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Protection of Environmental Rights for International Refugees in Indonesia: Present Practice and Future Challenges

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Abstracts

Human rights related to the environment and its enjoyment have been recognized in international law and need to be fulfilled without exception. One group that is vulnerable to the violation of human rights is international refugees. This paper aims to answer two problems they are the recent practice of environmental rights protection for refugees in the Republic of Indonesia and the future challenges faced by the Indonesian government in protecting the environmental rights of the refugees. This was doctrinal legal research using a statutory approach and a conceptual approach. The data used is secondary data in the form of legislation and scientific works related to the formulation of the problem. It is found that the Government of Indonesia has made efforts to protect the environmental rights of refugees residing in Indonesian territory through various means, including regulations issued by the government and through practical daily activities within the refugee shelters. However, there are still obstacles and limitations such as the imbalance between facilities and immigration personnel compare to the number of refugees as well as the uneven distribution of facilities for supporting the environmental rights of refugees throughout the territory of Indonesia. Thus, it is necessary to increase awareness by disseminating correct environmental knowledge and information to the public, including refugees' shelters personnel, policymakers in the shelters area, as well as communities around the shelters.

Keywords

environmental rights; international refugees; Indonesia; human rights

Introduction

Human rights related to the environment and its enjoyment have been recognized in international law,¹ so that the fulfillment of environmental rights for human beings has become part of the responsibility of the international community, including the state as a member. On the other hand, the threat of an environmental crisis that endangers the carrying capacity of the environment for human life is increasingly being faced by various countries in the world, including Indonesia.²The environmental crisis that occurs will have an impact on all human beings without exception, including the impact on vulnerable groups who need the protection of their rights. One of the vulnerable groups referred to in this paper is the international refugee group, who are directly or indirectly vulnerable to the denial of their rights as a result of the conditions they experience as refugees.

In general, refugees have obligations and rights that have been regulated internationally in the 1951 Convention on the Status of Refugees. A refugee's obligation is to comply with the laws and regulations and to follow all applicable procedures in the country where he or she resides in order to maintain public order in that country. Meanwhile, the rights of refugees include the right not to be discriminated against, the right to freedom and reciprocity, the right to religion and to practice one's beliefs, the right to obtain legal services, the right to live, the right to general protection, the right to freely move within the territory of the state, the right to obtain public assistance, and the right not to be forcibly repatriated (refouled).³ Although Indonesia has not ratified the 1951 Convention or the 1967 Protocol, as a citizen of the world community, Indonesia is obliged to participate in implementing international principles, one of which is related to refugees, namely *non-refoulement* or not forcibly repatriating refugees to their countries of origin. Thus, Indonesia is also obliged to participate in the protection of the rights of refugees while in the territory of the Unitary State of the Republic of Indonesia. The obligations of states that have not ratified the 1951 Refugee Convention are bound by the Principles of International Law. The principles of international law in the international convention on the protection of refugees are essentially derived from and are an affirmation of customary international law (International Customary Law), with legal implications binding on all countries regardless of

¹ Ali Younes and others, 'Spatial Suitability Analysis for Site Selection of Refugee Camps Using Hybrid GIS and Fuzzy AHP Approach: The Case of Kenya', International Journal of Disaster Risk Reduction, 77 (2022), 103062 https://doi.org/10.1016/j.ijdrr.2022.103062>.

² Yasmin Ali Khan and Claudio Minca, 'In the Camp but Not of the Camp. The Forced Incorporation of Bangladeshi Host Communities in Rohingya Refugee Camps', Political Geography, 97 (2022), 102639 https://doi.org/10.1016/j.polgeo.2022.102639.

³ Sigit Riyanto, 'The Urgency of Refugee Legislation in Indonesia and The Present Obstacles', Indonesian Journal of International Law, 2.1 (2004), 67–73.

whether the country has ratified the convention or not⁴

The 1951 Convention has generally regulated the rights and obligations of international refugees as stated above. If observed explicitly, the rights regarding the environment are not written in one of the refugee rights that must be guaranteed by the country of refuge. This paper aims to answer two problem formulations, namely (1) How is the practice of protecting environmental rights for refugees in the territory of the Republic of Indonesia? and (2) How can the Indonesian government protect environmental rights for the refugees?

Research Method

This research is doctrinal legal research using a statutory approach and a conceptual approach. The data used is secondary data in the form of legislation and scientific works related to the formulation of the problem. The data were analyzed and validated by *content identification*, namely reading, listening, recording, and reviewing with data triangulation techniques.

Results and Discussion

The Problem of International Refugees in Indonesia

International refugees are a group of people who are forced to leave a country for fear that is very threatening and can be caused by natural disasters or conflict⁵. *The International Convention Relating to the Status of Refugees 1951* (the 1951 Convention)⁶ provides limits or criteria for international refugees, namely being afraid of persecution based on race, religion, nationality, membership of a social group, political opinion, being outside their country, and not getting protection from the state.

However, the current international dynamics are many refugees who do not meet the criteria of the 1951 Convention, including people or groups of people leaving their countries due to armed conflict⁷. In international refugee law these people are called *War Refugees*. Referring to the criteria for international refugees regulated in the 1951 Convention, the author argues that the definition of the term refugee is not limited to only a group of people. The author is of the opinion that only one person who experiences persecution or other conditions as stipulated in Article 1 of the 1951 Convention can already be called a refugee.

⁷ Faruk Hossain and Dr.Md. Moniruzzaman, 'Environmental Change Detection through Remote Sensing Technique: A Study of Rohingya Refugee Camp Area (Ukhia and Teknaf Sub-District), Cox's Bazar, Bangladesh', *Environmental Challenges*, 2 (2021), 100024 < https://doi.org/10.1016/j.envc.2021.100024>.

 ⁴ Cecilie Dangmann, Ragnhild Dybdahl, and Øivind Solberg, 'Mental Health in Refugee Children', *Current Opinion in Psychology*, 48 (2022), 101460 https://doi.org/10.1016/j.copsyc.2022.101460.
 ⁵ Alexander Betts and others, 'Refugees Welcome? Inter-Group Interaction and Host Community Attitude Formation', *World Development*, 161 (2023), 106088

<https://doi.org/10.1016/j.worlddev.2022.106088>.

⁶ Nazifa Rafa and others, 'The Pursuit of Energy in Refugee Contexts: Discrimination, Displacement, and Humanitarian Energy Access for the Rohingya Refugees Displaced to Bangladesh', *Energy Research & Social Science*, 83 (2022), 102334 https://doi.org/10.1016/j.erss.2021.102334.

Developing countries were frequently chosen by the refugees as transit countries before they proceed to their main destination. It is considered more feasible for them to transit because of more loosen guard or many 'secret passages' to go through. Unfortunately, most of those countries were still striving with their own problems such as poverty, hunger, and under-developed infrastructure. Developing countries are still trying to make ends meet and may not be sufficiently prepared to accept more people with the proper preparation. On the other side, countries are bound to the principle *of non-refoulement*, so that they cannot reject the incoming refugees to their territory. This condition may lead to the unintentional violation of refugee rights due to the host country's unpreparedness to protect refugees. Thus, the issue of shared responsibility comes to the fore when there are violations of human rights and refugee rights in subsequent countries.

Indonesia, a developing country in Southeast Asia, faces a similar problem. Indonesia has not ratified the 1951 Convention yet so it relies on the United Nations High Commission on Refugees (UNHCR) to determine refugee status. UNHCR is the international body responsible for providing protection for international refugees⁸. One of its duties is to determine the status of refugees, especially for countries that are not parties to the 1951 Convention or have not ratified the convention. However, from practical experience, not all refugee status granted by UNHCR guarantees that refugees are accepted by the destination country. When that happens, the protection of refugees is threatened, and refugees tend to experience violations of their rights as refugees. Possible unintentional violations of refugee rights may also occur when refugees come to developing countries that are not sufficiently prepared to accommodate refugees. UNHCR requires a country to guarantee the protection of refugees and people in need of asylum seekers (asylum). States are required to fulfill the rights regulated in international law both administratively and non-administratively through their organs or officials and are prohibited from treating a group or individual refugees without clear *legal standing* (Romdhane & Jebali, 2021).9

The Government of Indonesia is not a party to the 1951 Convention and 1967 Protocol, so the determination of refugee status is the authority of UNHCR. After issuing refugee status, the further treatment of refugees is the full responsibility of UNHCR. The Indonesian government provides shelter in the form of an Immigration Detention Center (*Rumah detensi imigrasi*, Rudenim)¹⁰ for refugees to occupy as long as refugee status has not been determined by UNHCR. The problem that continues to be faced by the government is the limited resources in caring for refugees during the process of determining their status which often

⁸ Elli Cole and others, 'Social Support and Resilience among Burmese Adolescent Refugees: Examining Ethnic Identity Searching and Belonging as Moderators', Children and Youth Services Review, 142 (2022), 106647 < https://doi.org/10.1016/j.childyouth.2022.106647 >.

⁹ Kathleen Fincham, 'Syrian Refugee Women's Negotiation of Higher Education Opportunities in Jordan and Lebanon', International Journal of Educational Development, 92 (2022), 102629 https://doi.org/10.1016/j.ijedudev.2022.102629.

¹⁰ Andrea Daniel-Calveras, Nuria Baldaquí, and Inmaculada Baeza, 'Mental Health of Unaccompanied Refugee Minors in Europe: A Systematic Review', Child Abuse & Neglect, 133 (2022), 105865 <https://doi.org/10.1016/j.chiabu.2022.105865>.

takes a long time. With limited resources and funds, the government needs assistance. One of the international organizations, the *International Organization for Migration* (IOM) provides assistance in managing the flow of refugees.¹¹

However, the vast increase in the number of refugees appears cannot be balanced with the resources provided. Limited resources can cause refugees to experience inappropriate treatment, the uncertainty of long-term status, and many other violations of refugee rights. The number of international refugees and asylum seekers in Indonesia is increasing every year on average. In January 2012 there were 3275 asylum seekers and 1052 refugees registered with UNHCR Jakarta.12 At the end of 2014, there were 4,131 refugees 13registered with UNHCR Jakarta. In 201514, there were at least 3.8 million international refugees in the Asia Pacific region. Meanwhile, according to data from UNHCR Indonesia, the number of asylum seekers and international refugees in Indonesia is 13,679 people.15As of the end of January 2016, 7,616 asylum seekers 16 and 6,063 17 international refugees were registered with UNHCR Jakarta18. Based on data taken from the official UNHCR website as of the end of June 2017, there were 5,274 asylum seekers 19and 14,300 refugees registered by UNHCR Jakarta.20 In 2018 the number of asylum seekers and refugees registered in immigration detention centers throughout Indonesia reached 13,840 21 and in 2019 it reached 13,900 people22.

<https://doi.org/10.1016/j.outlook.2014.10.008>.

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¹¹ Mashoukur Rahaman, Md Manjur Morshed, and Sourav Bhadra, 'An Integrated Machine Learning and Remote Sensing Approach for Monitoring Forest Degradation Due to Rohingya Refugee Influx in Bangladesh', Remote Sensing Applications: Society and Environment, 25 (2022), 100696 https://doi.org/10.1016/j.rsase.2022.100696>.

¹² Jody R. Lori and Joyceen S. Boyle, 'Forced Migration: Health and Human Rights Issues among Refugee Populations', Nursing Outlook, 63.1 (2015), 68–76

¹³ P.J.M. Thomas and others, 'A PESTLE Analysis of Solar Home Systems in Refugee Camps in Rwanda', Renewable and Sustainable Energy Reviews, 143 (2021), 110872 https://doi.org/10.1016/j.rser.2021.110872.

¹⁴ Julia Morris, 'Colonial Afterlives of Infrastructure: From Phosphate to Refugee Processing in the Republic of Nauru', Mobilities, 16.5 (2021), 688–706

¹⁵ Anaïs Matthey-Junod and others, 'Leaving No Aspect of Sustainability behind: A Framework for Designing Sustainable Energy Interventions Applied to Refugee Camps', Energy Research & Social Science, 90 (2022), 102636 https://doi.org/10.1016/j.erss.2022.102636 .

¹⁶ Daniel K. Thompson, 'Refugees and Asylum Seekers', in International Encyclopedia of Human Geography (Elsevier, 2020), pp. 221–28 https://doi.org/10.1016/B978-0-08-102295-5.10340-3. 17 Tuba Ozaydin, Deniz Kocoglu Tanyer, and Belgin Akin, 'Promoting the Attitudes of Nursing Students towards Refugees via Interventions Based on the Contact Hypothesis: A Randomized Controlled Trial', International Journal of Intercultural Relations, 84 (2021), 191–99

¹⁸ Buket Cilali, Kash Barker, and Andrés D. González, 'A Location Optimization Approach to Refugee Resettlement Decision-Making', Sustainable Cities and Society, 74 (2021), 103153

<https://doi.org/10.1016/j.scs.2021.103153>.
19 Victoria Banti-Markouti, 'The Definition of Refugees and Health Issues Related to Refugee Influx in Europe', in Encyclopedia of Environmental Health (Elsevier, 2019), pp. 17–24
<https://doi.org/10.1016/B978-0-12-409548-9.11588-X>.

²⁰ R. Assi, S. Özger-İlhan, and M.N. İlhan, 'Health Needs and Access to Health Care: The Case of Syrian Refugees in Turkey', Public Health, 172 (2019), 146–52

²¹ Carmen H. Logie and others, 'The Prevalence and Correlates of Depression before and after the COVID-19 Pandemic Declaration among Urban Refugee Adolescents and Youth in Informal Settlements in Kampala, Uganda: A Longitudinal Cohort Study', Annals of Epidemiology, 66 (2022), 37–43 <https://doi.org/10.1016/j.annepidem.2021.11.005>.

²² Meseret F. Hailu, Tebeje Molla, and A.T. Johnson, 'Researching Experiences of African Refugee Youth in High-Income Countries: Reflections on Conceptual Challenges and Possibilities', International Journal of Intercultural Relations, 90 (2022), 168–76 <https://doi.org/10.1016/j.ijintrel.2021.08.004>.

The imbalance condition of international refugees and the provided facilities has been come to the awareness of some developing countries. They also realized that there is no comprehensive solution yet. This awareness has put some developing countries to sit together and discuss how to share this enormous responsibility through cooperation, collaboration, and regional or multilateral agreements. Moretti also agree that there is a great need for collaboration in one of his papers. In Southeast Asia, for example, there were efforts to deal with refugees and irregular migration, namely The Manila Process, the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime; and the "Jakarta Declaration." The Association of Southeast Asian Nations (ASEAN) is also one of the regional organizations that pay great attention to the issue of refugees. ²³ However, these efforts are still limited to information spreading, discussion on current issues, and have not yet become a decisive policy or binding regulation. Nonetheless, this can be considered a starting point for building a stronger collaboration and a more comprehensive solution to overcoming the international refugee problem (Rong & Nair, 2021).

The problem of the imbalance between the number of refugees and the resources that the Indonesian government can provide positions the refugees as a vulnerable group in the protection of their human rights. As stated in the 1951 Convention on the Status of Refugees, refugees have obligations and rights that must be fulfilled and protected. A refugee's obligation is to comply with the laws and regulations and to follow all applicable procedures in the country where he or she resides in order to maintain public order in that country. While the rights of refugees include: the right not to be discriminated against, the right to freedom and reciprocity, the right to religion and to practice one's beliefs, the right to obtain legal services, the right to live, the right to general protection, the right to freely move within the territory of the state. , the right to obtain public assistance, and the right not to be forcibly repatriated (refouled).24 If we look closely, rights related to the environment are not explicitly listed as the rights of international refugees. As is well known, the right to the environment has been part of human rights even for the last fifteen years.²⁵ The absence of environmental rights in the rights of refugees can be interpreted in several ways, two of which are (1) the protection of refugees' rights to the environment has not been accommodated in the 1951 Convention; or (2) the protection of environmental rights for refugees has been contained in the guarantee of other rights which have been regulated in writing in the 1951 Convention.

²³ Awaludin Marwan, Diana Odier-Contreras Garduño, and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', BESTUUR, 10.1 (2022), 22 <https://doi.org/10.20961/bestuur.v10i1.59143>.

²⁴ Sri Wahyuni and others, 'The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen', BESTUUR, 10.1 (2012), 12 https://doi.org/10.20961/bestuur.v10i1.64330. 25 Dewi Nurul Savitri, 'Legal Policy on the Protection of the Right to Health During the Covid-19

Pandemic in France', BESTUUR, 10.1 (2022), 1 <https://doi.org/10.20961/bestuur.v10i1.54449>.

Recognition of environmental rights in the international world

The protection of environmental rights, of course, cannot be separated from the development of the international community's attention to the environment itself. Development and economic needs are often the reasons for neglecting the environment, either directly or indirectly. Sooner or later, efforts in the name of development and economic development can destroy the environment, which in the end is felt as a negative impact for the citizens of the world. Jimly Asshidiqie said in one of his books that the environmental damage that is happening widely today is caused by human freedom which is not adequately balanced by awareness of the importance of ecological balance in the relationship between humans and the universe.²⁶

Human freedom competing in industrialization and economic development often results in adverse impacts on ecosystems. Forests are being cut down to open industrial and residential areas, rivers are polluted by industrial waste, polluting drinking water sources, pollution is becoming increasingly difficult to deal with, and marine ecosystems are being destroyed due to the exploration and exploitation of natural resources. Global climate change, depletion of natural products and non-renewable natural resources, and the lack of ecosystem support for human life have prompted the world community to immediately move to protect the environment from destruction in order to fulfill the environmental rights of future generations of mankind. Environmental rights formally first appeared in 1972 at the Stockholm Conference on *The Human Environment*. Then it was normatively raised at the *Earth Summit* in 1992 through the Rio de Janeiro Declaration and Agenda for Action 21 which explicitly linked environmental rights as part of human rights.²⁷

The development of environmental rights and their normative rules internationally only emerged about twenty years after the 1951 Convention on the Status of Refugees. One of the conditions that may occur during the formulation of the 1951 Convention is the difference in world conditions related to the environment compared to when environmental rights are realized normatively. Although at that time it was very possible that environmental damage was caused by world wars, greater attention was paid to human rights in general and the rights of refugees as a result of conflicts in various parts of the world. Another possibility that is very likely to occur is the existence of "differences in terms" related to the environment at that time and twenty years later. This difference in terms is very likely to occur considering the main focus of the world at the 1951 Convention and when the discussion of environmental rights at the *Earth Summit* was very different.

In the 1950s, the focus of the international community was on human rights

²⁶ W. Andrew Baldwin, 'Climate Change Refugees', in International Encyclopedia of Human Geography (Elsevier, 2020), pp. 275–79 < https://doi.org/10.1016/B978-0-08-102295-5.11000-5>.

²⁷ Zaid Alrawadieh and others, 'The Interface between Hospitality and Tourism Entrepreneurship, Integration and Well-Being: A Study of Refugee Entrepreneurs', International Journal of Hospitality Management, 97 (2021), 103013 < https://doi.org/10.1016/j.ijhm.2021.103013 >.

in general, which was triggered by one of the consequences of the world war. Although war procedures have been regulated in international law and international humanitarian law, damage and loss, both in the form of life and the physical environment, cannot be avoided.²⁸ In addition, conflicts that occur not only in one place, but occur widely so that they are called world wars.

A different situation occurs when environmental rights begin to become a concern and are then manifested normatively in the Rio de Janeiro Declaration. At that time the international world was not in a wide and prolonged conflict, but rather in a period of peace which was full of economic and infrastructure development. At that time, human rights had been recognized and enforced, although perhaps not yet fully, they had even expanded more widely through the recognition of civil and political rights as well as economic, social and cultural rights.²⁹ The development of the world that demands the development and expansion of settlements directly or indirectly threatens environmental sustainability. Industrial developments take part in the destruction of the environment through pollution from liquid, solid, and gaseous wastes. Conditions like these then give rise to concerns about the destruction of the environment for both current and future generations, along with the possible consequences. So that the world community together to build awareness and make it happen in a form of normative law to be followed by the entire international community.

The difference in the background above shows the different focus of attention from the two periods. This difference in the focus of attention is very likely to be one of the effects of the occurrence of different terms in environmental protection efforts in the above conventions. Environmental rights were not explicitly stated in the conventions prior to the emergence of the Rio de Janeiro Declaration, but that does not mean that they were ignored or not protected. Protection of environmental rights can be part of other rights that are more general or broader.

The practice of protecting the environmental rights of refugees in the territory of Indonesia

In the 1972 Stockholm Declaration it was stated that the natural environment and the man-made environment are an important element in the fulfillment of fundamental rights, even in the fulfillment of the right to life itself. ³⁰In summary, it can be concluded that the right to life requires the fulfillment of the right to the environment, both in the form of the natural (*natural*) and man-made (*man-made*) environment. So, the fulfillment of the right to life as a basic human right cannot be fulfilled properly when faced with environmental damage, both the natural environment and the man-made environment. Fulfillment of this

²⁸ Morris.

²⁹ Kristine J. Ajrouch and others, 'A Lifespan Developmental Science Perspective on Trauma Experiences in Refugee Situations', Advances in Life Course Research, 45 (2020), 100342 <https://doi.org/10.1016/j.alcr.2020.100342>.

³⁰ Terry Hutchinson and Fiona Martin, 'Australia's Human Rights Obligations Relating to the Mental Health of Refugee Children in Detention', International Journal of Law and Psychiatry, 27.6 (2004), 529–47 https://doi.org/10.1016/j.ijlp.2004.08.005.

right to life is also included in one of the rights that must be fulfilled by refugees. In other words, the rights to the environment are also part of the rights that must be considered and fulfilled for refugees, as part of the fulfillment of the rights to life for refugees.

One clear example of the need to fulfill the environmental rights of refugees is the availability of a healthy environment that supports the health of the refugees. Refugees as a group that is vulnerable to stress in refugee settlements, which are generally in the form of an Immigration Detention Center (Rudenim), need a healthy environment for outdoor activities and recreation. In their research, Apriadi and Yuliantoro stated that outdoor recreation and sports is one way to reduce stress for refugees who are accommodated in the Rudenim Surabaya. Recreation in environmental vehicles, both natural and man-made, can reduce stress for refugees who are waiting for clarity on their status, although refugees admit that this effort is still not enough to relieve stress.³¹ This situation is not always found in all Rudenim in Indonesia.

In several other Rudenim in Indonesia, not all of them have outdoor and recreational activities that involve refugees. Some of them were due to limited outdoor facilities owned by the Rudenim, limited staff at the Rudenim, or due to too many refugees who had to be accommodated in the Rudenim. This situation is actually a form of the lack of protection for the environmental rights of refugees. ³²

Another example related to environmental rights for refugees is regarding a healthy and healthy environment. With the large number of refugees being accommodated in the Rudenim, the environment where the refugees live become full, congested, and does not meet health requirements. In addition, the carrying capacity of the environment is not proportional to the density of the residents of the Rudenim. Possible consequences include the high rate of household waste production, the easy transmission of bacterial and viral infections, high-stress levels, and the ease with which conflicts and friction arise between residents of the Rudenim. An above condition is a form of neglect of the environmental rights of the refugees which then results in the disruption of their right to life.

Conclusion

The right to a healthy and healthy environment is part of human rights, which also applies to international refugees. Until now, the Government of Indonesia has made efforts to protect the environmental rights of refugees residing in Indonesian territory through various means, including regulations issued by the government and through practical daily activities within the Rudenim.

<https://doi.org/10.1016/j.geoforum.2017.06.022>.

³¹ Issa Ibrahim Berchin and others, 'Climate Change and Forced Migrations: An Effort towards Recognizing Climate Refugees', Geoforum, 84 (2017), 147–50

³² Jonix Owino and Christina D. Weber, 'Explicating Anomie in Refugee Women's Integration

Narratives: A Qualitative Research Study', International Journal of Intercultural Relations, 74 (2020), 69–79 https://doi.org/10.1016/j.ijintrel.2019.10.011>.

Nevertheless, various limitations still hinder the protection of the environmental rights of refugees as a whole. These limitations include the imbalanced Rudenim facilities and personnel with the number of refugees, the uneven distribution of facilities for supporting the environmental rights of refugees in various Rudenim in Indonesia, as well as the lack of awareness of policymakers and the public in protecting environmental rights, including the rights of the community. international refugees.

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