

Implications of Civil Law on the Transfer of Land Rights through Deeds Under Hand : An Analysis of the Conformity between the Civil Code and the Principal Agrarian Law

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ABSTRACT

*The transfer of land rights in Indonesia is an important issue in agrarian law which is colored by normative dualism between the Civil Code (KUHPerdara) and the Basic Agrarian Law (UUPA). The Civil Code recognizes the agreement on the transfer of rights through a deed under hand as long as it fulfills the elements of Article 1320, and considers it valid under civil law and has evidentiary value in accordance with Articles 1874-1880. However, the UUPA as a *lex specialis* requires that the transfer of land rights is only valid if it is made through an authentic deed by PPAT and registered with the land office. This disharmony creates legal uncertainty, especially in the protection of third parties and certainty of ownership. This study uses a normative juridical method with a historical, systematic, and comparative approach to analyze the applicability of deeds under hand in the Indonesian land law system. The results of the study show that the deed under hand only produces obligatory rights and cannot be the constitutive basis for the transfer of rights. Therefore, harmonization between the Civil Code and the UUPA needs to be carried out in order to realize a coherent, responsive, and guaranteed legal system. This reformulation is important to adapt colonial norms to the principles of national law based on justice and certainty.*

Keywords: Deeds Under Hand; Civil Law; Agrarian Tree Law

INTRODUCTION

The transfer of land rights is a fundamental aspect in agrarian law that is directly related to the ownership and control of agrarian resources. In Indonesia, the land law system has experienced a complex historical influence due to the legacy of colonial law that still exists through the Civil Code (KUHPerdara), although legal codification has been attempted through Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA). This dualism of the legal system often causes disharmony between the normative provisions derived from the Civil Code and the special provisions regulated in the UUPA, especially in terms of the formal mechanism of transfer of land rights.¹

The Civil Code, as part of the Dutch inherited civil law, provides the basis for the recognition of freedom of contract through Article 1320 which regulates the conditions

¹ Taumba, A., & Syahrin, M. A. (2024). TINJAUAN HUKUM KEABSAHAN JUAL BELI TANAH DIBAWAH TANGAN TANPA MELALUI PEJABAT PEMBUAT AKTA TANAH PERSPEKTIF KUH PERDATA (Analisis Putusan Pengadilan Tinggi Nomor 449/Pdt/2020/PT SMG). *Jurnal Kajian Ilmu Hukum*, 3(1), 65-75.



for the validity of an agreement, namely the agreement of the parties, legal competence, certain objects, and *halal causa*. Under this provision, the agreement on the transfer of land rights can theoretically be carried out under the hand, as long as it meets the legal requirements of the agreement.² However, problems arise when this provision is applied to land objects, which according to the UUPA, the transfer of rights must be carried out through an authentic deed made by the Land Deed Making Officer (PPAT) and administratively registered in the national land system.

Furthermore, Articles 1874 to 1880 of the Civil Code provide a legal basis that the deed under hand still has value as written evidence in civil law. The deed is valid as long as it is signed by the parties, even though its evidentiary strength is weaker than that of an authentic deed. In practice, this provision is often used as a legal basis by people who buy and sell land informally using a deed under hand, assuming that as long as there is a signature and agreement, the transaction is legally valid.³ However, in the context of modern agrarian law, the use of deeds under hand creates legal vulnerability to the certainty of property rights and potential agrarian conflicts.⁴

The UUPA expressly makes fundamental reforms to the land law system, among other things, by requiring that the transfer of land rights must be proven through an authentic deed made by PPAT and subsequently registered with the local land office. The goal is to realize the principles of legal certainty, information disclosure, and protection of third parties. Therefore, although the Civil Code recognizes the deed under hand, its application is no longer relevant in the case of the transfer of land rights after the enactment of the UUPA. The use of the deed under hand in a land transaction only consequent the recognition of obligatoir rights (engagement), not on the acquisition of administratively valid property rights.⁵

The conflict between the norms of the Civil Code and the UUPA in this case is substantive and requires a systemic interpretation. In legal theory, a law of a special nature (*lex specialis*), namely the UUPA, must override a law of a general nature (*lex generalis*), namely the Civil Code, in terms of the object of land law.⁶ Therefore, the application of Article 1320 and Article 1874–1880 of the Civil Code in the transfer of land rights must be seen in a limited way, and cannot be used as a sole basis for obtaining land ownership. This is in line with the jurisprudence of the Supreme Court which in its various decisions affirms that deeds under hand in the sale and purchase of land only produce civil rights that are not imperfect and cannot be used as a basis for registration of rights.

² Abon, M. A., Dantes, K. F., & Adnyani, N. K. S. (2022). Akibat Hukum Peralihan Hak Atas Tanah Waris Berdasarkan Pasal 20 Ayat (1) Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria. *Jurnal Komunitas Yustisia*, 5(3), 64-80.

³ Rahmah, S., Jalil, H., & Kadir, M. Y. A. (2024). Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in Indonesia: A Study in Aceh Province. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(1), 556-578.

⁴ Rahmatiar, Y., Abas, M., & Sanjaya, S. (2024). Perlindungan Hukum Terhadap Pembeli Dalam Peralihan Hak Atas Tanah Melalui Jual Beli Di Bawah Tangan Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Dan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah (Studi Kasus Di Desa Cengkong Kecamatan Purwasari Kabupaten Karawang). *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 4(6).

⁵ Setoaji, B., & Kunarti, S. (2023). Validity of Land Rights Transfer Based on Debt with Collateral of Land Certificate under Indonesian Law. *Problems of legality*, (160), 284-303.

⁶ Adinda, A. D., & Silviana, A. (2025). Konsekuensi Hukum Peralihan Hak Atas Tanah melalui Jual Beli Terhadap Perjanjian yang dibuat di bawah Tangan. *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton*, 11(1), 295-305.

The practice of people who still use deeds under hand in land transactions shows that there is a gap between normative law and *living law* in society. Economic factors, ignorance of the law, and limited access to PPAT are the main reasons for the rampant transfer of land rights without authentic deeds.⁷ However, a sociological approach alone is not enough to justify the practice, because in a formal legal context, the use of deeds under hand creates legal uncertainty, especially in terms of protection of well-meaning third parties as well as in the process of proving the law in court.

This condition requires harmonization and integration between the norms contained in the Civil Code and the UUPA, both through an interpretive approach by judges and through the codification of laws and regulations. This harmonization is important to ensure legal certainty, justice, and efficiency in the transfer of land rights. One form of harmonization that can be done is to affirm the position of the deed under hand as preliminary evidence that must be complemented by an authentic deed and registration in order to meet the constitutive elements in the national land law.⁸

Thus, although the Civil Code still provides a legal basis for the existence of deeds under hand, its enforceability in the context of the transfer of land rights must be adjusted to the principles outlined in the UUPA. The legal implication is that the deed under hand cannot be used as the sole basis for proving a lawful transfer of ownership of land. In-depth studies and normative reconstruction are needed to encourage synchronization between civil law and agrarian law, in order to realize a national land system that is fair and based on legal certainty.

METHODS

This research uses a normative juridical method, which is legal research that focuses on the study of applicable positive legal norms. Normative research aims to examine and understand how the law should apply (*das sollen*), not how the law is practiced in empirical reality (*das sein*), so that the entire analysis process relies on primary and secondary legal materials that are textual and conceptual.⁹

As explained by Peter Mahmud Marzuki, normative legal research is a method that focuses on the study of legal materials as the main object of study, by interpreting and constructing applicable laws to answer certain legal issues.¹⁰ According to Marzuki, this approach is prescriptive because it aims not only to describe the law, but also to provide normative arguments for the validity of a legal action or act in the legal system adopted.¹¹ Meanwhile, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and comparative law.¹²

The main focus of this approach is to analyze the written rules that govern the transfer of land rights, especially through deeds under the hand, with reference to the Civil Code (KUHPerdata) and Law Number 5 of 1960 concerning the Basic Regulations on

⁷ Chang, Y. C., & Smith, H. E. (2012). An economic analysis of civil versus common law property. *Notre Dame L. Rev.*, 88, 1.

⁸ Lubis, T. H., & Ramadhani, R. (2021). The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights. *International Journal Reglement & Society (IJRS)*, 2(3), 149-160.

⁹ Novea Elysa Wardhani, Sepriano, and Reni Sinta Yani, *Metodologi Penelitian Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia., 2025).

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

¹¹ Mahlil Adriaman et al., *Pengantar Metode Penelitian Ilmu Hukum* (Padang: Yayasan Tri Edukasi Ilmiah, 2024).

¹² Rangga Suganda, "Metode Pendekatan Yuridis Dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2859, <https://doi.org/10.29040/jiei.v8i3.6485>.

Agrarian Principles (UUPA). The Civil Code, especially Article 1320, is used as the basis for analysis of the conditions for the validity of the agreement, including the land sale and purchase agreement made in the form of a deed under hand. In addition, Articles 1874 to 1880 of the Civil Code were analyzed to understand the legal evidentiary power of the deed under hand compared to the authentic deed.

Meanwhile, the UUPA is the main basis for assessing the formal validity of the transfer of land rights, which expressly requires the use of authentic deeds made by the Land Deed Making Officer (PPAT) and its registration at the land office as a constitutive condition in obtaining land rights. The comparison between the provisions of the Civil Code and the UUPA is studied through a systematic and historical approach, in order to place both within the framework of national agrarian law that has undergone recodification. In addition, the comparative legal approach is also used to assess the extent to which the deed under hand can still be used as a valid legal basis in the current land system.

The legal materials used include primary legal materials such as laws and regulations and court decisions, as well as secondary legal materials in the form of literature, journals, and the opinions of legal experts. This research aims to identify the point of disharmony between the provisions of civil law and agrarian law, as well as provide juridical arguments regarding the relevance and limits of the applicability of the deed under hand in the transfer of land rights. With this method, it is hoped that a comprehensive understanding will be obtained that can be the basis for normative arguments for harmonization efforts between the Civil Code and the UUPA in order to ensure legal certainty and protection of land rights in Indonesia.

RESULTS AND DISCUSSION

1. Legal Construction of the Validity of the Agreement on the Transfer of Land Rights through Deeds Under the Hand according to the Civil Code

The legal construction of the validity of the agreement on the transfer of land rights through a deed under hand in the perspective of the Civil Code (KUHPercivil) places the agreement in the framework of an obligatory relationship that still has legal binding force even though it does not meet the formal provisions in agrarian law. Based on Article 1320 of the Civil Code, the validity of an agreement requires the existence of four constituent elements: agreement of the parties, legal competence, certain objects, and *causa* that is *halal*. If these four elements are met, then the land sale and purchase agreement, even if it is stated in the form of a deed under hand, still has the binding force of private and legal law according to the principle of consensualism which is a basic principle in civil agreement law.¹³

In the realm of evidentiary law, Articles 1874 to 1880 of the Civil Code expressly regulate the existence and evidentiary power of deeds under hand. This kind of deed, although it does not have the characteristics of an authentic deed made in the presence of an authorized public official (notary or PPAT), can still be used as written evidence as long as it meets the formal requirements, including signature by the parties and no denial of its authenticity.¹⁴ Theoretically, the deed under hand serves as written preliminary

¹³¹³ Maharani, I. A. D., Puspadma, I. N. A., & Astiti, N. G. K. S. (2023). Keabsahan Jual Beli Hak atas Tanah yang Dilakukan tanpa Akta PPAT Ditinjau dari Perspektif Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah. *Jurnal Konstruksi Hukum*, 4(3), 261-267.

¹⁴¹⁴ Damayanti, D. A. A. (2020). Perjanjian Jual Beli Tanah Yang Tidak Dilakukan Di Hadapan Pejabat Pembuat Akta Tanah (PPAT). *Lex Privatum*, 8(2).

evidence that can be strengthened by other evidence, and has probative value in confirming the existence of a civil law relationship.¹⁵ This shows that the deed under hand remains juridically relevant as an instrument of proof in the litigation process, especially in civil disputes related to the fulfillment of achievements in land sale and purchase agreements.

However, the validity of the agreement on the transfer of land rights through a deed under hand does not necessarily imply a formal juridical transfer of rights according to the national agrarian law system. This is due to the existence of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) which requires that any transfer of land rights must be proven through an authentic deed made by PPAT and subsequently registered at the Land Office to obtain the force of constitutive law. Thus, the agreement in the form of a deed under hand only causes legal consequences at the obligatory level, namely creating an alliance relationship between the seller and the buyer, but has not given birth to legal consequences at the translatoir level, namely the transfer of ownership rights legally according to land administration law.¹⁶

The juridical implications of this construction show the dualism between the civil law system and agrarian law, where civil law recognizes the existence and validity of private agreements based on the principle of freedom of contract, while agrarian law requires formal and administrative legality in every transfer of land rights.¹⁷ This phenomenon poses complex legal consequences, especially in the case of ownership disputes, since the civil courts can recognize the validity of the agreement under the deed at hand, while from the perspective of land administration, the rights to the land have not been fully transferred juridically. Therefore, in the future, a normative harmonization is needed between the provisions of the Civil Code and the agrarian law system, in order to provide legal certainty and proportionate protection to the parties who enter into land rights transfer agreements, especially in situations where the agreement is not stated in an authentic deed.

2. Normative Analysis of the Formal Conditions of Transfer of Land Rights in the Basic Agrarian Law

The transfer of land rights in the Indonesian agrarian law system normatively is not solely subject to the principle of consensualism as embraced in the classical civil law system rooted in the Burgerlijk Wetboek (Civil Code), but has undergone a conceptual transformation through the enactment of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA). The UUPA introduces a new paradigm regarding land as a strategic agrarian resource that is no longer solely an object of private law, but part of a public legal regime that prioritizes social functions and state control over natural resources.¹⁸ Therefore, the transfer of land rights must meet the formal

¹⁵ Gaol, S. L. (2020). Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden). *Jurnal Ilmiah Hukum Dirgantara*, 11(1).

¹⁶ Maudina, E., Rizki, A. D., Nurhasanah, D. A., Adriansyah, A. P., & Noor, A. (2024). The Role of Land Deeds Official Certifier (Ppat) in Terms of Transfer of Land Rights Through Land Exchange in The Development of Educational Infrastructure. *International Journal of Latin Notary*, 5(1), 11-14.

¹⁷ Junita, R., Rosadiana, E., Agustini, D. D. A., & Noor, A. (2024). Critical Review of Officials Making Land Deeds Who Do Not Comply With The Procedure For Making Authentic Deeds of Land Sale and Purchase Agreements. *Journal of Law, Politic and Humanities*, 4(5), 1794-1800.

¹⁸ Efendi, M., Arifin, S., & Napitupulu, D. R. W. (2025). Analisis Hukum Penyelesaian Sengketa Hak Milik Atas Tanah Menurut Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria. *Journal Scientific of Mandalika (JSM) e-ISSN 2745-5955 | p-ISSN 2809-0543*, 6(8), 2089-2097.

requirements as stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, namely that every transfer of land rights must be proven by an authentic deed made by the Land Deed Making Officer (PPAT), and followed by registration with the land office to obtain certainty and legal protection.

This conception differs paradigmatically from the provisions of Article 1320 jo. Article 1459 of the Civil Code, which states that an agreement on the transfer of rights to property (including land) is considered valid if there has been an agreement and delivery (levering), without requiring state administrative formalities. This approach reflects the principles of individualism and freedom of contract, where the law facilitates private agreements without state intervention, and the transfer of rights is considered complete at the time of assignment, regardless of the recording or ratification aspect. However, such an approach is not entirely relevant in the context of a codifying and integralistic national agrarian legal system, where the recognition of rights by the state is an inherent part of the validity of transitional law.

Non-compliance with formal requirements in agrarian law, namely the non-making of a deed by PPAT or the non-registration of rights to the land office, has implications for the imperfection of the process of transferring rights, both administratively and substantially.¹⁹ Juridically, the transfer of rights has no evidentiary power against third parties, and has the potential to give rise to disputes or even be considered null and void in the perspective of agrarian law. This is confirmed in the jurisprudence of the Supreme Court which consistently states that the transfer of land rights that is not based on an authentic and unregistered deed cannot be used as the basis for a claim of legally protected rights. Consequently, land that has been "sold" without meeting the formal requirements is still recognized as belonging to the party registered in the certificate, thus creating legal uncertainty for well-meaning buyers.

Scientific studies conducted by Soetandyo Wignjosebroto and Boedi Harsono underline that the UUPA not only overhauled the legal structure of colonial heritage lands, but also introduced the principle of formal attachment as a mechanism for control and protection of land rights. From the perspective of the rule of law, the registration of land rights is not only an administrative system, but part of public ordering that ensures accountability, openness, and legal legitimacy. Thus, formalities in the transfer of land rights should not be seen as a mere technical procedure, but rather as a *conditio sine qua non* for the legal validity and effectiveness of ownership.

Overall, the normative provisions on the formal requirements for the transfer of land rights in the UUPA and Government Regulation No. 24 of 1997 reflect a fundamental change in the legal structure of land in Indonesia, from the civil law system of colonial heritage to a national legal regime that emphasizes the legitimacy of the state in every agrarian legal-transaction process. Thus, the existence of authentic deeds and land registration systems is not only a means of proof, but also as a constitutive instrument inherent in the existence of the right itself. This difference in approach between the Civil Code and the UUPA marks a shift from contract-based land transactions to state-recognized land tenure, which underscores the importance of state involvement in the protection of land rights and the prevention of agrarian conflicts.

¹⁹ Patahuddin, M. K. (2023). Pengaturan Terhadap Peralihan Hak Milik Atas Tanah Melalui Jual Beli Tanah Menurut UU No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria. *Lex Administratum*, 11(1).

3. Legal Harmonization between the Civil Code and the Law on the Transfer of Land Rights

The problem of disharmony between the Civil Code (KUHPercivil) and the Basic Agrarian Law (UUPA) in the transfer of land rights is a fundamental issue in the construction of national agrarian law. The Civil Code as a legacy of Dutch colonial law prioritizes the principle of freedom of contract which provides the widest possible space for the parties to make agreements, as long as they meet the legal requirements of the agreement as specified in Article 1320 of the Civil Code. However, in the framework of national land law after the 1960 UUPA, this principle must be read systemically with the application of the principles of legality, publicity, and formality that bind every form of transfer of land rights. The transfer of rights according to the UUPA and its implementing regulations (especially Government Regulation No. 24 of 1997) is only considered valid if it is stated in an authentic deed made by the Land Deed Making Officer (PPAT) and registered in the national land registration system.²⁰

The consequences of the insynchronization of norms in the Civil Code and the UUPA can cause legal ambiguity in assessing the validity of a land rights transfer agreement. This can be seen in practice, where land transfer agreements made under the hands are valid under civil law but are not recognized in the land regime because they do not meet the formal administrative requirements as stipulated in agrarian regulations.²¹ This kind of normative clash creates legal dualism that has the potential to weaken legal certainty, increase the space for disputes, and reduce the credibility of the national land system. In this context, Van Apeldoorn in his theory of the legal system emphasizes the importance of coherence between norms in a complete legal system, so that no norms are mutually reinforcing. The disintegration between the principle of freedom of contract and the principle of legality requires a harmonious reconstruction, both through legislative reform, judicial reinterpretation, and an integrative approach in notarial and land practice.

The urgency of harmonization between the Civil Code and the UUPA is not only normative-technical, but also part of the national legal codification agenda that leads to the unification of a legal system that is more responsive to the social and economic needs of the Indonesian people.²² Such systemic adjustment needs to be based on integrative legal theory which states that law cannot stand normatively alone, but must be actualized in social praxis. Therefore, this legal harmonization must be directed to form a land law system that is not only formally valid but also substantively just.

In addition, this harmonization is essential in order to increase the effectiveness of legal protection for legal subjects in land transactions. The existence of two legal regimes that run in parallel without substantive interconnection causes transaction actors, especially ordinary people, to be in an asymmetrical legal situation. For example, in land disputes that are based solely on deeds under hand, courts often face a dilemma between respecting the will of the parties (as in the principles of the Civil Code) and enforcing the principle of administrative formality (as in the principles of the UUPA). This tension can be resolved through a harmonized approach that places the principles of agrarian law in

²⁰ Zaphiriou, G. A. (1990). Harmonization of private rules between civil and common law jurisdictions. *The American Journal of Comparative Law*, 71-97.

²¹ Handira, K., & Yandi, R. (2024). Dampak Perubahan UUPA terhadap Implementasi Hukum Perdata. *Jurnal Mahkamah Hukum*, 1(1), 62-72.

²² Fathoni, M. Y., Sahrudin, S., & Dilaga, Z. A. (2022). Sistem Peralihan Hak Atas Tanah Sebelum dan Sesudah Berlakunya UUPA Ditinjau Dari Perspektif Abstract dan Causal System. *Private Law*, 2(1), 1-12.

a supremacist position but still opens up space for recognition of contractual principles in the Civil Code that have a historical basis and juridical legitimacy.²³

Thus, the harmonization between the Civil Code and the UUPA cannot be seen as a mere procedural equalization, but must be interpreted as a systemic effort to build interlegality between colonial inheritance law and national law based on Pancasila. The reformulation should ideally be realized through a normative-progressive approach that takes into account the social dynamics of contemporary law, as well as minimizing gaps and overlapping regulations that can hinder the realization of agrarian justice.

CONCLUSIONS

Legal construction of the validity of the agreement on the transfer of land rights through the deed under hand shows that there is a normative dualism between the Civil Code and the UUPA. On the one hand, the Civil Code places the agreement as valid as long as it fulfills the elements of Article 1320, namely agreements, skills, certain objects, and causa that are halal. The deed under hand still has binding force in private and can be used as valid evidence according to civil law. However, from the perspective of agrarian law, such an agreement does not necessarily transfer land rights in a formal juridical manner. UUPA and Government Regulation No. 24 of 1997 require an authentic deed by PPAT and land registration as a constitutive condition for the transfer of rights. This inconsistency creates legal uncertainty, especially for the buyer in good faith who only holds the deed under hand. As a result, a potential dispute arises because the land is still recognized as belonging to the party whose name is listed in the certificate. This requires harmonization between the principle of freedom of contract in the Civil Code and the principle of legality in the UUPA. The harmonization must be based on an integrative and progressive national legal paradigm. The goal is not only to unify legal procedures, but also to ensure substantial justice and the protection of citizens' civil rights. Thus, Indonesia's land law system can become more responsive, coherent, and ensure legal certainty in any transfer of land rights.

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²³ Simbolon, M. M. (2025). Harmonisasi Hukum Adat dan Hukum Positif di Indonesia. *Jurnal Hukum Lex Generalis*, 6(3).

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