

## **INTERFAITH MARRIAGE CONTROVERSY IN THE PERSPECTIVE OF FIQIH AND POSITIVE LAW**

**Abdul Khabir**

State Islamic University of Mataram-Indonesia  
[abdulkhabir@gmail.com](mailto:abdulkhabir@gmail.com)

### **Abstract**

*Interfaith marriage has become a controversial issue in Indonesia. The hesitation of interfaith couples to pursue their relationships to a more serious level, namely marriage, is hampered by the lack of clarity in existing regulations. Referring to Marriage Law Number 1 of 1974, the concept of interfaith marriage is not explained in detail; the law only covers mixed marriages (citizenship). The purpose of this study is to understand the concept and legal consequences of interfaith marriage. The research method is qualitative research using normative juridical research methods. Qualitative research also includes methodologies used for research procedures that produce descriptive data. Descriptive data is data written using detailed words. In this study, the researcher also used a normative juridical approach with the technique used to collect data is by examining library materials. Data obtained from library research will then be systematically compiled and processed with qualitative descriptive analysis, which will then provide conclusions from the analyzed data. The research concluded that interfaith marriage is a contract of engagement in the form of a marriage between a man and a woman who is Muslim and a woman who is not Muslim, thus causing the marriage to be invalid because the marriage contract was not carried out in the same religion.*

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*Perkawinan beda agama merupakan sesuatu yang sudah menjadi masalah kontroversial di Indonesia. Keraguan para pasangan beda agama untuk melanjutkan hubungan ke jenjang yang lebih serius yaitu perkawinan berbenturan dengan ketidakjelasan peraturan yang ada. Mengacu pada Undang- Undang Perkawinan Nomor 1 Tahun 1974, tidak dijelaskan secara rinci mengenai konsep perkawinan beda agama, Undang-Undang tersebut hanya memuat tentang pernikahan campuran (kewarganegaraan). Tujuan penelitian ini, yaitu untuk memahami konsep dan konsekuensi hukum terhadap pernikahan beda agama. Metode penelitian merupakan penelitian kualitatif yang menggunakan metode penelitian yuridis normative. Penelitian kualitatif juga termasuk metodologi yang dimanfaatkan untuk prosedur penelitian yang menghasilkan data deskriptif. Data deskriptif adalah data yang dituliskan menggunakan kata-kata secara mendetail. Dalam penelitian ini peneliti juga menggunakan pendekatan yuridis normatif dengan teknik yang dilakukan untuk mengumpulkan data adalah dengan meneliti bahan pustaka. Data yang diperoleh dari riset kepustakaan (library research), yang kemudian akan disusun secara sistematis dan akan diolah dengan analisis deskriptif kualitatif yang kemudian akan diberikan kesimpulan-kesimpulan dari data yang telah dianalisis. Penelitian menghasilkan kesimpulan bahwa pernikahan beda agama adalah suatu akad keterikatan*

berupa pernikahan antara laki-laki dengan perempuan beragama Islam dan non beragama Islam, sehingga menyebabkan pernikahan tidak sah karena akad pernikahan tidak dilaksanakan dengan satu agama.

**Keywords:** *Controversy, Marriage, Different Religions, Fiqh, Positive Law*



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Journal of Islamic Law

## A. INTRODUCTION

Islamic law is the law of Allah SWT which demands obedience from Muslims to implement it as a continuation of their faith in Allah SWT. These rules are stated in the form of orders or God's will regarding actions that humans can and cannot do. In simple terms, Allah's will is sharia or sharia law which is now called Islamic Law.

Historically, the general perception of sharia in this era is actually different from that of the Prophet's time. Efforts at codification, or corpus juris, in Engineer's terms.<sup>1</sup>, took more than a century. In Shi'ism alone, sharia began to be codified during the time of Imam Ja'far al-Sadiq, one hundred and fifty years after the Prophet's migration. It was at this point that the question of sharia emerged.<sup>2</sup>

As Allah SWT says in the Qur'an, Surah Al-Jtsiyah, (45): 18: which means "Then We made you above a Shari'a (regulation) of (religious) affairs. So follow that Shari'a and do not follow the desires of those who do not know."<sup>3</sup>

<sup>1</sup>Asghar Ali Engineer dilahirkan di Rajasthan, dekat Udaipur pada 10 Maret 1940 dalam keluarga yang berafiliasi ke Syi'ah Isma'iliyah. Adapun ayahnya bernama Sheikh Qurban Husain, dan ibunya bernama Maryam. Dalam hal ini, ayahnya merupakan seorang pemuka agama yang mengabdi kepada pemimpin keagamaan Bohra. Melalui ayahnya, Engineer mempelajari ilmu-ilmu keislaman seperti teologi, tafsir, hadis, dan fiqh.

Tawaran metodologis Engineer, bahwa kehadiran Islam di jazirah Arab merupakan sebuah upaya transformatif yang sangat revolusioner. Menurut Engineer banyaknya kesenjangan dan ketidakadilan sosial yang terjadi dalam masyarakat Arab pra- Islam waktu itu, menjadi bukti ilmiah bahwa Islam datang untuk melakukan transformasi sosial masyarakat Arab pra Islam. Seperti sebelum Islam datang telah terjadi berbagai penindasan atas berbagai kelompok dalam masyarakat Arab Jahiliyah, seperti perempuan pada waktu pra-islam menjadi kelas bawah, dan para budak yang tidak dimanusiakan layaknya manusia, mereka para budak hanya seperti barang yang tidak ada satupun hak kemanusiaan yang melekat dalam dirinya.

Ajaran revolusioner Nabi Muhammad SAW merupakan upaya reformasi-transformatif sosial yang bersifat egalitar. Upaya reformasi- transformatif tersebut banyak termanifestasi dalam beberapa kasus sosial yang egaliter baik dalam ritual (seperti shalat dan zakat), kehidupan sosial (penghapusan perbudakan secara gradual), ekonomi- politik (perlawanan terhadap kapitalisme buta dan monopolisasi oleh sejumlah pedagang besar yang bersifat eksploratif), dan hubungan antar agama (dengan para penganut agama lain).

Akan tetapi, upaya revolusioner yang universal dari Al Qur'an tersebut juga tidak melupakan konteks sosial masyarakat Arab pra- Islam waktu itu, dalam upaya transformasi tradisi Araab jahiliyah menuju tradisi islam egaliter tersebut selalu dilakukan secara gradual (tadrijiyan).

<sup>2</sup>Anas Kholish dkk. *Epistemologi Hukum Islam Transformatif*, (Malang: UIN Maliki Press, 2015), hal. 66

<sup>3</sup>Departemen Agama, *Al-Qur'an Tafsir Per Kata Tajwid Kode Angka*, (Banten: al-Hidayah, 2011), 501.

The verse above explains that Sharia law must be followed and implemented in all aspects of human life. The forms of life regulated by Allah in Islamic law are divided into two groups. First, the laws of worship, which relate to the physical relationship between humans and their Creator, known as *hablun min Allah*. Second, the laws of *mu'amalat*, which relate to relationships between humans, known as *hablun min al-ns*.<sup>4</sup>

Among the rules relating to fellow human beings established by Allah are the rules regarding the jurisprudence of *munakahat*, also known as marriage. Marriage is a contract that results in legal changes in the form of legalizing association by limiting the rights and obligations between a man and a woman who is not a mahram. Article 2 of the KHI states that marriage according to Islamic law is marriage, namely marriage, namely a very strong contract or *mitsaqan ghalidzan* to obey God's commands and carrying it out is an act of worship. Another opinion states that marriage is a legal relationship between a man and a woman, which is eternal and eternal, based on the conditions stipulated by the state regarding marriage law.<sup>4</sup>

One of the social issues concerning marriage is the controversy surrounding interfaith marriage. This is because, both from a legal perspective and under the law, it invalidates the marriage contract, as stated in the Quranic verse in Surah al-Baqarah (2:221):<sup>5</sup> which means "and do not marry polytheist women, before they believe. Indeed, a believing slave woman is better than a polytheist woman, even though She attracts your heart. And do not marry polytheist women (to believing women) before they believe. Indeed, a believing slave is better than a polytheist, even though He attracts your heart. They invite you to hell, while Allah invites you to heaven and forgiveness with His permission. And Allah explains His verses (His commandments) to people so that they learn a lesson.

In the Compilation of Islamic Law (KHI) Article 40: it is prohibited to carry out a marriage between a man and a woman due to certain circumstances, in paragraph (c) it says: a woman who is not Muslim.

## B. METHODS

The research method is qualitative research that uses the methodstudynormative juridical. Qualitative research also includes methodologies used for research procedures that produce descriptive data. Descriptive data is

<sup>4</sup>Sri Wahyuni, *Nikah Beda Agama*, Jakarta: Pustaka Alvaber. 2016. 43

<sup>5</sup>*Ashabul Nuzul: Ibnu Mundzir, Ibnu Abi Hatim, dan al-Wahidi meriwayatkan dari Muqatil, dia berkata, "Ayat ini turun pada Ibnu Abi Marisad al-Ghanawi, ketika dia meminta izin kepada Nabi saw. untuk menikahi seorang wanita muda musyrikah yang memiliki kekayaan dan kecantikan. Maka turunlah ayat 221 surah al-Baqarah." Al-Wahidi meriwayatkan dari jalur as-Suddi dari Abu Malik dari Ibnu Abbas, dia berkata, "Ayat ini turun pada Abdullah bin Rawahah, yang ketika itu memiliki seorang budak wanita berkulit hitam. Pada suatu hari dia marah kepada budaknya dan menamparnya. Kemudian dia mendatangi nabi saw. dan memberi tahu beliau tentang hal itu, lalu dia berkata, 'Sungguh saya akan memerdekaannya dan menikahinya. Lalu dia melakukan apa yang dikatakan itu. Melihat apa yang dilakukannya itu, seba gian orang muslim mencelanya. Mereka berkata, 'Dia menikahi seorang budak wanita?'*

data written in words in detail. In this study, the researcher also used a normative juridical approach with the technique used to collect data is by examining library materials. Data obtained from library research will then be systematically compiled and processed with qualitative descriptive analysis, which will then provide conclusions from the analyzed data.

## C. DISCUSSION

### 1. Interfaith Marriage from a Fiqh Perspective

Interfaith marriage is a union between a man and a woman, occurring between a Muslim and a non-Muslim. Interfaith marriages can be categorized into several categories:

#### a. Marriage between a Muslim and a polytheist

A polytheist is someone who denies the existence of God (atheist), does not believe in prophets or the Last Day, or is known as a group of Magians and idol worshippers. Another opinion states that a polytheist is an infidel other than the People of the Book.<sup>6</sup>

The majority of scholars are of the opinion that it is haram to marry polytheists. As the opinion says:<sup>7</sup>

حَرَمَ اللَّهُ تَعَالَى الْمُشْرِكَاتِ عَلَى الْمُسْلِمِينَ وَلَا عَرْفٌ شَيْئًا مِنْ الْإِشْرَاكِ أَعْظَمُ مِنْ أَنْ تَقُولَ الْمُرْوَةُ  
: زُنْجَاعِيْسَى أَوْعَبْدُ مِنْ عِبَادِ اللَّهِ

However, in another opinion, feminists<sup>8</sup> reject the prohibition on interfaith marriage because it contradicts the principle of religious freedom. In their view, QS al-Baqarah, 2:221 is specific and political. The majority of scholars understand the above verse to be general, and therefore prohibits interfaith marriage, in the sense of marriage with polytheists. Meanwhile, feminists understand it specifically, therefore marriage with polytheists is permissible and not forbidden. It is said to be specific because the prohibition is limited to polytheistic Arab women only (شِرْكَةِ الْأَعْرَبِ مِنْ مَنْ). That means, other than Arabic ('ajamiyah) is permissible<sup>9</sup>.

Contextually and historically, the prohibition was political rather than theological. Historical evidence shows that Zainab, the Prophet's daughter, was married to Abu al-Asha ibn Rabi'. Abu al-Asha ibn Rabi', meanwhile, adhered to the religion of his ancestors, namely idol worship. Although the Prophet

<sup>6</sup>Showi ala tafsir al-Jalalain. Haramain. Tanpa Tahun. 142

<sup>7</sup>Ali al-Shobuniy, Muhammad. *Rawaibu al-Bayan. Al-Ashrya.2017.Libanon.268*

<sup>8</sup>Kaum feminis merujuk pada kelompok orang, biasanya perempuan, yang memperjuangkan kesetaraan gender dan hak-hak perempuan dalam berbagai aspek kehidupan, termasuk politik, sosial, ekonomi, dan budaya. Tujuan utama gerakan feminisme adalah untuk menghapuskan diskriminasi gender dan memastikan perempuan memiliki kesempatan yang sama dengan laki-laki.

<sup>9</sup>Sufyan dkk. *Fikih Feminis*. (Yogyakarta: Pustaka Pelajara, 2014), hal 118

ultimately gave Zainab a choice between returning Zainab to his bosom or Abu al-Asha ibn Rabi' converting to Islam, Abu al-Asha ibn Rabi' eventually converted to Islam.<sup>10</sup>.

It is also explained that a married infidel woman who converts to Islam, while her husband remains an infidel, is not permissible for him, and vice versa. In other words, if a woman converts to Islam without her husband converting to Islam, the marriage is automatically dissolved. Therefore, the marriage of a woman who converts to Islam is considered broken (dissolved) with her infidel husband.<sup>11</sup> The Word of Allah SWT.

An-Naim<sup>12</sup> details the rules deemed to have discriminated against the dhimmi group and against women in general. For example, a Muslim man may marry a Christian or Jewish woman. However, neither a Christian nor a Jewish man may marry a Muslim woman. As for infidels, those who do not believe in the revealed scriptures, neither Muslim men nor women may marry them.<sup>13</sup>

In response to this issue, an-Naim proposed a legal definition stating that Muslim men may marry Christian or Jewish women. Likewise, Christian or Jewish men may marry Muslim women. Furthermore, Muslim men and women are permitted to marry non-Muslims.<sup>14</sup>

#### b. Marriage between Muslims and people of the Book

Jumhur ulama' argue for the permissibility of interfaith marriages between Muslims and people of the Book, namely Jews and Christians, as a proof in Surah al-Maidah (5:5): "On this day it is Halal for you who are good. The food (slaughter) of those who are given the Book is Halal for you, and your food is Halal (also) for them. (And Halal Mangawini) women who maintain honor among believing women and women who maintain honor among those who were given the Book before you, if you have paid their dowry with the intention of marrying them, not with the intention of committing adultery and not (also) taking them as concubines. Whoever disbelieves after believing (does not accept the laws of Islam) Then his deeds will be erased and he will be among the losers on the Day of Resurrection.

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<sup>10</sup>Sufyan dkk. *Fiqih Feminis...*119

<sup>11</sup>Ainul Izzah dkk, *Metodologi Ayatul Ahkam (Paradigma Konsep Fiqih dalam kajian Ayatul Ahkam)*, (Lirboyo: 2015 Lirboyo Press)

<sup>12</sup>Abdullahi Ahmed an Naim dilahirkan di sebuah desa al Maqawir yang terletak di tepi barat Nil sekitar 200 km dari utara Khartoum pada 6 April 1946, namun di dalam akte tertulis 19 November 1946. an Naim membedah aspek-aspek ambiguitas pemikiran hukum Islam baik persoalan metodologi maupun materinya. Termasuk kelebihan an Naim dalam setiap bahasannya adalah tawaran bangunan epistemologi hukum Islam yang telah mengkritik teori dan praktik hukum Islam tradisional. Seingga an Naim mampu melahirkan produk hukum Islam yang baru. Sekalipun dalam teorinya tetap berpijak pada teori nasakh

<sup>13</sup>Anas Kholish dkk. *Epistemologi Hukum ...* hal, 187

<sup>14</sup>Dahlan, Moh. *Epistemologi Hukum Islam*. (Yogakarta: Pustaka Pelajar, 2009), hal 241

Preceding the lafazh المُؤمنات from the word الحصّنات in the verse above shows the virtue of marrying a fellow believer, even though it is permissible to marry someone from the people of the book<sup>15</sup>as in the expression

أَلَا أَحْبِرُكُمْ عَنْ حَيْرَمَا يَكْنِزُ الْمُؤْمِنَةَ الصَّالِحَةَ

Words الصالحة means al-Sholâh, namely the believer and this shows the affirmation to marry the same religion<sup>16</sup>.

Even though the verse above provides tolerance for Muslim men to marry women from the ahlu al-kitab, recent ulama' have forbade men to marry ahlu al-kitab because the belief of the ahlu al-kitab who believe that Jesus is the son of Allah has entered into idolatrous terminology.<sup>17</sup>This was emphasized by Ibn Umar, who argued that interfaith marriage between Muslims and people of the Book is haram.<sup>18</sup>

ذَهَبَ أَبْنُ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا إِلَى تَحْرِيمِ نِكَاحِ الْكِتَابِيَّاتِ وَكَانَ شُعْلَانَ عَنْ نِكَاحِ الرَّجُلِيِّ النَّصْرَانِيَّةِ وَالْيَهُودِيَّةِ قَالَ : حَرَّمَ اللَّهُ تَعَالَى الْمُشْرِكَاتِ عَلَى الْمُسْلِمِينَ وَلَا أَعْرِفُ شَيْئًا مِنَ الْإِشْرَاكِ أَعْظَمُ مِنْ أَنْ تَقُولَ الْمَرْأَةُ : رُهْمًا عِيسَى أَوْ عَبْدُ مِنْ عِبَادِ اللَّهِ

## 2. Interfaith Marriage: A Perspective Outside of Islam

Opinions of religions other than Islam regarding interfaith marriages include:

### a. Interfaith Marriage from a Catholic and Protestant Perspective

Catholicism considers marriage a sacrament, so it must be performed in the presence of a bishop or parish priest. In principle, interfaith marriage is prohibited in Catholicism, except in certain cases where the bishop can grant a dispensation. There are several circumstances that prevent the goal of marriage from being achieved, including differences in church or religion. Therefore, in Catholicism, interfaith marriage is considered a less than ideal marriage and is not recommended for Catholics. A marriage in Catholicism cannot be separated from the sacrament, so that the two partners who are different are included within the framework of the Catholic faith.<sup>19</sup>

<sup>15</sup>Aly Al-Shobuny. M, Rawaihu al-Bayan Tafsir Verses of the Qur'an, (Lebanon: al-Ashriyah. 2017). Pg, 503

<sup>16</sup>Aly Al-Shobuny. M, Rawaihu al-Bayan ... Pg, 503

<sup>17</sup>Imron Rosyadi, Rekonstruksi Epistemologi Hukum Keluarga Islam (Jakarta: 2023, Kencana). Hal 197

<sup>18</sup>Aly Al-Shobuny. M, Rawaihu al-Bayan... Pg, 268

<sup>19</sup>Imron Rosyadi, Reconstruction of Epistemology... 199

Based on the explanation above, it explains that the Catholic religion states that marriage with someone who is not of the same religion is not an ideal couple, and is even considered invalid.

However, the Catholic Church can, in certain cases, grant dispensation for marriages where Catholics are willing to make promises, among other things.<sup>20</sup>:

- 1) Accepting marriages with non-Catholics. Dispensation is granted if the other party is Catholic;
- 2) Will not divorce parties who are Catholic;
- 3) It will not prevent Catholic parties from educating their children.

Catholic couples must also make a promise;

- 1) will remain faithful to the Catholic faith;
- 2) tried to bathe and educate all their children in a Catholic manner

b. Interfaith Marriage from a Hindu and Buddhist Perspective

In Hinduism, a marriage is considered valid if it meets certain requirements, including being conducted according to Hindu law. If one of the partners is not yet a Hindu, the marriage cannot be legally recognized. To be valid, the non-Hindu partner must undergo a religious ceremony to officially become a Hindu, known as disudhi wadani or disudhikan.<sup>21</sup>.

c. Interfaith Marriage from a Confucian Perspective

Confucianism explains that marriage aims to enable humans to continue their history and develop the seeds of God (the One Almighty God), manifested in the virtues that reside within them, and to enable humans to guide their children. One of the requirements for marriage in Confucianism is that both prospective brides and grooms must perform a profession of faith. The requirement to perform a profession of faith indicates that they must first believe in Confucian beliefs, which ultimately equates to conversion to Confucianism. The profession of faith takes place at a Confucian place of worship called a Lithang.<sup>22</sup>

From the explanation above, it can be concluded that, from a religious perspective, interfaith marriages are not permissible for various reasons. Interfaith marriages can be performed if the prospective bride and groom, who are of different religions, are willing to convert to the religion in which the marriage will be conducted.

**3. Interfaith Marriage: A Positive Legal Perspective**

Legally, interfaith marriage is explained in the Compilation of Islamic Law Article 40 paragraph (c): it is prohibited to carry out a marriage between a man and a woman due to certain circumstances, a woman who is not Muslim.

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<sup>20</sup>Imron Rosyadi, Reconstruction of Epistemology... 199

<sup>21</sup>Imron Rosyadi, Reconstruction of Epistemology... 202

<sup>22</sup>Imron Rosyadi, Reconstruction of Epistemology... 203

The prohibition on marriage in the KHI has strong reasons, namely:<sup>23</sup>

- a. From a positive legal perspective, this is stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning marriage, which states: Marriage is valid if it is carried out according to the laws of each religion and belief.
- b. Considering Maqosidu al Syari'ah both in the context of hifzhu al-Din (preserving religion) and hifzhu al Nasal (preserving offspring), this shows that justifying interfaith marriages is inviting a disease, namely kufr (apostasy). As stated in the principle:

درء المفاسد مقدم على جلب المصالح

*Avoiding risk is prioritized over seeking benefit<sup>24</sup>*

- c. The VIII Indonesian Fatwa Commission's Ulama Conference Number 16/Ulama Conference/VIII/2024 concerning the Registration of Interfaith Marriages following the Constitutional Court's decision and the Supreme Court's Circular Letter
  - 1) Constitutional Court Decision Number 24/PUU-XX/2022 dated January 31, 2023 rejected the material review of Article 2 paragraph (1) and paragraph (2) and Article 8 letter f of Law 1/1974 concerning Marriage submitted by the Applicant so that he could conduct a marriage with a partner of a different religion;
  - 2) The Supreme Court (MA) issued Supreme Court Circular Letter (SEMA) Number 2 of 2023 dated July 17, 2023, which provides guidelines for judges in adjudicating applications for registration of marriages between people of different religions and beliefs, in essence so that the court does not grant applications for registration of marriages between people of different religions and beliefs.
- d. Legality of Marriage Registrars

A marriage is considered invalid if it is not considered valid according to religious law. In other words, no marriage is legally valid if the religion in question declares it invalid. Marriages that have been performed according to religion must be registered. For Muslims, this is done by a Marriage Registrar at the Religious Affairs Office (KUA). For those marrying according to a religion other than Islam, the registration is done by a Marriage Registrar at the Civil Registry Office (Population and Civil Registration Office).<sup>25</sup>.

<sup>23</sup>Abror Sodik, *Fikih Keluarga Muslim*, Yogyakarta: Aswaja Presindo, 2011. Hal 111-112

<sup>24</sup>Syafe'i, Rachmat. *Ilmu Ushul Fiqih*. Bandung: Pustaka Setia, 2010. Hal 290

<sup>25</sup>Imron Rosyadi, Reconstruction of Epistemology... 194

#### **D. CONCLUSION**

This controversy relates to differences in religious views and interpretations of the institution of marriage, whether regarding who can marry, the mechanism by which marriage should be conducted, or the institutions authorized to regulate and supervise marriages. Interfaith marriage is a contract entered into by a man and a woman in the form of a marriage with one of the partners of a different religion. In Islamic Fiqh: interfaith marriage in Islam is strongly influenced by religious teachings that restrict marriage between Muslims and non-Muslims, with some exceptions for Muslim men who marry non-Muslim women from the Ahl al-Kitab community. This often gives rise to debates about gender equality, individual rights, and the impact on the family, while other religions have more diverse approaches, with some religions being more open to interfaith marriage (such as Hinduism and Buddhism) and others more conservative (such as Christianity), depending on the interpretation of the teachings and prevailing social norms. Interfaith marriage in the perspective of Indonesian positive law is regulated by a combination of secular law (Marriage Law) and religious law (Islam, Christianity, Hinduism, etc.) although Law No. 1 of 1974 concerning Marriage stipulates that marriage is valid if it is conducted according to each person's religion and belief.

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