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Consequences of Violations of the Rights of Children in Conflict with the Law Related to the Disclosure of the Child's Identity by the Media

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Abstract

The purpose of this writing is to examine the consequences of violations of children's rights who are in conflict with the law, specifically related to the dissemination of children's identities by the press. The method used in this research is normative legal research. The approach applied to this issue involves the statutory approach and legal material analysis approach. The results of this study indicate that the regulation of children's rights has, in essence, been extensively governed by positive law in Indonesia. These legal instruments essentially regulate matters related to the confidentiality of the identities of children in conflict with the law (CICL). In this regard, the Press Council has established rules concerning children's rights, and some points also address the confidentiality of children's identities. Violations of children's rights through the dissemination of the identities of children in conflict with the law by the media can be subject to criminal sanctions, as stipulated in the Child Protection Law (UUSPPA). Law enforcement against media personnel who disclose the identities of CICL must be strictly enforced, as these individuals have violated the children's right to privacy, which can disturb the child's mental well-being and negatively impact the future of the CICL.

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1. Introduction

A child, in essence, is a gift from God, born into the world with a soul and body that are still pure. From birth, a child is endowed with rights as a child, such as the right to receive proper education, protection, care, and others. However, in reality, many children do not receive their rights. They do not receive proper education, lack care, and are deprived of other rights. In essence, children are the golden generation who will carry forward the nation's legacy, determine its future, and continue the heritage of previous generations. Yet, we frequently observe concerning conditions among children, evident from the large number of children who do not receive proper education, the many abandoned children who become beggars, and those who are inappropriately employed. Furthermore, numerous children do not receive optimal healthcare, and not all children who encounter the law are afforded special protection. As a fundamental element within a legal and democratic state, the protection of human rights, including the rights of children whom we consider the future of the Indonesian nation and as the succeeding generation, must be clearly regulated. In this context, rights to legal protection are imperative. This need arises from the understanding that human beings, as creations of Almighty God, are endowed with human rights to ensure the existence of dignity and noble stature. Hence, human rights are fundamental rights inherently possessed by human beings, which are universal in nature ^[1].

Currently, in Indonesia, the protection of children involved in legal issues is regulated by Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The enactment of a law specifically governing children ensures that the handling of children involved in legal cases will receive special treatment compared to adults involved in legal cases. This is done to protect and guarantee the rights or interests of the child, particularly for children who commit criminal offenses.

¹ Azizah, R.N., 2017. Dampak Perceraian Orang Tua Terhadap Perkembangan psikologis Anak. Al-Ibrah, 2(2), pp.152-172.

Legal protection for children can be understood as efforts to safeguard the various freedoms and fundamental rights of children, as well as various interests related to the welfare of the child. Thus, the issue of legal protection for children encompasses a very broad scope. Attention to children in the international community is indeed significant, as evidenced by the establishment of numerous international instruments concerning children.

Specifically, global attention to child protection began with the emergence of the Geneva Declaration of the Rights of the Child in 1924. This declaration was also recognized in the Universal Declaration of Human Rights of 1948. Following these events, on November 20, 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child, which contains ten principles of children's rights [2].

The Declaration of the Rights of the Child was followed by the Convention on the Rights of the Child, contained in United Nations Resolution No. 40/25 dated November 20, 1989. In an effort to provide legal protection for children, the Convention on the Rights of the Child explicitly states the legal guarantees that must be provided by the participating countries for children who commit criminal offenses.

In reality, violations of children's rights still frequently occur in cases involving children in conflict with the law. Children in conflict with the law are those aged 12-17 years who are suspected of committing a criminal offense. One of the common violations is the breach of the child's right to confidentiality of their identity. However, many people in Indonesia, especially journalists, still do not fully understand these regulations.

This is evidenced by the fact that many media outlets still disclose the identities of children in conflict with the law. However, the Journalistic Code of Ethics clearly prohibits the publication of a child's identity, as stated in Article 5 of the Journalistic Code of Ethics. Violations of the Journalistic Code of Ethics represent an issue within the field of journalism. This problem is supported by the statement from Endro S. Efendi, the Chairman of the Indonesian Journalists Association of East Kalimantan, who mentioned that, according to research data from the Press Council, approximately 75 percent of Indonesian journalists have never read the Journalistic Code of Ethics.

The above issue leads to bullying in society towards children in conflict with the law due to their exposure in the media. The impact of this results in child-unfriendly reporting. Some news reports circulating on social media contain content that judges the child in their case, without any effort to keep the child's identity confidential as a child in conflict with the law. Furthermore, revealing the child's background or personal matters is portrayed in narratives that create a negative stigma towards children in conflict with the law.

Cases of children's rights violations include violations of the fulfillment of children's rights and special protection for children. Based on data from Databoks obtained from the Indonesian Child Protection Commission (KPAI), cases of children's rights violations decreased by 566 cases in 2021. In 2021, a total of 5,953 cases of children's rights violations

were reported to the KPAI, which is a decrease compared to 6,519 cases in 2020. The decrease in children's rights violations is influenced by the commitment of stakeholders regarding child protection, community involvement, and public awareness about child protection, which are indicators of progress in child protection. However, this achievement seems to be marred by the violation of children's rights in the case of the child named "AG".

The case of the assault on CDO (17) by MDS, involving AG (15) as a Child in Conflict with the Law (ABH), garnered significant attention and quickly spread on social media. AG's status as an ABH changed to a child in conflict with the law after sufficient facts and evidence were established through the police's case review process. On Monday, April 10, 2023, the South Jakarta District Court sentenced AG to 3 years and 6 months in a Juvenile Correctional Facility. AG was found guilty of violating Article 355 Paragraph (1) of the Penal Code in conjunction with Article 55 Paragraph (1) of the Penal Code. The sentence was delivered by the presiding judge, Sri Wahyuni Batubara. This decision was upheld by the Jakarta High Court on Thursday, April 27, 2023, with the same sentence of 3 years and 6 months. However, the sentencing of AG has raised several issues concerning violations of children's rights that should be protected within the juvenile justice system. These issues include the media's dissemination of AG's identity, which contravenes the confidentiality requirements for children under the Child Criminal Justice System Law [3].

2. Method

The researcher employs a normative legal research method. Normative legal research serves to uphold the critical aspects of legal scholarship as a sui generis normative science. The problem-solving approaches used in this research include the statute approach, the conceptual approach, and the case approach. The discussion of this issue utilizes primary legal sources, such as legislation, and secondary legal sources, including theories and legal literature. The technique for collecting legal materials involves library research, which includes noting, examining, and understanding the content, and employing descriptive, evaluative, and argumentative analysis techniques.

3. Result and Discussion

A. Regulation of the Rights of Children in Conflict with the Law According to Positive Law in Indonesia

Children's human rights are a part of human rights enshrined in the 1945 Constitution of the Republic of Indonesia and the provisions of the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990. These rights are also reflected in Law No. 4 of 1979 on Child Welfare and Law No. 23 of 2002 on Child Protection. All these laws articulate general principles of child protection, which include: non-discrimination, the best interests of the child, survival and development, and respecting the child's participation [4].

Indonesia has fundamentally established regulations that address and uphold children's rights, including the

² Lubis, M.A., 2019. Perlindungan Hukum Terhadap Anak Nakal Berdasarkan Uu Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Jurnal Retentum*, 1(01).

³ Nafja Livia Avissa, "Pelanggaran Hak Anak: Publikasi Identitas Anak Yang Berkonflik Dengan Hukum Oleh Pers", LK2 FHUI, tersedia pada <https://lk2fhui.law.ui.ac.id/portfolio/pelanggaran-hak-anak-publikasi-identitas-anak-yang-berkonflik-dengan-hukum-oleh-pers/> diakses pada tanggal 26 Juli 2024

⁴ Kahesti, Y.Z., 2018. Pemenuhan Hak Anak di Bidang Pendidikan pada Lembaga Pemasarakatan Kelas IIA Kota Balikpapan. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7(3), pp.343-359.

ratification of the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990. Other legislation enacted by the Indonesian government includes: Law No. 39 of 1999 on Human Rights, Law No. 3 of 1997 on Juvenile Courts, which was updated by Law No. 11 of 2012 on the Juvenile Criminal Justice System, and Law No. 23 of 2002 on Child Protection^[5].

Substantively, these laws regulate various children's rights, including the right to life, the right to a name, the right to education, the right to basic health care, the right to worship according to their religion, the right to express themselves, to think, to play, to create, to rest, to socialize, and social security rights. According to Law No. 35 of 2014, child protection clearly encompasses the protection of these rights. One of these rights is the right to education, as outlined in Law No. 39 of 1999 in conjunction with Law No. 35 of 2014. The fulfillment of children's constitutional rights under Article 28B, Paragraph 2 of the 1945 Constitution remains disrupted and violated due to the criminalization of children at an excessively early age or treating state children (non-offenders) with the same conditions as juvenile offenders within juvenile detention facilities or even prisons. This situation is relevant and has causal implications, as the criminalization of children results in violations of the constitutional rights of children as stipulated in Article 28B, Paragraph 2 of the 1945 Constitution. This is despite the well-recognized harm and negative impact of detaining children alongside adults, as emphasized in Article 37(c) of the CRC. Secara normatif, bahwa adanya pemidanaan anak merupakan perbuatan melanggar hak konstitusional atas perlindungan dan kepastian hukum yang adil serta perlakuan sama di hadapan hukum. Padahal berdasarkan pada Pasal 28D di dalam ayat 1 UUD 1945 yang menegaskan bahwa, setiap orang berhak atas pengakuan, jaminan, perlindungan dan kepastian hukum yang adil serta perlakuan sama di hadapan hukum. Atas dasar itu, maka para hakim didorong untuk menggali rasa keadilan substantif (*substantive justice*) di masyarakat daripada terbelenggu ketentuan undang-undang (*procedural justice*)^[6].

Article 3 of the Juvenile Criminal Justice System Law (UU SPPA) regulates the rights of children during the criminal justice process. According to this article, there are 16 rights for children during the juvenile criminal justice process, one of which includes protection of the child's identity. Children in conflict with the law (ABH) and/or children who are in legal disputes have the right to not have their identity published. Regarding the confidentiality of the ABH's identity, there is a specific provision on this matter in Article 19 of the UU SPPA. Article 19, Paragraph (1) of the UU SPPA outlines the categories of children whose identities must be kept confidential from public disclosure, including children in conflict with the law, child witnesses, and child victims. Further explanation regarding the identity is provided in Article 19, Paragraph (2) of the UU SPPA. This identity includes the child's name, face, address, parents' names, and other details that could reveal the identity of the ABH or the child in conflict with the law.

According to the regulations from the Ministry of Women Empowerment and Child Protection, there is an exception to

the confidentiality of a child's identity that can be published in the media, which is the use of initials. The publication of initials is permitted by the media without including images, as stated in Article 61, Paragraph (2) of the UU SPPA. This measure serves to distinguish one child from another, preventing confusion and ambiguity about which child is being referred to. Confidentiality of a child's identity in publications is also regulated under the UU SPPA in Article 97. This article specifies that violations of the confidentiality of a child's identity in publications can be subject to imprisonment for up to 5 (five) years and a fine of up to Rp 500,000,000.00 (five hundred million rupiah).

The Press Law (UU Pers) not only provides protection for journalists but also safeguards the subjects and objects of news coverage, including criminal offenders and children in conflict with the law (ABH). Article 5, Paragraph (1) of the Press Law specifies the obligation of the press to respect religious and moral norms and adhere to the presumption of innocence when reporting news. The presumption of innocence is a doctrine intended to protect the human rights (HAM) of suspects or defendants, ensuring they are considered innocent until a final court verdict determines otherwise. A final court decision is one where no further legal remedies are pursued against the first-instance or appellate court rulings or is a cassation ruling.

The press is deemed to violate the presumption of innocence if the content of the news is judgmental and breaches the Journalistic Code of Ethics. Violations of Article 5, Paragraph (1) can result in a fine of up to Rp 500,000,000.00 (five hundred million rupiah) as stipulated in Article 18, Paragraph (2) of the Press Law. Regulations concerning the confidentiality of the identity of children in conflict with the law are explicitly outlined in the Journalistic Code of Ethics, although the Press Law mentions the Code of Ethics but does not specify it in detail.

The Journalistic Code of Ethics is explicitly outlined in Article 7, Paragraph (2) of the Press Law (UU Pers), which states that a Journalistic Code of Ethics must be adhered to by journalists. This Code of Ethics encompasses the ethical standards for journalists in reporting news, ensuring that journalists are always socially responsible in their professional duties. The Journalistic Code of Ethics is based on public interest, ensuring that the freedom granted to the press does not violate citizens' human rights or harm public interests. The Code of Ethics is established and supervised by the Press Council, an independent body that upholds press freedom. In cases of violations of the Code of Ethics, sanctions are imposed by the related press company or professional journalist organizations.

Article 3 of the Journalistic Code of Ethics reaffirms the presumption of innocence principle previously mentioned in Article 5, Paragraph (1) of the Press Law. It states, "Indonesian journalists must always verify information, report in a balanced manner, refrain from mixing facts and opinions that are judgmental, and apply the presumption of innocence." In addition to the presumption of innocence, Article 5 of the Journalistic Code of Ethics also regulates the prohibition of publishing the identities of victims of sexual crimes and the identities of children who are perpetrators of

⁵ Dwitamara, T., 2013. Pengaturan dan Implementasi Mengenai Hak Anak yang Berkonflik Dengan Hukum Di Indonesia (Studi Di Pengadilan Negeri Surabaya dan Rumah Tahanan Medaeng). *Perspektif*, 18(2), pp.97-107.

⁶ Ramadhan, T. and Sihaloho, O.A., 2022. Pemenuhan Hak Anak Yang Berhadapan Dengan Hukum (Abh) Di Lembaga Pembinaan Khusus Anak

(Lpka) Untuk Mendapatkan Jaminan Kesehatan Berdasarkan Konstitusional Warga Negara (Constitutional Rights). *Al Qisthas Jurnal Hukum dan Politik*, 13(2), pp.1-20.

crimes (criminal offenses), in accordance with Article 19, Paragraph (1) of the UU SPPA. Besides the Journalistic Code of Ethics, the Press Council has also established regulations governing the confidentiality of the identities of children in conflict with the law through Press Council Regulation No. 1/Peraturan-DP/II/2019 on Guidelines for Child-Friendly Reporting (*Pedoman Pemberitaan Ramah Anak*).

The Press Council established the Guidelines for Child-Friendly Reporting to create media coverage that aligns with the regulations concerning children's rights as set forth in the Press Law (UU *Pers*), Law No. 32 of 2002 on Broadcasting (UU *Penyiaran*), Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014 on Amendments to Law No. 35 of 2014 on Child Protection (UU *Perlindungan Anak*), Articles 19 and 97 of the UU SPPA, the Presidential Decree on the Membership of the Press Council for the 2016-2019 period, and Press Council Regulation No. 6/Peraturan-DP/V/2008.

The Guidelines for Child-Friendly Reporting contain several points regarding the protection of the confidentiality of the identity of children in conflict with the law, specifically in points 1 and 4. These points stipulate that journalists must maintain the confidentiality of the identity of children who commit criminal offenses (children in conflict with the law) and can only capture visual content (images or videos) of these children without publishing visual and audio content that reveals their identity. Journalists are also prohibited from reporting descriptions that are sexual or sadistic in nature as stated in point 2 of the Guidelines for Child-Friendly Reporting. Additionally, point 12 of the Guidelines emphasizes that journalists must respect the provisions of the UU SPPA in juvenile justice. Violations of these guidelines are addressed by the Press Council according to the regulations set forth in the Press Law and the applicable Press Council regulations.

B. Consequences and Legal Sanctions for the Dissemination of the Identity of Children in Conflict with the Law by the Media

Recent cases involving children in conflict with the law (CCL) have increasingly drawn media attention. Unfortunately, media outlets have not only reported on these cases but have also disseminated the identities and personal lives of CCL, eliciting negative responses from netizens and resulting in cyberbullying against these children. Despite their status as CCL not implying guilt, they often face social sanctions due to the media coverage.

According to Muhadjir Effendy, Coordinating Minister for Human Development and Culture, 45 percent of children in Indonesia were victims of cyberbullying in 2020. Given this significant percentage, it can be concluded that children in conflict with the law are at an even greater risk of becoming victims of cyberbullying on social media, exacerbated by the negative stigma attached to them through media publications. The increase in cyberbullying is further fueled by the public's heightened attention to news reports involving cases of abuse where children are portrayed as perpetrators of criminal offenses^[7].

In addition to the impact of cyberbullying by the public against children in conflict with the law, the negative stigma attached to these children due to widespread media coverage of abuse cases has led to public hostility in the judicial process. This hostility undermines the focus on the best interests of the child, as the child's guilt or innocence has not yet been determined.

Ideally, unfavorable reporting about children and the rushed and commonplace nature of the judicial process should not occur if there were no negative stigma attached to children in conflict with the law due to the media's exposure of their identities. The publication of a child's identity is prohibited because children are entitled to special protection as guaranteed by the Child Protection Law, the Juvenile Criminal Justice System Law (UU SPPA), the Press Law, the Journalistic Code of Ethics, and the Guidelines for Child-Friendly Reporting, all of which uphold the principles of non-discrimination and the presumption of innocence.

The publication of the identity and personal life of children in conflict with the law, along with narratives that impose negative stigma on these children, results from journalists' lack of awareness regarding the Journalistic Code of Ethics and the limited number of editorial leaders who have undergone journalist certification. Additionally, the pressure for rapid reporting by media outlets causes journalists to neglect adherence to the Journalistic Code of Ethics^[8].

This situation results in child-unfriendly news coverage in the media, which can lead to discrimination and cyberbullying against children in conflict with the law. In response, the Indonesian Child Protection Commission (KPAI) has issued recommendations aimed at relevant parties to address these issues and ensure that children's rights, which have been violated during legal proceedings, are upheld in accordance with the mandates of the 1945 Constitution, the Child Protection Law, and the Juvenile Criminal Justice System Law (UU SPPA).

Children in conflict with the law have the right to have their identities protected and kept confidential from media coverage, in accordance with the principle of personal privacy protection in media. This principle requires media to safeguard personal rights within their purview, as media content is publicly accessible and can be read by anyone. The prohibition on publishing the identity of children in conflict with the law is regulated by several legal provisions and regulations established by relevant authorities, including Article 19 of the Juvenile Criminal Justice System Law (UU SPPA), Article 64 of the Child Protection Law, and Article 5 of the Journalistic Code of Ethics^[9].

In addition to having the freedom to seek, obtain, and disseminate information to the public, the press also bears the responsibility to ensure that public interests are not disrupted. In carrying out journalistic activities, the press must adhere to certain limitations to prevent interference with the public interest. One common violation is the publication of the identity of children in conflict with the law. This action is prohibited as a form of special protection for such children. However, in practice, the publication of children's identities in media coverage continues to occur across various media

⁷ Nahda Rizki Utami, "Menko PMK Sebut 45 Persen Anak di RI Jadi Korban Cyber Bullying," *Detik.com*, 12 April 2022, tersedia pada <https://news.detik.com/berita/d-6039817/menko-pmk-sebut-45-persen-anak-di-ri-jadi-korban-cyber-bullying>, diakses pada tanggal 28 Juli 2024

⁸ Humas KPAI, "Setiap Anak Berhak Mendapatkan Diperlakukan Adil, termasuk AG," Komisi Perlindungan Anak Indonesia, 14 April 2023, tersedia pada <https://www.kpai.go.id/publikasi/setiap-anak-berhak-atas-diperlakukan-adil-termasuk-ag>, diakses pada tanggal 28 Juli 2024.

⁹ Erdianti, R.N., 2020. *Hukum Perlindungan Anak Di Indonesia* (Vol. 1). UMMPress. h. 63

platforms, including newspapers, television, and the internet. The publication of the identity of children in conflict with the law in the mass media constitutes a media offense. According to the Indonesian Dictionary, a "delik" is an act punishable under the law, or a criminal offense. The press, as a social institution and mass communication tool, has the duty to seek, obtain, process, and disseminate information through various media. Therefore, a media offense can be defined as a criminal act committed by the press through the publication of information using print media, electronic media, and other available channels.

Whereas, many media outlets hide behind the Press Law, creating the impression that the press is immune from legal sanctions for their actions in producing news. In cases involving children in conflict with the law, where the press discloses the child's identity leading to mental distress due to negative stigma and cyberbullying, the press is often shielded from legal claims by invoking press freedom. They argue that all reported news is based on actual and true facts, as stipulated in Article 4(3) of the Press Law.

Press freedom is not without limits. There are certain restrictions that the press must observe when publishing news. National media outlets are obligated to report events and opinions while respecting religious norms and societal decency, as well as the principle of presumption of innocence (Article 5(1) of the Press Law). Additionally, it is stipulated that Indonesian journalists should not disclose the identities of victims of sexual crimes or identify children who are perpetrators of crimes (Article 5 of the Journalistic Code of Ethics). Despite these regulations, it is a fact that the press frequently violates these provisions, often solely to boost the media outlet's ratings.

The enforcement of the law against journalists who disseminate the identities of juvenile offenders must be stringent, as they violate the Journalistic Code of Ethics and children's rights. These individuals could be subject to penalties as outlined in the Juvenile Justice System Act (UUSPPA), the Child Protection Law, and the Press Law. Such actions infringe on the child's privacy rights, resulting in cyberbullying, mental distress, and negative labeling within society, which could hinder the child's future reintegration into the community.

Violations of juvenile rights are not solely committed by the media; they also occur among law enforcement officials. For example, in a case where a child set fire to his own school after being bullied by peers, the police publicly displayed the child, identified as R, alongside armed officers. R, a juvenile offender (CCL), is still within the age category considered as a child. He reported feeling hurt from frequent bullying by both peers and teachers, which led him to commit the crime of arson.

The actions of the police in displaying R during a press conference, especially with armed officers, have been widely criticized, particularly by child rights advocates. Former commissioner of the Indonesian Child Protection Commission (KPAI) expressed that the police's actions could significantly violate the Juvenile Justice System Act (UUSPPA) and the Child Protection Law. Despite R's involvement in criminal damage, being only 13 years old, R should not have been showcased in a press conference, especially under such conditions that could exacerbate his distress and sense of insecurity.

From the above discussion, it is evident that violations of the rights of juvenile offenders are ongoing. Both law

enforcement and the media seem to lack understanding in handling children in conflict with the law. Actions taken by these parties often serve the interests of certain entities or news providers, without considering the long-term impact on the child. Children, who are emotionally and mentally vulnerable, require a more thoughtful approach. It is crucial to implement specialized training for law enforcement personnel to handle cases involving children more appropriately and to prevent further violations that could harm the child's future.

Violation of a child's rights through the dissemination of the identity of a child in conflict with the law contravenes Article 19, Paragraph (1) of the Child Protection Act, and can result in criminal penalties as stipulated in Article 97 of the same Act. In addition to being regulated by the Child Protection Act, the protection of children in conflict with the law is also governed by Law Number 40 of 1999 on the Press, even though it is not explicitly addressed.

C. Conclusion

The regulation of children's rights has been extensively addressed in positive law in Indonesia, including the Convention on the Rights of the Child (CRC), the Child Protection Act, the Child Protection Law, and the Press Law. These legal instruments fundamentally govern issues related to the confidentiality of the identities of children in conflict with the law (CCL). Article 19, Paragraph (1) of the Child Protection Act specifies the categories of children whose identities must be kept confidential from publication, including children in conflict with the law, child witnesses, and child victims. The Press Council has established Guidelines for Child-Friendly Reporting to promote reporting that aligns with children's rights regulations, which also address the confidentiality of children's identities. Violating children's rights by disseminating the identities of children in conflict with the law contravenes Article 19, Paragraph (1) of the Child Protection Act and can result in criminal penalties as outlined in Article 97 of the same Act. Legal action against media personnel who disclose the identities of ABH should be strictly enforced due to violations of the Journalistic Code of Ethics and children's rights. Such individuals infringe upon the child's privacy, causing mental distress and potentially making it difficult for the child to be accepted by society in the future.

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