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# Non-Litigation Dispute Resolution Based on Labor Law in Indonesia

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***Abstract***

*Law Number 2 of 2004 concerning the resolution of Industrial Relations issues, among other things, determines the resolution of industrial relations disputes, through litigation and non-litigation channels, which regulates the mechanism for resolving disputes through litigation, which consists of procedures for lawsuits in the Industrial Relations Court at the Court. State and appeal to the Supreme Court of the Republic of Indonesia. The procedure used to collect data in this research is documentation, namely the guidelines used in the form of notes or quotations, searches for legal literature, books and other things related to the identification of problems in this research both offline and online. Analysis of legal materials is carried out using a content analysis method (centent analysis method) which is carried out by explaining the material on legal events or legal products in detail to facilitate interpretation in the discussion. Law Number 13 of 2003 concerning Employment and Law Number 2 of 2004 concerning solving Industrial Relations problems are the basis for resolving disputes between workers and employers. The collective agreement must be registered by the parties making the agreement in the Industrial Relations court at the District Court in the area where the parties entered into the collective agreement. If within 30 working days one of the parties refuses to negotiate or negotiations have been carried out but no agreement has been reached, bipartite negotiations deemed to have failed. If bipartite negotiation efforts fail, one or both parties will register their dispute with the agency responsible for the local employment sector by attaching evidence that bipartite efforts have been made. If such evidence is not attached, the agency responsible for the field of local labor force must return the files to be completed no later than within (seven) working days from the date of return of the files and every bipartite negotiation must be made into minutes signed by the parties.*

***Keywords: Industrial Relations Disputes, Non-Litigation, Employment.***

## INTRODUCTION

The legal relationship between workers and employers is a legal relationship that has its own character, compared to other legal relationships, on the one hand, this relationship is a relationship that is mutually complementary, complementary and beneficial as well as a relationship that is in a position of mutual dependence, where the legal relationship occurs in a industrial processes. However, it is not uncommon to find this position of interdependence, like two sides of a coin, which often gives rise to two different interests. This position of conflicting interests will give rise to disharmony in work relations, which will directly or indirectly affect

productivity, and can even give rise to wider conflicts with the interests of society. Conflicts between workers and entrepreneurs have been occurring for a long time in various parts of the world, namely when there was a massive transformation of work culture from agrarian communities who usually worked in paddy fields, fields or gardens to industrial communities who worked in the industrial sector. Such conditions make workers weak and therefore vulnerable to unilateral actions such as exploitation, discrimination and so on. This gap has the potential to cause problems.

There are various conflicts of interest in employment relations, including regarding wages, working hours, leave and rest periods as well as various welfare benefits, termination of employment relations and even criminal cases. This incident can actually be anticipated and does not need to happen if the parties involved in the industrial process as legal subjects correctly understand the provisions of the law, especially those relating to legislation regarding employment, and understand and comply with the contents contained in the work agreement. The employment agreement made between the employer and recipient is the starting point for an employment relationship, which contains work conditions and several matters regarding employment. In industrial relations, even though the employment relationship is based on a work agreement that is valid and binding on the parties, disputes will always arise. This is due to, among other things, the educational, social and economic backgrounds as well as the interests between the two parties which are not the same and perhaps because the relationship between workers/laborers and entrepreneurs is a relationship based on an agreement between the parties to bind themselves to a work relationship. However, if one of the parties no longer wishes to be involved in the working relationship, it will be difficult for the parties to maintain a harmonious relationship.

Industrial relations disputes can also occur with or without being preceded by a violation of law that cannot be reconciled between the employer and the worker. Industrial relations disputes that begin with an act of violation of the law, such industrial relations disputes are generally caused by several factors: (Putri & Dkk, 2021)

a. As a result of differences in understanding regarding the implementation of labor law. This is reflected in the actions of employers or workers who violate legal provisions. For example, employers pay workers' wages below the legal provisions governing minimum wages, or employers do not provide annual leave as regulated in Law Number 13 of 2003 concerning Manpower or workers who have worked overtime are not paid their overtime wages by the employer. Violation of workers' rights by employers here is a factor causing industrial relations disputes.
b. Industrial relations disputes that begin with violations of this law can also be caused by differences in treatment which are reflected in discriminatory actions by employers, due to different gender, ethnicity, race or religion.

According to Lalu Husni, in the current era of industrialization, industrial relations disputes are becoming increasingly complex, and to resolve them, institutions are needed that support fast, precise, fair and cheap dispute resolution mechanisms. The laws and regulations governing the resolution of industrial relations disputes, as regulated in Law Number 22 of 1957 concerning the Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment Relations in Private Companies, are no longer in accordance with developments in conditions and needs. above, because it has not been possible to realize a

simple, fast, fair and cheap settlement, on the contrary, the procedure is long and there is no guarantee of legal certainty. (Husni, 2004).

In Law Number 2 of 2004, among other things, determines the resolution of industrial relations disputes, through litigation and non-litigation, which regulates the mechanism for resolving disputes through litigation, consisting of procedures for lawsuits in the Industrial Relations Court at the District Court and cassation to Mahmakah. Supreme Court of the Republic of Indonesia. Settlement of Industrial Relations Disputes through non-litigation means, among other things, procedures for negotiation, conciliation, arbitration and mediation between disputing parties, namely workers/laborers and employers. Based on the description above, the main problem can be drawn, namely what is the legal regulation regarding the settlement of industrial relations based on labor law in Indonesia? And what is the mechanism for resolving industrial relations disputes based on labor law in force in Indonesia?

## RESEARCH METHODS

This research is a type of normative research that uses documentary studies using a content analysis method (centent analysis method) based on the data source used, namely secondary data sources in the form of primary legal materials in the form of Law Number 2 of 2004 concerning solving Industrial Relations problems, the Law Number 13 of 2003 concerning Employment, Law Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment Relations in Private Companies.

## DISCUSS AND ANALYSIS

### Legal Regulations Regarding the Settlement of Industrial Relations Based on Labor Law in Indonesia

Law is the basis for various implementations, one of which is orderly administration and legal certainty of mortgage status which has been regulated in positive law in Indonesia. Humans as living creatures show two aspects that cannot be separated from one another. One aspect is as an individual being and the other aspect is as a member of society in togetherness with other individual humans. Therefore, Sudiman Kartohadiprodjo, stated "Humans are born and live not separately from each other, but in groups. Living in groups is a weapon for humans to defend their lives, both against dangers from within, hunger which must be eradicated by searching for and obtaining food, as well as those that come from outside in the form of humans and non-humans (wild animals, natural disasters and so on). (Zainuddin & Ramadhani, 2021). There are four elements contained in humans, namely body, taste, ratio, harmony. Humans in their lives are now tasked with and will try to use the four elements as well as possible, meaning each element as well as possible, as well as with each other in the best balance, so that there is peace, balance (evenwich) harmony between them." (Charda, 2017).

Observation and appreciation of human life shows that within humans there is a self-preservation instinct, namely the instinct to maintain their existence or presence in the world, both as individual humans and as living creatures. The instinct of self-preservation in the reality of everyday life is always confronted with or confronted with various dangers that threaten human existence, because within themselves there is an instinct of self-preservation, every human being will be encouraged to make various efforts to avoid or fight and overcome these dangers. Everything that humans need to maintain their existence is called needs or interests.

These interests are personal or interpersonal interests. Each individual's personal interests can be pursued without meeting or clashing, but sometimes interpersonal interests can meet and clash with each other. Considering the many interests, especially interpersonal interests, it is not impossible for conflicts to occur between human beings, because their interests conflict with each other. A conflict of interest occurs when the implementation of other people's interests is harmed. So that personal interests are not disturbed and you feel safe in fulfilling your interests, this must be prevented because it will disturb the balance of the social order.

Law Number 13 of 2003 concerning Employment and Law Number 2 of 2004 concerning solving Industrial Relations problems are the basis for resolving disputes between workers and employers. One of the efforts required to solve this problem is a solution outside of court. Before going to the Industrial Relations court, each disputing party should not immediately take the dispute case to court, but resolve it through amicable discussions, especially to reach a consensus. Litigation or court is the last route taken.

In a company which is a particular working community environment, employment relations cannot be separated from the definitions above. An employer's policy that has been carefully considered will be accepted by workers with a sense of satisfaction or dissatisfaction. Those who are less than satisfied contain the seeds of discord between the policy providers and them, and if their dissatisfaction is exposed and developed, there will be turmoil in the company, which must be immediately resolved through deliberation. In this way, the company will be able to carry out production as planned. So, the problem of disputes arising between employers and workers stems from these feelings of dissatisfaction. Employers provide policies that, in their judgment, are stable and will be accepted by workers. In Article 1 number 22 of Law Number 13 of 2003 jo. Article 1 number 1 of Law Number 2 of 2004 formulates the definition of industrial relations disputes as follows: "Differences of opinion that result in conflicts between employers or combinations of employers and workers/laborers or trade/labor unions, due to disputes regarding rights, disputes over interests and disputes termination of employment relations and disputes between workers/labor unions in just one company."

The definition above reflects that it can be felt to fulfill a sense of justice, whether the worker is in a trade union or not, and if an industrial relations dispute occurs, they will still receive protection from Law Number 13 of 2003 and Law 2 of 2004. Meanwhile, Article 2 Law Number 2 of 2004 states that there are at least three types of industrial relations disputes, namely rights disputes. Interest disputes and industrial relations termination disputes.

Rights disputes, namely disputes that arise due to non-fulfillment of rights, due to differences in implementation or interpretation of the provisions of laws and regulations, work agreements, company regulations, or collective work agreements. Conflict of interest, namely a dispute that arises in a work relationship due to a lack of agreement regarding the creation of, and/or changes to, work conditions stipulated in a work agreement, or company regulations, or collective work agreement. Employment termination dispute, namely a dispute that arises due to a lack of agreement regarding the termination of the employment relationship carried out by one of the parties.

According to the provisions of Article 1 paragraph (10) of Law no. 2 of 2004 states that bipatrit negotiations are negotiations between workers/laborers or trade/labor unions and employers to resolve industrial relations disputes. Bipatrit is the first step to resolve industrial relations disputes in accordance with Article 3 paragraph (1) of Law no. 2 of 2004. So from the

provisions above it can be understood that if an industrial relations dispute occurs, it is mandatory to first try to resolve it bipatritically. However, if bipatrit fails then according to Article 4 paragraph (1) of Law no. 2 of 2004 "In the event that bipatrit negotiations fail as intended in Article 3 paragraph (3), one or both parties will register the dispute with the agency responsible for the local employment sector by attaching evidence that efforts to resolve through bipatrit negotiations have been carried out. " Moreover, according to Article 4 paragraph (2) of Law No. 2 of 2004, if the evidence is not attached, the relevant agency is obliged to return the file for completion no later than 7 (seven) working days from the date of receipt of the returned file. Bipatrite dispute resolution is intended to find a solution to industrial relations disputes by means of deliberation to reach consensus internally, in the sense of not involving other parties, outside the disputing parties. Settlement of disputes in a bipatrit manner must be resolved no later than 30 (thirty) days from the start date of negotiations. If within 30 days one of the parties refuses to negotiate or negotiations have been carried out but no agreement has been reached, the bipatriate negotiations are considered to have failed. However, if the bipatriate negotiations can reach a settlement agreement, a joint agreement is made which is signed by the parties and is binding and becomes law and must be implemented by the parties. The collective agreement must be registered by the parties entering into the agreement in PHI at the state court in the area where the parties entered into the collective agreement (Putong, 2012).

Apart from bipatrit, the settlement of industrial relations can also be carried out through tripartite settlement. Basically, tripartite negotiations are negotiations involving a neutral third party. In Law No. 2 of 2004, the third party involved to resolve an industrial relations dispute is a mediator, or cociliator, or arbitrator. This tripartite settlement effort can only be carried out if the tripartite effort has been carried out. The tripartite settlement process is through mediation, conciliation and arbitration as described in more detail below: (Putong, 2012)

Mediation is the resolution of rights disputes, interest disputes, layoff disputes, and disputes between trade unions or labor unions in just one company, through deliberations mediated by a neutral mediator, as stated in article 1 point 1 UUPPHI). Basically, settlement through mediation has several superior characteristics, namely, Voluntary, where the decision to mediate is left to the agreement of the parties so that a decision can be made which is the will of the parties. Because it is desired by the parties, the resulting decision is a win-win solution, informal and flexible, which means that if ordered, the parties themselves with the help of a mediator can design their own procedures, procedures, procedures and mechanisms which are very different between litigation and mediation, interest based, in mediation we do not look for who is wrong or who is right, but what is more prioritized is how the mediation produces and achieves the interests of each party, Future looking, because the essence of mediation is to safeguard the interests of each party, so it places more emphasis on maintaining the relationship. the parties to the dispute move forward and are not oriented to the past, Parties oriented, Mediation orientation is an informal procedure, the parties play a more active role in the mediation process without depending on the role of lawyers and Parties control, the Mediator cannot impose his will or opinion to achieve agreement because resolving disputes through mediation is the decision of the parties themselves.

The government can appoint a Mediator whose job is to carry out Mediation or a Peacemaker who can mediate in resolving disputes between Workers and Employers. An

appointed Mediator has the requirements as stated in Article 9 of Law No.2 of 2004. The appointment and accommodation of the mediator is determined by the Minister of Manpower. If an agreement has been reached to resolve the dispute through the Mediator, a "collective agreement" is drawn up which is signed by the parties and the mediator, then the agreement is registered at the Industrial Relations Court at the local District Court. However, if there is no agreement between the parties to the dispute, mediation can be carried out. Mediation can be said to be one of the efforts that the parties can undertake before going to court. Resolution of problems at the mediation stage is very fast, no more than 30 working days, and the mediator is obliged to start the mediation session no later than 7 days after it is delegated.

Settlement is through a Conciliator, namely a Conciliation official who is appointed and dismissed by the Minister of Manpower based on the advice of a trade union organization or Labor Union. All the requirements to become a Conciliator official are stated in article 19 of Law No. 2 of 2004. Where the most important task of the Conciliator is to summon witnesses or related parties within no later than 7 (seven) days of receiving the Conciliator's settlement. The Conciliator Officer can summon the parties to the dispute and make a joint agreement if an agreement has been reached. Registration of the collective agreement initiated by the Conciliator can be registered before the local District Court. Likewise, the execution can be carried out at the Registrar's Office of the local District Court. Dispute resolution through arbitration is generally regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which applies in the field of trade disputes. Therefore, industrial relations arbitration regulated in this law is a special arrangement for resolving disputes in the field of industrial relations. The law can resolve disputes through arbitration, including disputes of interest and disputes between workers' unions and employers within a company. To be appointed as an Arbitrator as intended in Article 31 paragraph (1). The parties to the dispute can choose the Arbitrator they like as determined by the Minister of Manpower. The Arbitrator's decision that raises doubts can be filed for a challenge to the local District Court by stating the authentic reasons that give rise to the doubt. The District Court's decision in Article 3 of Law No. 2 of 2004, can make a decision regarding the reasons for the refusal and where no further opposition can be submitted. If peace is reached, then according to the contents of Article 44 of Law No.2 of 2004, an arbitrator must make a Deed of Peace signed by both parties witnessed by an Arbitrator or Panel of Arbitrators.

**Mechanism for Settlement of Industrial Relations Disputes Based on Labor Laws Applicable in Indonesia**

As previously explained, historically Law no. 2/2004 was promulgated as a replacement for Law no. 22/1957 and Law no. 12/1964, which in its implementation has not been able to realize quick, precise, fair and cheap resolution of industrial relations disputes. In addition, from the beginning of the formation of Law no. 22/1957 and Law no. 12/1964 also stipulates that industrial relations disputes must be resolved by deliberation to reach consensus between the disputing parties. Only then, if deliberative efforts are not achieved, can employers and workers/labourers resolve industrial relations disputes through dispute resolution institutions regulated by law based on the agreement of the parties. Based on these matters, it can be seen that the principles for resolving industrial relations include: (1) the principles of kinship, mutual cooperation and deliberation to reach consensus; (2) the principle of freedom to choose dispute

resolution institutions; and (3) the principles of fast, fair and cheap. The principles of kinship, mutual cooperation and deliberation to reach consensus can be found in the obligation to resolve industrial relations disputes through deliberation to reach consensus in bipartite institutions before pursuing further resolution. This principle also applies to settlements through out-of-court mechanisms (Santoso, 2018).

As mandated in Article 136 paragraph (1) of Law no. 13 of 2003 concerning Manpower, that industrial relations disputes (labor disputes) must be carried out by employers and workers/laborers or trade unions. workers through deliberation and consensus. With this provision, it is the obligation of the Workers/Labourers and Entrepreneurs/Employers to first resolve disputes that occur through negotiations; Negotiation is an effort made through talks, persuasive actions/persuasion, and compromise to reach an agreement with another party regarding a/several specific issues and a process in which two or more parties have the same (common interest) or opposing (conflicting) interests. interest) meet and talk with the intention of reaching a mutually agreed agreement (Manurung, 2018).

Basically, every dispute in Industrial Relations must have a bipartite resolution system before the dispute is brought to court. From each party there are representatives from employers and representatives from trade/labor unions. The representatives present in the bipartite party are determined proportionally and in accordance with the agreement. The type of agreement resulting from the bipartite formulation is in the form of an agreement that has been signed by both parties to the dispute. If there is a party who does not want to sign the agreement, then the party who feels aggrieved can submit an application to the Industrial Relations Court at the nearest District Court, even though it is not specifically regulated in the statutory regulations. (Abdullah & Lala, 2020).

That this also refers to the provisions of Article 3 paragraph (1) of Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes (PPHI), it is regulated that the resolution of industrial relations disputes (labor disputes) must be sought first through bipartite negotiations by deliberation and consensus. In fact, if we then look at the explanation of this article, it further emphasizes that bipartite negotiations are negotiations between employers or combinations of employers and workers/laborers or trade/labor unions or between other trade/labor unions in a company that are in dispute; So with that in mind, the parties must not ignore deliberation to reach a consensus to resolve a difference of opinion that occurs between workers/laborers and their employers or employers through Bipartite Negotiations. In the process of resolving negotiations in a bipartite manner, it is necessary to prepare minutes of the results of the negotiations as intended in article 6 paragraph 2 of Law no. 13 of 2003 concerning Employment must at least contain the full names and addresses of the parties, the date and place of negotiations, the subject matter or reason for the dispute, the opinions of the parties, the conclusions or results of the negotiations, and the date and signature of the parties conducting the negotiations.

In Indonesia (as a welfare state as mandated in the preamble to the 1945 Constitution of the Republic of Indonesia, state intervention in employment issues is demonstrated in several important aspects. First is the determination of the minimum wage determined by the government. This is a form of protection so that workers receive a decent wage that is in line with costs life. Second, the establishment of boundaries between employers and workers, as well as the rights and obligations enshrined in Law Number 13 of 2003 concerning Employment

and Law Number 21 of 2000 concerning Labor Unions. Lastly, the intervention is to assist in resolving industrial disputes. , namely through the PPHI Law. In the PPHI Law, the concepts of bipartite settlement of industrial relations, mediation, conciliation and arbitration are known as non-litigation methods for resolving labor disputes. Failure in non-litigation causes the parties to have to resort to litigation at the industrial relations court. In short, the government generally regulates that industrial relations disputes can be resolved in two ways, namely non-litigation and litigation. The non-litigation route, in the PPHI Law, apparently only seems to be a prerequisite for settlement through PHI to be implemented. On the other hand, PHI in the previous discussion has been described as a very ineffective solution. This problem is an urgency for the author to concentrate on resolving industrial relations disputes in non-litigation channels. In this research, the thesis or statement offered by the author is strengthening the tripartite function through mediation by the Manpower Office. Mediation, in various countries, is considered the best way to resolve disputes between employers and workers. This happens because conflicts between employers and workers are a routine occurrence and resolution through litigation is not cheap (not just counting court costs). The mediation system is a good thing, but there are many obstacles because now the orientation of dispute resolution is litigation because it is considered the only thing that can guarantee legal certainty. Therefore, only certain countries really implement mediation as well as possible (Arsalan & Putri, 2020).

Juridically, in Article 3 paragraphs (2) and (3) of Law no. 13 of 2003 concerning Manpower, it is indeed stipulated that the time limit (limitative) for resolving Industrial Relations Disputes (labor disputes) through Bipartite negotiations is only 30 (thirty) working days from the date of commencement of negotiations, and if within a period of 30 (thirty) on that day, one of the parties refuses to negotiate or negotiations have been held but no agreement has been reached, then the bipartite negotiations are deemed to have failed; Therefore, it is best if a dispute occurs between a worker/laborer and an entrepreneur or employer, then the parties must be proactive in holding discussions to reach an agreement which is always referred to as Bipartite Negotiations (deliberation which is directly carried out by two parties, namely the worker/laborer and the entrepreneur /Employer). In practice, it is true that Workers/Labourers are always in a very weak position, therefore if there is no opportunity given by the Employer for Deliberation through Bipartite negotiations, even though the Worker/Labourer has properly requested it, then by referring to the provisions of Article 4 paragraph (1) Law no. 13 of 2003 concerning Manpower, it is best for workers/laborers to immediately submit and record their problems to the Manpower Agency Office where the worker/laborer works by attaching proof of the negotiation efforts that have been made and other evidence regarding the dispute that occurred. (Arsalan & Putri, 2020).

Based on Law no. 2 of 2004 there is a Bipartite negotiation procedure for workers/laborers and entrepreneurs in the event of an Industrial Relations dispute, namely that the Bipartite settlement must be completed no later than 30 days from the start of negotiations, if Bipartite negotiation efforts reach an agreement, a collective agreement is made which is signed by the parties and then the agreement The joint agreement must be registered by the parties entering into the agreement in the Industrial Relations Court at the District Court in the area where the parties entered into the collective agreement. The collective agreement which has been registered is provided with a deed of proof of registration of the collective agreement and is an inseparable part of the collective agreement, if the collective agreement is has been

registered as not being implemented by one of the parties, the aggrieved party can submit a request for execution to the Industrial Relations Court at the District Court in the area where the collective agreement is registered for execution, if bipartite negotiation efforts fail, one party or both parties will register the dispute with the agency responsible responsibility in the local employment sector by attaching proof that bipartite efforts have been made, then if bipartite negotiation efforts fail, one or both parties will register the dispute with the agency responsible for the local employment sector by attaching evidence that bipartite efforts have been carried out, if If the evidence is not attached, the agency responsible for the local employment sector must return the file to be completed no later than within (seven) working days from the date of return of the file, then minutes of every bipartite negotiation must be drawn up signed by the parties. (Arsalan & Putri, 2020).

## CONCLUSION

### Closure

Law Number 13 of 2003 concerning Employment and Law Number 2 of 2004 concerning solving Industrial Relations problems are the basis for resolving disputes between workers and employers. One of the efforts required to resolve the problem is a solution outside of court. Before going to the Industrial Relations court, each disputing party should not immediately take the dispute case to court, but resolve it through amicable discussions, especially to reach a consensus. Litigation or court is the last route taken. Based on Article 1 number 22 of Law Number 13 of 2003 jo. Article 1 number 1 of Law Number 2 of 2004 formulates the definition of industrial relations disputes as follows: "Differences of opinion that result in conflicts between employers or combinations of employers and workers/laborers or trade/labor unions, due to disputes regarding rights, disputes over interests and disputes termination of employment relations and disputes between workers/labor unions in just one company.

### Suggestion

The Bipartite negotiation procedures for workers/laborers and entrepreneurs in the event of an Industrial Relations dispute (Labor Dispute), with reference to Law no. 2 of 2004 states that Bipartite Settlement must be completed no later than 30 days from the start of negotiations. If Bipartite negotiation efforts reach an agreement, a collective agreement is drawn up which is signed by the parties. The collective agreement must be registered by the parties making the agreement at the Industrial Relations Court on The District Court in the area where the parties entered into a collective agreement, If within 30 working days one of the parties refuses to negotiate or negotiations have been carried out, but have not reached an agreement, the bipartite negotiations are deemed to have failed. If the attempt at bipartite negotiations fails, one of the parties or both parties register the dispute with the agency responsible for the local manpower sector by attaching evidence that bipartite efforts have been made. If this evidence is not attached, the agency responsible for the local manpower sector must return the files to be completed within (seven) days. work from the date the files are returned and minutes must be drawn up for every bipartite negotiation signed by the parties.

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