

Settlement of Workers' Entitlements To Other Wage Components In The Event of Corporate Bankruptcy

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ABSTRACT

This thesis discusses the rights of workers in bankruptcy situations which have been regulated in the Manpower Law and the Bankruptcy Law, but their implementation still faces obstacles, especially related to the priority order of payments when compared to other creditors. Constitutional Court Decision Number 67/PUU-XI/2013 confirms that the obligation to pay wages to workers must take priority over all other types of creditors, including separatist creditors. This study aims to answer two problem formulations: (1) Are workers who experience termination of employment (PHK) due to the company going bankrupt in their position as preferred creditors entitled to other wages that have not been paid? and (2) How is the mechanism for payment of workers' rights to other wages that have not been paid compared to other creditors in the bankruptcy process. The research method used is normative juridical with a statutory, conceptual, and comparative approach. The results of the study show that workers who experience termination of employment (PHK) due to the company going bankrupt have the position of preferred creditors as regulated in Article 95 paragraph (4) of the Manpower Law and Article 39 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. This position gives priority rights to workers for payment of wages, including other wages that have not been paid. Thus, workers are entitled to other wages even though the company is in a state of bankruptcy, as long as it is recognized in the list of receivables. In the bankruptcy process, the mechanism for payment of workers' rights takes priority over concurrent creditors, but does not necessarily exclude separatist creditors (holders of property security rights). The order of payment begins with the settlement of bankruptcy costs, then workers' rights, only after that the remaining bankruptcy assets are used to pay separatist and concurrent creditors. With this mechanism, workers obtain legal protection for their wage rights, although in practice there are often obstacles due to the limited value of the available bankruptcy assets.

Keywords: Workers' Rights, Wages, Bankruptcy.

1. INTRODUCTION

The impact of corporate bankruptcy on workers' rights globally is a complex issue that demands serious attention from various parties, including governments, businesses, labor unions, and the wider community. Corporate bankruptcy is a legal event with far-reaching consequences, not only for shareholders and creditors, but also for workers who depend on the company for their livelihood.

Legal protection for creditors in the bankruptcy of a finance company is a crucial element in maintaining stability and trust in the financial system. Existing regulations actually address this, but their implementation still faces various obstacles. Cooperation between the government, judicial institutions, and all stakeholders is essential for the bankruptcy process to proceed fairly,



openly, and still guarantee the rights of all parties involved. Under Indonesian law, Article 36 of Government Regulation No. 35 of 2021 regulates layoffs due to bankruptcy, where workers are entitled to severance pay according to the cause of the company closure, while Article 95 paragraph (4) of Law No. 13 of 2003 stipulates that wages and workers' rights are debts that are prioritized for payment, with settlement through non-litigation channels or the Industrial Relations Court, where the curator manages the bankruptcy estate after the verdict is rendered (Absi et al., 2025).

Workers' rights in bankruptcy are regulated by the Employment Law and the Bankruptcy Law, but their implementation still faces obstacles, particularly regarding the priority order of payments compared to other creditors. Constitutional Court Decision No. 67/PUU-XI/2013 emphasized that the obligation to pay wages to workers must take priority over all other types of creditors, including secured creditors. However, workers' rights other than wages remain prioritized unless compared to the rights of secured creditors. This provision strengthens the legal protection guarantees for workers in bankruptcy proceedings. Workers have the right to file a lawsuit with the Commercial Court if their rights are not met, and can hold the curator accountable if there is an error that is detrimental to their position as creditors (Amboro, 2020).

From the curator's perspective, Constitutional Court Decision No. 67/PUU-XI/2013 facilitates the execution of their duties by eliminating potential disputes with workers, secured creditors, and tax authorities. This ruling provides curators with legal certainty in carrying out their obligations, without having to face conflicts regarding the order of payment. For bankrupt debtors, prioritizing severance pay and workers' wages is not an issue. However, for secured creditors, this provision can be considered detrimental, as it places them at a disadvantage in the payment scheme.

Constitutional Court Decision Number 168/PUU-XXI/2023 strengthens the protection of workers' rights, by emphasizing that the right to severance pay must be prioritized over other creditors' claims, except for creditors with material security rights. Thus, workers continue to receive legal protection so that they do not lose their rights when the company goes through the process of liquidation or bankruptcy. This decision also clarifies that the phrase "Central Government" in Article 42 paragraph (1) of the Job Creation Law must be interpreted as the minister in charge of labor affairs. In addition, foreign workers must still prioritize the presence of domestic workers, the maximum limit of Fixed-Term Employment Agreements (PKWT) is set at five years, the right to weekly rest includes two days for a five-day work week system, and Article



88 paragraph (1) must be interpreted to include the basic needs of workers and their families (Dewi et al., 2024).

These decisions affirm that severance pay and other workers' rights must be legally protected within the labor law system. With these decisions, workers have stronger legal guarantees in obtaining their rights, especially in the event of a company experiencing financial difficulties, liquidation, or bankruptcy. Furthermore, the government and companies are obliged to align their employment policies with these Constitutional Court decisions to ensure compliance with the constitution and the principle of fairer worker protection. However, cases still occur where workers experience difficulties in obtaining their rights due to lengthy and complex bankruptcy proceedings. This situation demonstrates a gap between the ideal legal norms and the reality of their implementation.

Within the Commercial Court, several cases demonstrate the legal steps taken by workers through bankruptcy petitions against companies that neglect to fulfill their normative rights. Examples include the cases of PT. Gema Ista Raya and PT. Sasana Taruna Aneka Ria, handled by the Commercial Court at the Surabaya District Court. These cases reflect workers' legal struggles to secure their rights. Although regulations related to worker protection are in place, their implementation still faces various obstacles that require further attention.

Previous studies discussing the fulfillment of workers' severance pay rights in bankruptcy have highlighted the importance of labor protection in accordance with the principles of Pancasila. One study examined the case of the Garden Palace Hotel Surabaya, where approximately 200 workers filed a cassation appeal against Decision Number 1565K/Pdt.sus-PHI/2022 to defend their rights as stipulated in Article 165 of Law Number 13 of 2003. In addition to the positive legal aspects, this study emphasized the need to consider social justice in worker protection. This research serves as the basis for this study in evaluating the effectiveness of regulations governing workers' rights in bankruptcy and the legal protection provided (Hadjon, 1987).

Based on the identified problems, this study aims to examine workers' rights related to the payment of other wages in corporate bankruptcy situations and to assess the effectiveness of existing legal protection mechanisms. Using a normative juridical approach, this study will analyze applicable regulations and case studies of court decisions to provide a deeper understanding of the payment mechanism for workers' rights to other unpaid wages. The main focus of this study is to understand the position of workers as preferred creditors in bankruptcy proceedings and to compare the payment mechanism for workers' rights with other creditors in the context of corporate bankruptcy.



The international dimension is an important consideration in regulating mediation in Indonesia. Several countries have comprehensive mediation legal frameworks, most notably Singapore through the Mediation Act 2017, which explicitly regulates the qualifications, legal status, and accreditation of non-judicial mediators. Indonesia's backwardness in mediation regulation impacts the competitiveness of international dispute resolution and may reduce investor confidence in the national legal system. The Mediation Act 2017 (Singapore) is a law that comprehensively regulates the out-of-court mediation process, including the qualifications, accreditation, obligations, and legal protection for non-judicial mediators, as well as the legal recognition and enforcement of mediation outcomes (Nopianti et al., 2024). Therefore, this study uses a comparative approach with Singapore to provide a regulatory model that can be adapted in Indonesia, while strengthening Indonesia's legal position in the international context.

Based on an in-depth analysis of the various legal issues outlined above, it can be concluded that non-judicial mediators practicing outside the courts face systemic and multidimensional legal uncertainty. The lack of a clear legal basis for out-of-court mediation is not merely a technical administrative issue, but a fundamental issue related to the public's constitutional right to access justice through the various available dispute resolution mechanisms.

2. RESEARCH METHOD

The research method used is a normative juridical method. The approaches used in this study are the legislative approach, the conceptual approach, and the case study approach. The sources of legal materials are primary legal materials, secondary legal materials, and tertiary legal materials. The legal material search technique in this study was carried out through library research and documentation studies of legal materials found at legal documentation and information centers. After all legal materials were collected, they were analyzed using systematic interpretation, historical interpretation, and sociological interpretation approaches.

3. RESULTS AND DISCUSSION

The Position of Workers as Preferred Creditors Over Other Wages in the Event of Company Bankruptcy

The position of workers in the Indonesian labor law system, particularly in the event of bankruptcy or liquidation, has been strengthened through regulatory changes and constitutional interpretations that emphasize workers' position as preferred creditors. The terms "worker" and "laborer" have conceptually different meanings. "Worker" refers to any individual who performs



work, while "laborer" specifically refers to those who work for wages. However, under the Employment Law, both terms are considered to have the same meaning. This equivalence is the result of a historical compromise following a long debate over the most appropriate and publicly acceptable use of the term. Furthermore, to strengthen understanding of the definition of workers in a legal context, it is necessary to study the applicable normative provisions (Al-Aydarus, 2017).

Based on Article 95 paragraph (4) of the Manpower Law as amended by Law Number 6 of 2023 (Job Creation Law), that:

- (1) In the event that the Company is declared bankrupt or liquidated based on the provisions of statutory regulations, wages and other rights that have not been received by workers/laborers are debts whose payment will be prioritized.
- (2) Workers'/Laborers' wages as referred to in paragraph (1) shall be paid first before payments to all creditors.
- (3) Other rights of workers/laborers as referred to in paragraph (1) shall be paid in priority over all creditors except creditors who hold property guarantee rights.

This provision is a form of legal protection and confirmation of workers' rights that must take precedence over other creditors, especially in the context of wages, which are workers' normative rights. Strengthening of this provision has also been emphasized in Constitutional Court Decision No. 67/PUU-XI/2013, which then obtained normative legitimacy through the enactment of Law No. 6 of 2023. The Court stated that workers have special rights as preferred creditors, with a higher position than all creditors, including the state and auction offices, especially in terms of wage payments.

However, in terms of payment of other rights besides wages, such as severance pay or other benefits, the position of workers does not defeat separatist creditors (holders of material security rights), but still takes priority over concurrent and general creditors. Furthermore, Article 55 paragraph (1) of the Bankruptcy Law states that separatist creditors (holders of material security such as mortgages, fiduciaries, etc.) can exercise their rights as if bankruptcy had not occurred (Nurdiannisa & Loren, 2024). However, this provision is limited in the context of workers' wages, which according to the Constitutional Court must still take priority even over separatist creditors, considering the character of wages as a means of fulfilling basic living needs.

The position of workers as legal subjects who must be protected by the state in bankruptcy situations is also supported by constitutional guarantees in the 1945 Constitution of the Republic of Indonesia, namely Article 28D paragraph (1) that the Right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. Article 28D paragraph (2) that the Right

to work and receive fair and proper compensation and treatment in employment relations. This guarantee strengthens the position of workers as a socially and economically weaker party, so that they deserve to be given priority in legal protection and in the debt repayment process when the company goes bankrupt.

The position of workers in employment law, particularly in the context of bankruptcy, has been significantly strengthened. Through Constitutional Court Decision No. 67/PUU-XI/2013 and Law No. 6 of 2023, workers receive priority legal protection for their wage rights, even trumping other creditors. However, for rights other than wages, there are still limitations on the rights of secured creditors. This demonstrates the state's efforts to ensure social justice and protect workers' normative rights, as a manifestation of constitutional values within Indonesian positive law .

Other wages include components other than the basic wage, such as fixed allowances, annual bonuses, productivity incentives, overtime compensation, and holiday allowances (THR). In practice, not all of these components are explicitly stated in employment agreements, which ultimately weakens workers' positions when demanding their rights in bankruptcy proceedings. Constitutional Court Decision No. 168/PUU-XXI/2023 confirms that the right to severance pay and all workers' rights in the event of termination of employment (PHK) due to bankruptcy have priority for payment, except for secured creditors holding material collateral.

However, implementation in commercial courts remains inconsistent, particularly in accommodating non-basic wage components as part of the rights protected in bankruptcy proceedings. Yet, every worker has a fundamental right to receive compensation for work they have completed, even when the company they work for goes bankrupt. This right encompasses not only basic wages but also unpaid allowances and other components.

In Indonesia, this protection is guaranteed through Law Number 13 of 2003 concerning Manpower and Law Number 6 of 2023 concerning Job Creation. If a company is declared bankrupt, workers have the right to terminate the employment relationship unilaterally. On the other hand, curators also have the authority to terminate workers, but must still comply with applicable laws and regulations. This is because work itself is a human right, as mandated in Article 27 paragraph (2) and Article 28 of the 1945 Constitution, which expressly states that "Every citizen has the right to work and a decent living for humanity." This emphasis on "a decent living" elevates workers' wages beyond mere contractual obligations. This places wages within a human rights framework that demands special protection, especially in situations of corporate financial difficulty such as bankruptcy. Therefore, the constitution serves as a fundamental basis



explaining why workers' claims are given preferential treatment in the debt repayment hierarchy (Rahardjo, 2009).

Workers' rights are not limited to basic wages but encompass various components stipulated in laws and regulations. According to Government Regulation Number 36 of 2021 concerning Wages, wages can consist of several components: wages without allowances, basic wages and fixed allowances, basic wages, fixed allowances, and variable allowances; or basic wages and variable allowances.

In addition to the wage components, there are also non-wage incomes that workers can receive, such as incentives, bonuses, compensation for work facilities, and service fees in certain businesses. Other rights that must be fulfilled by the company include Holiday Allowances (THR), which must be paid no later than 7 (seven) days before the Religious Holiday. Workers are also entitled to Overtime Pay, with a predetermined calculation (for example, 1.5 times the hourly wage for the first hour of overtime and 2 times the hourly wage for subsequent hours).

Worker protection also includes Social Security and Occupational Health and Safety (K3). Every worker, including foreign workers who have worked in Indonesia for at least six months, is required to participate in the Social Security program in accordance with Law Number 24 of 2011 concerning the Social Security Agency (BPJS). Workers with a Fixed-Term Employment Agreement (PKWT) are entitled to PKWT Compensation, which is calculated proportionally based on length of service.

In the context of Termination of Employment (PHK) due to bankruptcy, workers are entitled to Severance Pay (0.5 times the applicable provisions), Long Service Award Pay (1 time the applicable provisions), and Compensation for Rights. This Compensation for Rights covers unused annual leave rights, travel costs for workers/laborers and their families, repatriation costs for deceased workers/laborers, and other rights stipulated in the employment agreement, company regulations, or collective bargaining agreement (Rizani et al., 2023).

The detailed breakdown of the "other rights" components contained in Government Regulation No. 36 of 2021 and the Manpower Law demonstrates a comprehensive legislative intent to protect workers' entire compensation package, not just their base salary.

However, this complexity can pose significant challenges for the Receiver in accurately calculating and verifying all these diverse components, particularly in bankruptcy scenarios where documentation may be incomplete or poorly organized. This can compromise the workers' bargaining position and potentially lead to payment delays.



In practice, workers often face challenges proving their rights to "other wages" because not all forms of benefits and compensation are specifically outlined in their contracts. Therefore, the role of labor unions is crucial as representatives who help assert these rights, whether through negotiation, mediation, or legal channels. Unions can also provide additional support, such as legal aid, training, and access to emergency financial assistance.

Furthermore, courts play a central role in resolving disputes regarding wage payments and workers' compensation. Workers or unions can file lawsuits if a company fails to fulfill its payment obligations. The court's decision will then determine whether the company is obligated to repay the workers.

Once a company is officially declared bankrupt, a receiver will be appointed to manage the asset settlement and debt repayment process, including for workers. The receiver is responsible for ensuring that workers' rights, including outstanding wages, are met to the extent possible from the proceeds from the sale of the company's assets. This process reflects the recognition of workers not simply as ordinary creditors but as parties with preferential rights, particularly regarding wage payments.

Mechanism for Payment of Workers' Rights to Other Wages Compared to Other Creditors

A curator is an individual or estate agency appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a supervising judge. The curator's role is central to the bankruptcy process, with broad and crucial responsibilities.

Based on the provisions of Article 1 number 5 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, that:

"The Curator is the Estate Office or an individual appointed by the Court to manage and settle the assets of a Bankrupt Debtor under the supervision of the Supervisory Judge in accordance with this Law."

The provisions of Article 1, number 5, form the basis for the official definition of a Curator, which affirms their position and mandate as the party responsible for managing and settling the bankruptcy estate under the supervision of the Supervisory Judge. Understanding this definition is crucial because it serves as the starting point for identifying who is authorized to carry out management and settlement tasks in bankruptcy, including the protection of workers' rights (Sofwan, 1980).

Article 69 affirms that the Curator's primary duty is to manage and settle the bankruptcy estate. Furthermore, it regulates limitations and procedures for when the Curator needs to take certain actions, such as taking out loans that encumber the bankruptcy estate with material



collateral. This regulation ensures that all Curator actions remain within the law and do not harm parties entitled to the bankruptcy estate, including employees as preferred creditors.

Article 70 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that:

- (1) "The curator as referred to in Article 69 is:
 - a. Estate Planning Office, or
 - b. Other Curators.
- (2) Those who can become Curators as intended in paragraph (1) letter b, are:
 - a. Individuals domiciled in Indonesia, who have the special skills required to manage and/or settle bankrupt assets; and
 - b. Registered with the ministry whose scope of duties and responsibilities is in the field of law and legislation."

Article 70 details the parties who can serve as curators, including both the Estates Office and individual curators. Individual curators are required to be domiciled in Indonesia, possess specialized expertise, and be officially registered with the relevant ministry. This demonstrates that competence and legality are key factors in ensuring that bankruptcy estate management is conducted professionally and accountably.

Article 72 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that:

"The curator is responsible for any errors or negligence in carrying out management and/or settlement duties which cause losses to the bankrupt's assets."

Article 72 affirms the principle of the curator's liability for errors or negligence that result in losses to the bankrupt's assets. This means that if the curator is negligent in managing or disposing of assets, resulting in losses to employees or other creditors, he or she can be held legally accountable. This provision guarantees legal protection for parties with legitimate claims against the bankrupt's assets.

Article 73 discusses the decision-making mechanism when there is more than one curator. This provision emphasizes the importance of majority approval for valid and binding action. This aims to prevent abuse of authority by any one curator and ensure a collective agreement for the benefit of all creditors. Article 74 stipulates the curator's obligation to submit quarterly reports on the progress of the bankruptcy estate to the Supervisory Judge, which are open to the public. This transparency is essential to ensure accountability and provide an opportunity for interested parties, including employees, to understand the status of the bankruptcy estate management.



Article 75 stipulates that the amount of the curator's fee is determined after the bankruptcy is over. This is to prevent conflicts of interest during the asset settlement process, as the curator cannot determine or collect fees until all settlement obligations have been fulfilled.

Article 76 clarifies that the amount of the curator's fee is determined based on official guidelines from the relevant ministry. These guidelines ensure that the fee is determined objectively and avoid differences in interpretation that could be detrimental to the bankrupt estate or creditors.

The Receiver's dual role as liquidator of assets for all creditors and facilitator of workers' rights can create a potential conflict of interest, or at least a delicate balancing act. While legally obligated to prioritize workers' claims, the Receiver also has a fiduciary duty to maximize recovery for all creditors. This can create tensions in practice, particularly regarding the complex calculation and verification of "other rights." The Receiver's position, therefore, is not merely administrative but involves complex ethical and practical judgments in allocating limited resources.

In practice, the implementation of a curator's duties often faces technical and legal challenges. One major challenge is ensuring that workers' rights as preferred creditors are fully fulfilled in accordance with applicable law. This includes verifying the amount of unpaid wages, severance pay, and other compensation accrued before the bankruptcy decision is pronounced. Mistakes in the verification process can give rise to new disputes and delay the settlement of the bankruptcy estate (Sirait et al., 2023). Therefore, the curator must prioritize the principle of prudence in assessing, recording, and classifying each incoming claim.

Therefore, the role of the curator in the bankruptcy process cannot be viewed simply as a technical implementer. The curator is a central figure who must be able to manage conflicts of interest between various creditors in accordance with the principle of distributive justice. On the one hand, the curator must adhere to the priority order of payments as stipulated in the law, while on the other hand, the curator is required to maintain the optimal value of the bankruptcy assets for the benefit of all parties. This balance is the essence of a curator's professionalism in bankruptcy practice in Indonesia.

Administrative Stages of Submitting and Verifying Worker Claims

The mechanism for paying workers' entitlements in bankruptcy follows bankruptcy law, which regulates the order of creditor payments, with preferred creditors taking priority over concurrent creditors. The receiver is tasked with inventorying workers' entitlements owed to the company and allocating bankruptcy assets to pay those obligations. This mechanism must consider



synchronizing bankruptcy and employment regulations, as well as the latest regulations, such as the Job Creation Law No. 6 of 2023.

Workers with claims for other wages are required to register their claims in the permanent accounts receivable register. If there is no strong evidence or supporting documentation, the curator may classify them as preferred creditors, meaning they are only entitled to a proportional share of the remaining proceeds from the bankruptcy estate. Therefore, workers' bargaining power depends heavily on the completeness of administrative documentation and union support.

Practically, this process involves several administrative stages, including:

1. Minutes of the meeting between the Manpower Office, worker/employee representatives, and the curator;
2. Official determination from the Department of Manpower;
3. Issuance of a certificate of termination of employment (PHK); and
4. Preparation of a distribution list that includes the amount of rights of each party.

The Department of Manpower (Disnaker) and labor unions play a crucial role in supporting workers' claims in bankruptcy proceedings. The active involvement of these two entities is not merely complementary but essential for workers to effectively utilize their legal priorities in bankruptcy situations.

The Manpower Office (Disnaker) is involved in several administrative stages, including meetings between Disnaker, worker/employee representatives, and the Curator [User Query]. Disnaker can also issue official determinations regarding workers' rights, which are an important basis in the claims process [User Query]. As the initial point of contact, Disnaker receives complaints from workers who have not received wages. After receiving the complaint, the Head of Social Relations and Social Security will appoint a mediator to handle and conduct an initial investigation of the social conflict within 7 working days. This mediator then facilitates mediation between the worker and the company/Curator. If the mediation does not reach an agreement, the mediator is required to issue a written recommendation (advice) that can serve as a basis for the worker to continue the litigation process in the Industrial Relations Court (PHI). Despite the Curator's role, Disnaker remains relevant in ensuring that workers' rights are fulfilled and providing legal guidance.

Workers' bargaining power is highly dependent on support from trade unions [User Query]. Workers have the right to join or form a trade union. Trade unions play a crucial role in resolving disputes over layoffs, including addressing the power imbalance between workers and employers. They provide protection, defend the rights and interests of workers, and strive to



improve the welfare of workers and their families. Trade unions also facilitate various dispute resolution efforts, such as bipartite negotiations, mediation, strikes, and proceedings in the Industrial Relations Court. Through unions, it is hoped that basic workers' rights, such as decent wages, non-discrimination in employment, and social security, can be fulfilled. The existence of trade unions is crucial for addressing problems within companies, especially unilateral termination of employment that is detrimental to workers.

Thus, the active involvement of the Department of Manpower and Trade Unions is crucial for workers to effectively utilize their legal priorities in bankruptcy. These entities serve as crucial institutional and collective buffers against administrative disadvantage and individual worker power. They help translate theoretical rights into practical outcomes, ensuring that the legal protections afforded are actually realized.

4. CONCLUSION

Workers who experience Termination of Employment (PHK) due to the company going bankrupt have the position of preferred creditor as regulated in Article 95 paragraph (4) of the Manpower Law and Article 39 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. This position gives workers priority rights to wage payments, including other wages that have not been paid. Thus, workers are entitled to other wages even though the company is in a state of bankruptcy, as long as it is recognized in the list of receivables.

In bankruptcy proceedings, the payment mechanism for workers' rights takes priority over concurrent creditors, but does not necessarily exclude secured creditors (holders of collateral rights). The payment sequence begins with the settlement of bankruptcy costs, followed by workers' rights, and only after that is the remaining bankruptcy assets used to pay secured and concurrent creditors. This mechanism provides workers with legal protection for their wage rights, although in practice, obstacles often arise due to the limited value of available bankruptcy assets.

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