitation efforts, including endeavors to improve themselves. Some programs also offer inmates a chance to repair disrupted relationships with their family members. Therefore, for inmates willing to engage, the adoption of RJ within the LAPAS environment can serve as an initial step in their moral and ethical self-improvement, mitigating the negative impacts their behavior has had on others and helping to rebuild their moral connections with society.

For victims who participate in this process, RJ within the LAPAS also offers tangible benefits. Overall, the RJ approach has the potential to address diverse needs of victims, which, if left unmet, can hinder their recovery from the trauma of the crimes they have experienced.

In our opinion, the implementation of RJ in Indonesian correctional institution has six several advantages: (1) the use of RJ within prisons can facilitate the restoration of relationships between inmates and victims, as well as ease the reintegration process of inmates into society. The restoration of relationships can lead to a reduction or elimination of resentment towards inmates, (2) successful patterns of recovery and reintegration can enhance inmates' awareness, ultimately resulting in a decrease in recidivism. Awareness of the impact of their criminal behavior can lead to attitude and behavior changes towards legal compliance, (3) when victims needs are not met during the pre-adjudication and adjudication phases, there is potential to fulfill them in the post-adjudication phase after successful RJ implementation, (4) conflict management between inmates, victims, and the community reduces the stigma associated with being a former inmate, (5) it can mitigate conflicts among inmates, fostering a more positive atmosphere within the prison, and (6) inmates can learn to change their communication patterns, develop empathy and sympathy, all of which impact their social skills and facilitate effective inmate rehabilitation.

The RJ process within a LAPAS is certainly different from the inmate rehabilitation pattern, but it can be carried out simultaneously because it is closely related to the personality development program as regulated in Article 22, letter (a) of the Correctional Law. The aspects of "personality development" include religious awareness, ethical and moral behavior, national and state consciousness, national defense, intellectual capacity improvement, legal awareness, integration with society, and deradicalization [15].

An approach that can be adopted for use in the RJ process within LAPAS in Indonesia.

1) Guidance and counseling on the enhancement of awareness and responsibility of inmates

This approach is built upon concepts introduced by organizations engaged in serving inmates and their families, such as the Sycamore Tree Programme, Hope Prison Ministry, The Forgiveness Project, The Insight Development Group, Supporting Offenders through Program Restoration Inside, Opening Doors, and Bridges to Life [16].

These concepts primarily focus on guidance and counseling. The programs are implemented within the RJ process in LAPAS, aiming to maximize the potential of inmates by fostering empathy and sympathy, enabling them to comprehend the impact of their actions on the victims. Inmate participation in these programs is voluntary, and they must demonstrate motivation to engage in the process. These programs can be scheduled according to the needs and assessments conducted by psychologists.

Several of these approaches have already been implemented in LAPAS in Indonesia, e.g., the Personality Guidance for Incarcerated Clients provided by BAPAS, the establishment of the Community Concern for Correctional Institutions Group (POKMAS LIPAS), an official body with the responsibility of facilitating mental and spiritual support [17], and Furthermore, various religious organizations, such as Pola Pertolongan Allah and Church-related entities, also contribute to the development of the character, mental well-being, and spirituality of detainees in various regions [18]. These activities indeed encompass character development and the application of detainees' rights. However, their implementation has not yet been extended to the goal of implementing RJ within LAPAS.

To be implemented in LAPAS, the aforementioned activities should be more intensive and scheduled, or structured as Standard Operating Procedures as guidelines for the implementation of RJ. This includes aspects such as Group Sessions, where inmates who are willing and have the opportunity can attend guided group sessions led by trained facilitators. These sessions can be conducted continuously and on a scheduled basis, covering topics such as empathy, sympathy, responsibility, reconciliation,

restitution, and forgiveness. These sessions can provide guidance to inmates to apologize to their victims while also providing compensation, both directly in material form and indirectly through community service activities. Furthermore, Family Relationship Reharmonization activities can be conducted for inmates who have conflicts with their family members, involving dialogues and reuniting them with their family members. This helps inmates restore their relationships and gain family support while serving their sentences. Lastly, the Social Skills Development Activity, which can also encompass training in social and communication skills, assists inmates in dealing with social problems and conflicts when they are released from LAPAS.

2) *Meetings, mediation, and education activities between inmates and victims.*

Mediation, commonly known, differs from mediation between victims and offenders. General mediation is used in conflict situations, where both parties must compromise to reach a resolution, and it is more focused on achieving a resolution. The impact on the participants' lives is not the main focus. On the other hand, in victim-offender mediation, the parties involved are not in dispute. One has committed a crime and acknowledges their wrongdoing, while the other is the victim. Victim-offender mediation focuses on dialogue with an emphasis on healing the victim, holding the offender accountable, and recovering losses. Initial dialogue between the parties is more critical. This dialogue addresses the emotional needs and information important for the victims' healing and the development of empathy in the victim towards the offender, thus reducing future criminal behavior [19].

Recent research results by Danielle and her colleagues reveal that during the VOD (Victim-Offender Dialogue) process involving crime perpetrators and a mother and her affected daughter, a transformation takes place as the process unfolds. This research found that for the involved parties, the VOD process reveals a different aspect of humanity through the significant roles of religion and forgiveness [20].

In San Quentin Prison, this program was developed by the Insight Project and evolved into the Victim Offender Education Group (VOEG). Educational values are deeply ingrained in this model. Each group is facilitated by facilitators, even those who are peers with the inmates. This group program is conducted intensively for 18 months, providing support to inmates in understanding and gaining insights into the circumstances that led to their choices and actions resulting in their incarceration. This process specifically acknowledges that inmates have experienced unresolved traumatic events in their past, which contribute to their current unlawful behaviors. Facilitators strive to understand, identify, and address as much of this trauma as possible by creating an environment of compassion, acceptance, safety, inclusivity, and trust, where their past issues can be acknowledged and resolved [21].

In the United Kingdom, this program is implemented routinely. In the experience of project execution in Coventry and Leeds Prisons, victims and offenders engaged in mediation tend to report higher levels of satisfaction and perceptions of fairness regarding the justice system's response to their cases compared to victims and offenders who had the opportunity but did not participate. In both of these projects, it is crucial for victims to share the physical and psychological impact of the crimes committed by the offenders, as well as the importance of receiving apologies from the offenders [22].

In the United States, this model is referred to as VOD [23]. Based on research results, it shows that VOD can have a significant positive impact on victims, including increasing support and understanding from facilitators, enabling victims to see offenders as complex human beings, not just as criminals, helping victims heal from their trauma, and assisting victims in breaking free from negative experiences and thought patterns. This research also highlights the importance of building post-incarceration victim service infrastructure that supports access to VOD at every stage of victim recovery [24].

The use of this mechanism can be applied to both serious and minor crimes. However, in Indonesia, we believe it is necessary to consider and adapt to the length of the sentence served by inmates, given that the existing RJ rules in Indonesia have traditionally focused on crimes with penalties of less than 5 years.

In Indonesia, this concept can be implemented. The concept is roughly similar to the dialogue between victims and offenders in the current RJ stage in Indonesia. However, the process carried out at that stage is more specific to the restitution of victims' losses and does not proceed to the trial process, depending on the efficiency of the investigation and prosecution time.

In LAPAS, this concept can be carried out within a reasonable time frame in accordance with the length of the inmate's sentence and expanded to match the rehabilitation program. This form must, of course, correlate with the first form, meaning that before inmates enter this stage, they should be mentally and spiritually prepared, having gone through counseling and guidance sessions.

In this activity, inmates interact directly with victims or victim's families for a heart-to-heart dialogue, providing inmates with an understanding of the motives or backgrounds of the crime and the material and immaterial effects on the victim. The goal is to give inmates an opportunity to understand the psychological and physical impact they have had on the victim.

This activity not only involves bringing together victims and offenders but also mediators or facilitators who possess the competence to mediate and engage in conversations about the post-traumatic condition of the victim, be it material, physical, or psychological. In this context, the offenders are encouraged to empathize with the victim's situation. These meetings should be conducted voluntarily, in a conducive atmosphere, to prevent the occurrence of psychological wounds or the victim's feelings of anger. This process can be carried out intensively as needed, based on the assessment of the mediator or facilitator.

There are several elements that, according to the researcher, are capable of conducting this activity. The parties responsible for facilitating the dialogue between victims and offenders are individuals or organizations with competence and experience in the field of rehabilitating victims and offenders of criminal acts. These parties, e.g. LAPAS Rehabilitation and Juvenile Education Service Unit, the NGOs specializing in the rehabilitation of victims and offenders of criminal acts, volunteers who wish to contribute to RJ in LAPAS, and The RJ Network which comprises various organizations and institutions supporting the implementation of RJ.

3) *Application of restorative justice for violations and conflicts within Indonesian correctional institution.*

In this approach, RJ is not used to promote moral improvement as a result of offenses that lead to inmates being incarcerated but to address violations such as assaults and theft that occur within the LAPAS. RJ is used as an alternative to conventional processes [16].

Currently, when there is a fight between inmates, the efforts made are through disciplinary punishment in accordance with Regulation No. 6 of 2013 from the KEMENKUMHAM. There is no effort to reconcile the inmates so that they do not hold grudges in the future. In a restorative context, rather than imposing sanctions on those who have made mistakes, the perpetrators are invited to actively engage in discussions and decision-making regarding the actions they need to take to address the harm they have caused and to enhance their abilities to avoid similar actions in the future. Therefore, the perpetrators are given full responsibility, where they are not only held accountable for past mistakes but also have an obligation to take steps towards improvement in the future. The goal is that by treating offenders as moral individuals with responsibility and obligations, they will become more responsible and moral. In addition to effectively managing internal violations, the RJ process can also contribute to the moral recovery of inmates.

The concept of this approach is highly suitable for implementation in LAPAS, but to support it, there is a need to regulate and change the disciplinary enforcement rules within the LAPAS in a more progressive direction. Disciplinary punishment may not necessarily solve the personal issues of conflicting inmates. Peace is more beneficial for a conducive atmosphere within the LAPAS.

4) *Formation of a restorative justice special correctional institution for juvenile offenders.*

This concept needs to be developed as a pilot project by the Indonesian Government. It is not necessary to construct new facilities, but to transform existing LAPAS into specialized facilities for juvenile offenders. We view the potential of this four-pronged approach as highly visionary, as it represents a form of care for the youth, who are the future of our nation. Several considerations underlie this concept, i.e.

- The success of RJ with juveniles is greater than with adults because juveniles are afforded special legal treatment due to their mentally and psychologically unstable conditions. Additionally, it is relatively easier to rehabilitate a juvenile's mental state.
- The number of juvenile offenders in LAPAS in each region is quite limited.
- The Law on the Juvenile Criminal Justice System specifically accommodates diversion methods, thus warranting the expansion of the diversion system to LAPAS.
- The juvenile criminal sanctions system is designed with the best interests of the child as a guiding principle.

This fourth concept warrants further research and analysis to assess the conditions of LAPAS and to determine the suitable approach in accordance with the methods proposed earlier in this paper.

Some of the approaches presented still require further examination and adjustment to align with the legal culture in Indonesia. The participation and enthusiasm of juvenile offenders in the RJ process will undoubtedly be influenced by the nature of their offenses, emotional condition, and even their life circumstances before entering the LAPAS.

To begin, the primary goals of restorative justice are not punishment but rather the restoration of the offender's relationship with the community. Imposing either imprisonment or counseling marks a significant distinction in approach between a criminal law strategy and one rooted in restorative justice. For instance, approaches to deradicalization may adopt excessively punitive measures, neglecting the importance of reintegration and rehabilitation. [25]

V. CONCLUSION

Overcapacity within LAPAS can lead to human rights violations and horizontal conflicts among inmates, as well as vertical conflicts with LAPAS staff. Currently, the concept of RJ has been implemented at the pre-adjudication and adjudication levels in Indonesia, guided by the regulations of the respective law enforcement agencies. However, it is not always functioning optimally, resulting in the accumulation of prisoners.

In the current situation, with various programs aimed at rehabilitating prisoners, LAPAS, as a post-adjudication institution, can adopt different forms of RJ implementation within its facilities, as proposed in the findings of this research. Some of the presented approaches should be applied at present, considering that LAPAS has been actively collaborating with various organizations and institutions in the field of RJ. However, it should also be understood that the regulation in this regard must be carefully considered,

taking into account the motivations, backgrounds, and psychological conditions of both prisoners and offenders, to ensure that this concept does not merely serve as a tool benefiting one party in its execution.

We recommend that the Indonesian Government, which has plans to adopt this concept, promptly enact regulations involving various stakeholders actively engaged in social work, mediation experts, legal and sociological professionals. Alternately, the government can harmonize regulations concerning RJ into a legal framework, such as an amendment to the criminal justice system

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