



MASLAHAH MURSALAH AS A CONSIDERATION FOR COMPLETION OF ISLAMIC LAW BASED ON THE MAQĀSID SHARĪ'AH PRINCIPLE

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Abstract

Maslahah mursalah is an important concept in Islamic law; in fact, most scholars use maslahah mursalah as a legal istinbat method. In writing this article using a qualitative research method of literature by prioritizing data credibility, the results obtained in this study are that maslahah mursalah has an important role in law. Not even a few Islamic scholars make maslahah mursalah a legal consideration. However, the use of maslahah mursalah is not absolute. To anticipate misuse of maslahah mursalah, maslahah mursalah must meet the requirements that must be considered for legal considerations, such as that it must not conflict with maqāṣid sharī'ah, the scriptures, sunnah, qiyas, maslahah, or a higher level. Maslahah mursalah is an old concept, but it is also very relevant to be applied today by studying Islamic treasures and then applying it in today's life.

Keywords : *Islamic law; Maqāṣid Sharī'ah; Maslahah Mursalah*

A. Introduction

Maslahah is an important concept in Islamic law that refers to the benefit or public interest of individuals or society. This concept is an important consideration in resolving problems or issues of Islamic law that are based on the principle of maqāṣid sharī'ah. The maqāṣid sharī'ah principle itself is the basic principle that determines the purpose and intent of Islamic sharia. The purpose of Islamic sharia is to protect and maintain five important things, namely religion, soul, mind, lineage, and property. Therefore, when resolving issues of Islamic law, one must always consider the public good and ensure that the decisions taken do not conflict with the goals and objectives of Islamic sharia.

In practice, the concept of maslahah is used to resolve unclear legal issues in the holy Quran and Hadith. For example, in determining the legal status of modern financial products such as insurance and Islamic banking, Islamic jurists use the maslahah principle to determine whether the product complies with Islamic sharia principles.

In this modern era, the challenges of resolving issues of Islamic law are increasingly complex. This condition is influenced by many factors, such as technological advances and social changes that continue to develop. Therefore, it is

necessary to have strong guidelines and principles in resolving issues of Islamic law in order to provide legal certainty and pay attention to the public good.

Maslahah, which means benefit or public interest for individuals or society, is an important consideration in resolving issues of Islamic law. This concept is used when there is no clear legal guidance from the Qur'an and Hadith. In practice, the concept of maslahah is used to determine the legal status of modern financial products, such as insurance and Islamic banking.

The concepts of maslahah and maqāṣid sharī'ah play an important role in the settlement of Islamic law. Maslahah can be used as a consideration in determining Islamic law decisions in situations that have not been explicitly defined in sharia. Whereas maqāṣid sharī'ah assists in determining broader sharia objectives in meeting human needs and interests.

However, the use of the concept of maslahah in resolving issues of Islamic law must be carried out with care and still be based on the principle of maqāṣid sharī'ah. Decisions taken must consider the general benefit without compromising the basic principles of Islamic sharia.

Therefore, this study will discuss the concept of maslahah as a consideration in resolving issues of Islamic law based on the principle of maqāṣid sharī'ah. The aim is to deepen understanding of this concept and provide guidance in resolving issues of Islamic law by taking into account the general good and the basic principles of Islamic sharia.

B. Method

This study uses a qualitative research method in literature that aims to understand the concept of maslahah as a consideration in solving problems of Islamic law based on the principle of maqasid sharia. This method is carried out by collecting and analyzing data from various sources of literature that are relevant to the research topic.

In the qualitative research method of literature, the credibility of the data used is very important. Therefore, researchers must ensure that the data sources used are of high quality and have high reliability. In addition, researchers must also triangulate data using various data sources to ensure the validity of the research results obtained.

C. Discussion

Maslahah, or what is also known as the general benefit, is an important concept in Islamic thought. In the view of Imam Izzuddin bin Abd as-Salam, a

leading scholar, *maslahah* refers to the principle of achieving prosperity, goodness, and benefit for individuals and society as a whole.

According to Imam Izzuddin bin Abd as-Salam *Maslahah*: (Izzuddin bin Abd Assalam, n.d.)

لذة أو سببها, أو فرحة أو سببها

"Pleasure or the cause or happiness or the cause."

Mafsadah, according to Imam Izzuddin bin Abd as-Salam, is as follows:

ألم أو سببها, أو غم أو سببها

"Pain or its cause, or sorrow or its cause."

Imam Izzuddin bin Abd as-Salam explained that Islamic religious law does not distinguish between *maslahah* and *mafsadah* that appear a little or a lot, even if they are likened to mustard seeds.

Maslahah also has the meaning of everything that has a value of benefits and goodness called *maslahah* because all *maslahah* is goodness that is beneficial, and in the Qur'an every good thing refers to benefit. Imam Izzuddin bin Abd as-salam said that every intermediary who delivers to benefit is called *maslahah*, even though the intermediary is *mafsadah*. He is ordered to do *mafsadah* not on the basis of his *mafsadah* but because *mafsadah* is an intermediary towards *maslahah*, and *mafsadah* is not the main goal, but *maslahah* is the main goal. (Umar bin Shalih, n.d.)

Imam Izzuddin bin Abd al-Salam does not make any essential understanding of *mashlahah* and *mafsadah*, he tries to explain *maslahah* and *mafsadah* universally so that the consequence is the emergence of *maslahah* and the abandonment of *mafsadah*. (Misbar, 2022)

However, Imam Izzuddin bin Abd al-Salam is more authoritative in using the universal meaning of *maslahah* for everything that can bring benefits, both essential and imaginary, and both specific to groups of people and general in nature. and Imam Izzuddin bin Abd al-Salam did not give the definite meaning of *maslahah* used by most of the Ushul scholars.

Imam Izzuddin bin Abd al-Salam then concluded that the purpose of all forms of *maqashid* is to reinforce sharia law by creating profits (*tahqiq al-masalih*) and rejecting those that can harm (*dar al-mafasid*). This rule is a general rule used by other Ushul scholars as well. The two elements mentioned above are elements that must exist in *maqāṣid sharī'ah*, namely *maslahah* and *mafsadah*. (Irzak Yuliardy Nugroho, Tutik Hamidah, 2021)

1. *Maslahah Perspective Shaykh Said Ramadhan al-Buthi*

Shaykh Said Ramadhan al-Buthi, a well-known Islamic scholar, has an important view of the concept of *maslahah* in Islam. He is a respected Shafi'i scholar and is often quoted in various studies of Islamic law.

Shaykh Said Ramadhan al-Buthi explains the meaning of *maslahah* as follows: (Said Ramadhan, 1973)

المصلحة هي المنفعة التي قصدها الشارع الحكيم لعباده، من حفظ دينهم ونفوسهم، وعقولهم، ونسلهم، وأموالهم. طبق ترتيب معين فيما بينها

"Maslahah is the benefit intended by the All-Wise Shari'a (Allah) for his servant, from protecting his religion, life, mind, lineage, and wealth according to a predetermined order"

From the above understanding, it can be understood that Islamic law will not be separated from maintaining the five main things (*Maqāṣid Sharī'ah*), namely: religion, life, mind, lineage, and property. Therefore, everything that aims to maintain these five main things is called *maslahah*, and vice versa, anything that can eliminate these five main things is called *mafsadah*.

Shaykh Said Ramadhan al-Buthi disagrees with some scholars who divide the *maslahah* into two, namely, the *maslahah* of the world and the *maslahah* of the hereafter. According to Shaykh Said Ramadhan al-Buthi, this division is not needed because everything that is determined by the Shari'a, whether it is *aqidah*, worship, or *muamalah*, is essentially beneficial to both the world and the hereafter.

Someone who sticks to obedience and a lot of *dhikr* will receive a reward and pleasure from Allah SWT. Therefore, the division into *maslahah* for the world and the hereafter is not needed; it's just that *maslahah* in the form of *muamalah* will be directly obtained in the world and indirectly in the hereafter; even in worship, it will make a Muslim stronger and easier to carry out all sharia laws, be indirectly useful in the world, and give happiness in the hereafter. (Fauzi, 2016)

2. Kinds of Maslahah

Maslahah in terms of strength as *hujjah* has several types, among which those mentioned are:

1. *Maslahah al-Daurah*.
2. *Maslahah al-Hajat*.
3. *Maslahah al-Taḥsinat al-tazyinat*

Maslahah al-Darurah is the highest level of *maslahah* among other *maslahahs* in maintaining the five basic principles of Islamic law (*Maqāṣid Sharī'ah*). The five basic principles are: safeguard religion, life, mind, lineage, and property. Al-Ghazali's view of *Maqāṣid sharī'ah* was later refined by Shihab al-Din al-Qarafi by

adding a goal or principle, namely strengthening self-esteem (hifd al-'ird), although Qarafi himself admitted that this was a point of debate between the experts.(Sulthon, 2023)

Maslahah al-Darurah

Maslahah al-Darurah is the main maslahah, which is very influential in human life, both in religious and world aspects. Maslahah al-Darurah cannot be abandoned in human life; if it is abandoned, then human life in the world will be destroyed and the hereafter will be damaged (tormented). Maslahah al-Darurah prioritizes maintaining the five basic principles of Islamic law (Maqāṣid Sharī'ah) as well as the highest level of other maslahahs. In Islamic Law, Maslahah al-Darurah is protected from two sides: first, its realization and implementation, and second, the maintenance of its sustainability. For example, the first is protecting religion by carrying out and fulfilling all religious obligations, and the second is maintaining the continuity of religion by fighting the enemies of Islam and jihad.

Maslahah al-Hajat

Maslahah al-Hajat is essentially a maslahah that is secondary in the sense that it is needed by mankind to live life so that it is easier and eliminates difficulties. If there were none, there would be difficulties and traffic jams, but the impact would not be detrimental to human life.

Maslahah al-Tahsinat al-Tazyinat

Maslahah al-Tahsinat al-taszyinat is a maslahah that is morally guided to do good and avoids bad things, such as wearing nice clothes in general and staying away from something bad instinctively by humans. Maslahah al-Tahsinat al-taszyinat, if there is none, it will not make the human predicament.

Maslahah al-Hajat and al-Tahsinat at-tazyinat are maslahahs that are at a level after Maslahah al-Darurat, so that Maslahah al-Hajat and al-Tahsinat at-tazyinat cannot be a separate source of law without any supporting arguments, because if that happens, it's the same punishment as Ra'yu. In contrast to maslahah al-Darurat, which can be obtained by means of ijihad even though it is not supported by the al-ashl argument. In an effort to uphold maslahah at the al-Dharurat level as above, three criteria must be met, namely Dharuriyyat, Qath'iyyat, and Kulliyat.

3. *Maslahah Relationship With Maqāṣid Sharī'ah*

The Usul Fiqh scholars divide maslahah into three types, as follows:

- a) Maslahah al-mu'tabarah is a maslahah that is directly based on the arguments of the Qur'an and Hadith.

- b) Maslahah al-mulghah, is something that can produce maslahah, but it is not in accordance with the texts.
- c) Maslahah al-mursalah is a maslahah whose existence is not specifically approved by the Shari'a, and at the same time there is no argument against it, but the maslahah is supported by several meanings of the texts of the Qur'an and Hadith.

The majority of scholars agree that maslahah al-mu'tabarah can be used as an ijtihad method with guidance from the syara' texts, which acknowledge it. Therefore, if one day there is a conflict between the maslahah and the syara' text, then according to the majority of scholars, the text must take precedence.

In this discussion, which is more focused on maslahah mursalah, it should be noted that the use of maslahah mursalah is not absolute in the sense that anything that contains a maslahah can be used as a legal consideration, but the use of maslahah al-mursalah must meet the requirements described by the scholars as follows:(Syarifuddin, 2011)

- a) Maslahah mursalah must be essential and general, in the sense that maslahah can provide benefits and avoid harm as a whole.
- b) Maslahah must really be in line with the intention of the Shari'a in determining a law, namely by realizing maslahah for humans.
- c) Maslahah does not conflict with the arguments of the Shari'a, both the Qur'an, Hadith, and Ijma 'ulama.
- d) Maslahah is practiced in a state of urgency, in the sense that to solve problems, if you don't use it, humanity will experience difficulties.

When viewed from the conditions that have been mentioned, scholars are very careful in applying maslahah mursalah as a legal argument; besides that, the resulting legal provisions must be based on maqasid sharia for the benefit of mankind. Therefore, between maslahah mursalah and maqasid sharia, there is a very clear relationship, namely, by creating maslahah and avoiding harm in legal

terms. When analyzed more deeply, Imam as-Syathibi, who earned the nickname "Father of Maqāṣid Sharī'ah" actually uses the maqasid sharia theory to strengthen the methodology of maslahah mursalah as a source of law because maslahah mursalah is a way of istinbat law when the arguments are not found in a problem. With the existence of maqasid sharia, it is hoped that the rule of law will not deviate from the will of Allah SWT.(Busyro, 2019)

4. *Opinion of Ulama About Maslahah Mursalah as a Source of Law*

According to most Usul al-Fiqh scholars, there are two categories of sources for determining Islamic law: sources used by all scholars (mutafaq 'alaih) and sources not used by all scholars (mukhtalaf fih).

Scholars have different opinions about maslahah regardless of the supporting arguments (Maslahah al-Mursalah), as follows:

The first group denies the existence of maslahah mursalah and is supported by al-Qada and several fiqh scholars. The second group, of course, accepts the existence of maslahah mursalah and is led by Imam Malik. The third group can receive maslahah mursalah if it fulfills the conditions and this opinion is supported by al-Juwaini. The fourth group is represented by al-Ghazali, who accepts the existence of maslahah bmursalah only on emergency matters.(Rosyadi, 2012)

At the time of the Companions, maslahah mursalah was used as evidence for proof against new problems that arose after the death of the Prophet. One example of a problem based on the Maslahah Mursalah method is the compilation of the Qur'an in the form of one mushaf during the time of Abu Bakr and Ustman. When Umar Khattab became caliph, he also used prison to punish criminals, whereas the Prophet never used this method. Even during Uthman's time, there were two calls to prayer for Friday prayers. That is an example of using the word maslahah mursalah as a legal argument to define the problems they faced.(Sanusi Ahmad, 2008)

It should be noted that the Shafi'i Madzhab rejects maslahah mursalah as a separate source of law. Imam Syafi'i has explained that there are only four sources of law: the Qur'an, Hadith, Ijma', and Qiyas. The reason that underlies Imam Syafi'i's rejection of maslahah mursalah as a separate source of law is that, in fact, the Shari'a has taken care of all the maslahahs of mankind through existing texts or maslahahs shown through the qiyas method, and the Shari'a will not make humans go to waste. The essence is that there is no maslahah unless it comes from the Qur'an or Hadith, and its validity is witnessed through these two sources. Therefore, any maslahah that does not originate from these two is just a fantasy, and the Shari'a will not stand by it. Not only that, if Islamic law stood with the absolute maslahah, it would just make room for ulama, leaders, and other

influential people to determine and initiate a law based on their desires for reasons of benefit, even though it is a benefit that they are not aware of. (Khallaf, 2010)

When studied further, Imam Shafi'i and his followers indirectly practice *maslahah mursalah*. As the words of Imam Syafi'i quoted by Imam Ibn Hajar al-Haitami say, "*Any matter that differs from the Al-Qur'an, Hadith, Ijma', and Qiyas is heretical heresy, and vice versa; every case that does not differ from that is called blessed heresy*". (al-Haitami, 2008)

From Imam Syafi'i's statement, it appears that the concept of *maslahah mursalah*, which was introduced by Imam Malik as a source of law, is a commendable *bid'ah* because the concept of *maslahah* does not contradict the Qur'an, Hadith, Ijma', and Qiyas.

Actually, Imam Syafi'i acknowledged that there is a meaning in *maslahah mursalah*, but he did not intend to use this expression because the meaning contained falls under the general category of the concept of *qiyas* and is not a source of law that stands alone. Therefore, many followers of Imam Shafi'i use the concept of *maslahah mursalah* even with different expressions, such as Imam al-Ghozali, al-Juwaini, ar-Razi, and other scholars. The scholars of the Shafi'i Madzhab categorize *maslahah mursalah*, which was introduced by Imam Malik into the chapter *Masalik al-Illah* (methodology of seeking the law of law) in the discussion of *qiyas*. (Farkhan Muhammad, 2022)

5. Opinion of Shaykh Said Ramadhan Al-Buthi About Maslahah Mursalah as a Source of Law

Shaykh Said Ramadhan al-Buthi explained that *maslahah* can become a source of law if it fulfills the five limitations that he termed (*Dhowabit al-Maslahah*) as follows: (Said Ramadhan, 1973)

First, *maslahah* must be in harmony with *maqāṣid sharī'ah* in the sense that *maslahah* must be able to protect religion, life, mind, lineage, and property; therefore, anything that protects the five objectives of sharia is called *maslahah*, and vice versa, anything that eliminates them is called *mafsadah*. The five objectives of the sharia unfold into three parts: *al-Darurah*, *al-Hajat*, and *at-Tazniyats*, as explained above. Shaykh Said Ramadhan al-Buthi explained that the argument for the five objectives of sharia above is based on research by scholars showing that everything that has been determined by Islamic law will not be separated from maintaining the five objectives of sharia, although some scholars have added one thing, namely maintaining prices. themselves so that the number is six, but the addition is still disputed by the scholars.

Second, the *maslahah* does not conflict with the Scriptures. In this case, Shaykh Said Ramadhan al-Buthi explained that there are two arguments underlying the *maslahah* that must be in accordance with the Scriptures, namely the *Aqli* and *Naqli* propositions. *Aqli*'s argument says that in order to know the *maqasid sharia*, it must be determined from detailed evidence, and all of that is returned to the Scriptures so that any *maslahah* that is not in accordance with the Scriptures is rejected. Meanwhile, the *Naqli* argument has been explained in the *Qur'an*.

Third, it does not conflict with the *sunnah* in the sense that each *maslahah* may not conflict with the *sunnah* in terms of words, deeds, and provisions that are *shohih*, *mutawatir*, or *ahad*.

Fourth, it does not conflict with *qiyas*; the meaning is that *qiyas* is a form of effort to maintain *maslahah* on *far'u* (branches) due to the existence of divine equality in *Ashl* law. The parable of *Far'u* and *Asl* is common and typical. Every *qiyas* must take care of the *maslahah*, but every guard of the *maslahah* does not mean a *qiyas*. This *maslahah* is called *maslahah mursalah*, namely *maslahah*, which is analogous to the *mujtahids* without any *syara'* arguments to justify it, and there is no argument against it in the *Qur'an* or *Hadith*. However, it should be known that *Maslahah* does not have any foundation at all. Without the basis of *syar'i* *maslahah*, it cannot be a source of law because implicitly, the law is always under the provisions and prohibitions of Allah SWT. Therefore, *maslahah* must rely on a proposition even though it is not specifically related; for example, in the collection of *mushafs* during the time of Sayyidina Abu Bakr, there was no *asl* argument that could be justified, but this was included in the *Hifz ad-din* category.

Fifth, do not *meyalahi* *maslahah* that is higher or at the same level. Shaykh Said Ramadhan al-Buthi explained that, in essence, all of Allah SWT's laws must be built for the benefit of His servants. The main objective is to prioritize the *maslahah* that is more important than the *maslahah* below it, such as choosing a worldly *mafsadah* to get the *maslahah* in the hereafter, if indeed both of them are in a legal relationship. If there is a conflict between *maslahah*, the primary *maslahah* must take precedence over the secondary *maslahah*. As for *maslahahs* that conflict at one level, such as *dharuri* *maslahahs*, *maslahahs* related to religion must take precedence over *dharuri* *maslahahs* related to the soul.

From this, we can understand that Shaykh Said Ramadhan al-Buthi, who is a contemporary scholar as well as an influence on society and academics, allows the use of *maslahah* as a source of law. Of course, that does not mean that there are no conditions that must be met, one of which is that *maslahah* must be based on *maqāsid sharī'ah*.

6. *The Relevance of Maslahah Mursalah as a Contemporary Legal Solution*

Currently, and especially in the future, the problems of human life are growing and getting more complicated. The problems that arise are always related to legal issues. Here, social change in people's lives is inseparable from several issues related to Islamic law. Here, the steps of *ijtihad* by the scholars are needed, which, although not supported by the texts, if they support the realization of profits, then from an Islamic point of view, are valid. Conversely, if the concept does not bring convincing benefits but instead causes harm, then from an Islamic point of view, it is declared *fasid*.

With this paradigm, the rule of *fiqh*, namely "*Idza Asahha al-Hadith Fahuwa Mazhab*" (if a hadith proves to be valid, then it is my school of thought), really needs to be verified. It is this rule that systematically changes the world of Islamic legal thought and so far places the literal sound of the text. Or in the world of *fiqh* thought so far, they prioritize or pay attention to the sound of formal legal rules rather than the demands of *maslahah*, which is the soul of all Islamic law. Instead, we must uphold the principle of "*Idza Sahhat al-Maslahatu Fahuwa Mazhabi*" (when the affirmation of goodness has been ratified, then that is my school of thought).

With the *maslahah mursalah* approach, we can answer problems that arise regarding law, of course, without eliminating the values that must be in accordance with *maqasid sharia* in the formation of Islamic law. (Shomad, 2017)

Viewed by *maslahah mursalah* in the current era as an *ijtihad* method is valid as long as it does not conflict with *sharia*. The *Istinbath al-Ahkam* method which is used through the *Ijtihad mashlahah mursalah* method within the framework of *Istihsan*, *Istishab* and *Sadz Dzari'ah* basically focuses on the best formula to achieve general problems, especially in matters related to priority scale issues. (Cholili, 2013)

It should be noted that there are three trends in contemporary Islamic law, as follows:

1. The tendency is to use a formalist method with an emphasis on *fiqh* and *ushul fiqh* which are standard in nature. This approach interacts more with existing laws. Many say that this approach is more focused on the text.
2. The trend through a historical approach, which has recently been referred to as sociological history. This approach aims to compensate for the shortcomings of the first approach. This kind of approach regards *fiqh* as fact, not practice. Historical facts are presented as they are to explain the reality of *fiqh*.

3. The tendency to combine normative and historical This approach intends to eliminate worries if the first approach is not in accordance with reality and the second approach is not in accordance with the norm. With this approach, it is expected to be able to overcome these two things.

Wael B. Hallaq said that there are currently two trends in Islamic law, namely religious utilitarianism and religious liberalism.(Hallag, 2001)

1. Utilitarianisme Religius

Religious utilitarianism is a concept that holds that the Koran is a source of law that is general and not specific. Therefore, the Qur'an cannot only be understood through textual channels. And on this basis, istinbat law can consider its maslahah and mafsadah. For example, istinbat law through maslahah, istihsan, and qiyas methods, which are far more sensitive to the interests of humanity, Belief in the concept of religious utilitarianism, according to Hallaq, will create new legal theories and methods.

2. Liberalisme Religius

This concept views how Revelation can be understood textually and contextually. Therefore, it is primarily about reinterpreting the concept of Sharia to find solutions to current reality's problems. Figures that, according to Hallaq, usually fall into this category are Fazlur Rahman and Mohammad Syahrour. According to Fazlar Rahman's view, legal theory can be formulated, known as the "Double Movement Theory", from the specific to the general and vice versa. The first step is to understand the historical situation and the things in which the Revelation was revealed, and then look for the divine connection. The second part generalizes and systematizes the general principles of the first part and then compares them with current reality. Meanwhile, Mohammad Syahrour also has a theory known as the "Boundary Theory" (hudud). In this boundary theory, it is more accurate to describe Allah SWT's commands contained in the Qur'an and Hadith as providing lower and higher limits on human actions.(Zuhdi, 2014)

In addition, there is Hasan Hanafi's theory, which believes that both tradition and modernity are equally good as long as tradition is understood by modern standards. Hasan Hanafi also holds the view that tradition has value in every era in the context of modernity; of course, it must go through studies and re-interpretations that are relevant to the times.(Hanafi, 1980)

From this explanation, the paradigm of contemporary Islamic legal thought seeks to apply all the traditions in the Islamic treasury to modern practice by reaching maslahah and eliminating disadvantages in building a theory of Islamic law that is based on texts and more on general maslahah.

D. Conclusion

Maslahah mursalah has a big impact on the construction of Islamic law; not a few scholars apply maslahah mursalah as a consideration for istinbat Islamic law. The application of maslahah mursalah as a source of law is not an easy problem but must meet the requirements described by the scholars, including that maslahah be in line with maqasid sharia so that maslahah and maqasid sharia are related to one another.

The application of Maslahah Mursalah as a source of law is not constrained by time. Therefore, maslahah is a vital element in Islamic law that is always relevant to the times. Maslahah mursalah, in the view of contemporary Islamic law, seeks to apply the treasures of Islamic law to modern times by realizing maslahah and eliminating mafsadah.

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