



Juridical study on the authority of the state attorney's authority in filing applications for the revocation of the *ouderlijke macht*

Muhammad Iqbal Pramudani, Fifiana Wisnaeni

Department of Law, Diponegoro University, Jalan Imam Bardjo, Semarang, Indonesia

Abstract

Parents have the right of authority over their children (*ouderlijke macht*) in accordance with Article 299 of the civil code. This right can be revoked if the parent is incompetent or unable to look after their child. Parental power is limited by Article 48 of Undang-Undang Perkawinan. If the judge deems, it necessary for the child's interests, then this right can be revoked per Article 319a of the civil code. The authority of the State Attorney is based on the Regulation of the Attorney General of the Republic of Indonesia Number 7 Year 2021, one of whom can submit a request for revocation of this right, but currently, this authority tends not to be used. The purpose of this research is to determine the legal consequences of the revocation of these rights in Indonesia and to determine the implementation of the authority of the State Attorney in submitting requests for revocation of these rights. This research uses a normative juridical approach through literature studies from various legal material sources. The legal consequence of revoking this right is that parents do not have this authority but are still obliged to support their child, and the Chief Justice of the District Court is obliged to appoint guardianship over the child. The State Attorney may submit a request for a father or mother to be released or restored from their powers as a parent in accordance with Article 18 paragraph (1) and paragraph (2) of Law of the Republic of Indonesia Attorney General.

Keywords: Authority, state attorney, revocation of authority rights over children

Introduction

Parents have the right of authority over their children (which can be called *ouderlijke macht*). Article 299 of the Civil Code explains that both parents have authority over their children as long as they are not adults yet and independent. Authority here is, of course, in accordance with the legal principles and values that exist in society, including those related to human rights. However, in parental authority, both a father and/or mother can revoke their power as parents over one child or more than one child. This means that the parents are released from their power as parents of their children. The revocation or release of parental authority can be carried out if the parents are incompetent or unable to fulfill their obligations to care for and educate their children. The authority of parents over their children is limited in accordance with the provisions of Article 48 of the Marriage Law that parents may not transfer rights or mortgage the permanent property of their children who are not yet 18 (eighteen) years old or have never been married unless the interests of the child require it. If the parents, in this case, are very negligent in their obligations and behave badly towards their children, then this authority can be revoked within a certain period. Article 319a of the Civil Code explains that if the Judge deems it necessary for the interests of the children, each of them, and the parents, a Father or Mother, may be dismissed from parental authority over all their children or one or more children. The revocation of the *ouderlijke macht* can be done by a court decision upon the request of the other parent or one of the blood relatives or the children, up to the fourth degree of descent, or the guardianship council, or the Attorney General's Office of the Republic of Indonesia based on abusing parental authority or grossly neglecting the obligation to care for and educate one or more children; behaving badly; being sentenced to an irrevocable sentence for intentionally participating in a crime (including assistance and attempts)

with a minor child under his/her authority; being sentenced to an irrevocable sentence for committing a crime listed in Chapters 13, 14, 15, 18, 19, and 20, Book Two of the Criminal Code, against a minor under his/her authority; being sentenced to an irrevocable corporal punishment for two years or more.

Prosecutor's Office, in accordance with the provisions of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office, in Article 18 paragraph (1) and paragraph (2), it is explained that the Attorney General as the highest Public Prosecutor and State Attorney in the Unitary State of the Republic of Indonesia with a Special Power of Attorney or because of his position acts as a State Attorney, in the fields of Civil and State Administration and State Administration in all Judicial environments, both inside and outside the Court for and on behalf of the State or government, or the public interest. According to the provisions of the Republic of Indonesia Prosecutor's Office Regulation Number 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions, and Legal Services in the Field of Civil and State Administration, the Prosecutor's Office has the authority through the State Attorney in handling civil cases related to family and marriage law. One of them can apply for a father and/or mother to be released from their authority or restored from the release of their authority as parents. Regarding the application for the revocation of parental authority over children (*ouderlijke macht*) submitted by the State Attorney, to date, only 3 (three) applications have been handled by the State Attorney until the court has decided them. Based on this, the author obtained two court decisions that have permanent legal force (*inkracht*), which has differences in their decision. One decision is the Kuala Tungkal District Court Decision Number: 16/Pdt.G/2022/PN.KIt, there is a phrase "but does not sever the blood relationship between

the child and his biological parents and does not eliminate the obligation of parents to finance their children's lives". The other decision was the Muara Sabak Religious Court Decision Number 313/Pdt.G/2022/PA.MS, there is no such phrase. Based on the description that has been explained above, the author is interested in discussing and studying it further in the form of an article with the title "Jurudical Study on The Authority of The State Attorney's Authority in Filling Applications for the Revocation of the Ouderlijke Macht". To discuss it, the author formulates it in 2 (two) problem formulations, namely; 1. What are the legal consequences of the revocation of *ouderlijke macht* in Indonesia? and 2. How is the implementation of the authority of the State Attorney in submitting a request for the revocation of *ouderlijke macht*?

Research methods

This study uses a normative legal approach method. The normative legal approach is legal research conducted by examining library materials or secondary data as basic materials for research by searching for regulations and literature related to the studied problems (Soekanto dan Mamudji, 2001). The specification of this research is based on analytical descriptive, namely analysis that only reaches the level of description, namely analyzing and presenting facts systematically so that they can be more easily understood and concluded. The data collection technique uses library research, in other words, using secondary data, namely data obtained from a researcher not directly through the source (the object of his research) but through other sources. The data that has been collected is analyzed using qualitative analysis techniques.

Results and Discussion

1. Revocation of *Ouderlijke Macht* in Indonesia and the legal consequences that aroused

In Indonesia, the revocation of parental authority over children (*ouderlijke macht*) is regulated in Article 319a of the Civil Code (KUH Perdata). The article explains that "A father or mother who exercises parental authority may be released from parental authority, either over all children or over one or more children, at the request of the guardianship council or upon demand of the prosecutor, if it is evident that he or she is incompetent or unable to fulfill his or her obligations to care for and educate his or her children and the interests of the children do not conflict with this release on other grounds." From here, it can be understood that *ouderlijke macht* can be revoked if, in reality, a father and mother who have received such power are unable and incompetent in carrying out their obligations to educate and care for their children. Therefore, upon request from the Guardianship Council or the Prosecutor's Demand, such revocation can be requested for all children or one or several of the children. If the Judge deems it necessary for the benefit of the children, each of the parents, as long as they have not lost their parental power, may be dismissed, and parental power, either for all children or for one or more children, upon request from the other parent or one of the blood relatives or by marriage and the children, up to the fourth degree of descent, or the guardianship council, or the Prosecutor's Office based on abusing parental power or neglecting the obligation to care for and educate one or more children; misbehaving; being sentenced to an irrevocable sentence for intentionally participating in a

crime with a child who is still a minor who is in their power; sentenced to an irrevocable sentence for committing a crime (including abetment and attempt) listed in Chapters 13, 14, 15, 18, 19, and 20, Book Two of the Criminal Code, against a minor under his/her authority; and/or sentenced to an irrevocable sentence of corporal punishment for two years or more.

Parental authority can also end if due to the release of both parents, revocation or dismissal of authority from both parents, death of the child, the child becoming an adult, revocation of one of the parents, and dissolution of the marriage of the child's parents. Article 49 of the Marriage Law explains that if a parent commits a very bad act, one or both parents can be released from their authority over their child for a certain period through a Court Decision. The consequences of a court decision that grants the revocation of *ouderlijke macht*, of course, means that a husband and/or wife have also been released or dismissed from their authority as parents, so for children who are free from their parent's authority, the District Court must hold guardianship for the child as regulated in Article 319c of the Civil Code. The parent whose authority is released or dismissed must provide for their children the child's living and education and submit costs in a certain amount to the Guardianship Council, the amount determined by the judge. This is in accordance with the provisions of Article 319j of the Civil Code that "a person who is released or dismissed from parental authority is obliged to provide support to the guardianship council for the costs of maintaining and educating the children who have been withdrawn from their authority every week, every month, or every three months, in the amount determined by the District Court upon the request of the guardianship council." Those who have been released or dismissed from their parental authority can have their parental authority rights restored or be appointed as guardians of children (still minors) if the event that resulted in the release or dismissal is no longer an obstacle to the restoration of the right of *ouderlijke macht* in accordance with the provisions of Article 319g of the Civil Code. The parents must prove that they have truly improved their treatment.

2. Implementation of the authority of the state attorney in submitting an application for revocation of *ouderlijke macht*

The State Attorney, as a representative of the Prosecutor's Office in enforcing the law in the Civil and State Administrative fields, has the authority as stipulated in the Republic of Indonesia Attorney General's Regulation Number 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions, and Legal Services in the Civil and State Administrative Fields. One of these authorities relates to family and marriage law, such as filing a request for a parent's authority to be revoked or restored from the revocation of their authority as a parent. This authority is regulated in Chapter III of this Prosecutor's Regulation concerning Law Enforcement. The State Attorney may file a request to release the father's or mother's authority as a parent over all children or one or more children if it turns out that the parents are incompetent or unable to fulfill their obligations to care for and educate their children. This application is submitted in the interests of the child. This application is filed based on abusing

parental power or neglecting the obligation to care for and educate one or more children; misbehaving; sentenced to an irrevocable sentence for intentionally participating in a crime (including assistance and attempt) with a minor under his/her control; sentenced to an irrevocable sentence for committing a crime (including attempt, assistance, and attempt) listed in Chapters 13, 14, 15, 18, 19, and 20, Book Two of the Criminal Code, against a minor under his/her control; sentenced to an irrevocable corporal punishment for two years or more.

In the case of restoration of *ouderlijke macht*, the State Attorney may file a request for such restoration. The request is filed if the events that have resulted in the release are no longer an obstacle to the restoration. Information regarding the father or mother as parents whose authority will be released or restored from the release of their parental authority is obtained from related agencies, the community, and/or the internal prosecutor's office. The State Attorney coordinates with the technical field and/or related authorized agencies in this case. Based on the information and results of coordination and review by the State Attorney, the head of the work unit determines whether the Prosecutor's Office will file a request for release or revocation of *ouderlijke macht*. The request is filed with the District Court at the place of residence of the parent requested for release or to the District Court at his/her last place of residence or if the request concerns the release of one of the parents who is entrusted with the task of exercising parental authority after separation, the request is filed with the District Court that decides on the request for release of authority. However, in its development, the State Attorney rarely applies this authority. In the author's research, the Prosecutor's Office, through the State Attorney, has so far only submitted a request for the revocation of *ouderlijke macht* 3 (three) times, namely by the State Attorney at the West Tanjung Jabung District Attorney's Office in case Number: 16/Pdt.G/2022/PN. KIt, by the State Attorney at the East Tanjung Jabung District Attorney's Office in case Number: 313/Pdt.G/2022/PA.MS, and recently by the State Attorney at the Kediri Regency District Attorney's Office.

In the case handled by the State Attorney at the West Tanjung Jabung District Attorney's Office, who filed a lawsuit with the Kuala Tungkal District Court, this case, according to the case position that has been described by the Author previously, *suing ANGERAG'O ZAI Alias ZAI, known as BAPAK BUTE Son of FAGILALA ZAI as the father of Ms. KASIANI ZAI and Mr. KENANGAN HATI ZAI to be able to be released or dismissed from the ouderlijke macht against the Defendant.* The Kuala Tungkal District Court Judge granted the lawsuit in Decision Number 16/Pdt.G/2022/PN.KIt dated July 13, 2022. The application for the revocation of the *ouderlijke macht* was also submitted by the State Attorney at the East Tanjung Jabung District Attorney's Office. This lawsuit was filed against ANTONI, known as TONI Bin MANSYUN, a father who had sex with his biological child who was still in school. In addition, the Defendant was considered to be able to endanger his other children. This lawsuit was granted by the Judge at the Muara Sabak District Court in Decision Number 313/Pdt.G/2022/PA.MS dated November 7, 2022. In this case, the authority to submit a request for revocation of *ouderlijke macht* held by the State Attorney is a form of legal protection for children. This legal protection is an effort to protect various basic rights and freedoms of

children (fundamental rights and freedoms of children), including those related to child welfare. Parents, family, society, government, and the state are very important for children and are responsible for protecting children's rights. Every child has rights that must be considered by parents, family, society, government, and the state. The 1945 Constitution of the Republic of Indonesia mandates through Article 28B that parents should guarantee children's rights to survival, growth, and development and provide protection from violence and discrimination. Law Number 39 of 1999 concerning Human Rights (HAM Law) in Article 56 paragraph (1) and Article 57 paragraph (1) also mandates that parents have the right to raise and care for their children and are obliged to maintain, care for, and educate their children until they are adults in accordance with the provisions of laws and regulations and values that exist in society. Article 58, paragraph (1) of this Law also explains that while in parental care, parents should provide protection to children from all forms of physical, psychological, or mental violence, including not to neglect. There are also several other rules related to parents and children. The position of children is regulated in Articles 42 to 44 of the Marriage Law. The rights and obligations of children are regulated in Articles 4 to 19 of the Child Protection Law. In contrast, the rights and obligations of parents towards children are regulated in Article 45 of the Marriage Law and Article 26 of the Child Protection Law. Regarding the maturity of children, it is regulated in Articles 419 to 432 of the Civil Code. Meanwhile, regarding the revocation and restoration of parental authority, this is regulated in Article 49 of the Marriage Law and Articles 30 to 32 of the Child Protection Law.

The revocation of *ouderlijke macht* is also known in criminal law. In criminal law, additional punishments can be applied in addition to the main punishment against perpetrators of certain crimes, namely in the form of revocation of certain rights. One of the rights that can be revoked is the right to exercise parental authority. In Indonesian legal regulations, there are punishments, including main punishments and additional punishments. Related to additional punishments in the sentencing, it is regulated in Article 10 of the Criminal Code, which states that punishment consists of: a. Main punishment, in the form of the death penalty; imprisonment; imprisonment; fine; imprisonment; and b. Additional punishment includes revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision. In relation to the revocation of *ouderlijke macht*, Article 35 paragraph (1) 5 of the Criminal Code also regulates the application of additional punishment in the form of revocation of certain rights that can be imposed, namely in the form of revocation of the right to exercise paternal authority, to exercise guardianship or guardianship over one's child. In Article 37, paragraph (1) of the Criminal Code, it is explained that this father's authority, both over his child and over another person, can be revoked in the case of the criminalization of a parent or guardian who intentionally commits a crime together with a minor child under his authority; or a parent or guardian of a minor child under his authority, commits a crime, as stated in Chapter XIII, XIV, XV, XVIII, XIX, and XX of Book Two. In the development of its practice, the Prosecutor tends to ignore the imposition of additional criminal penalties on the perpetrator of a father's crime against his biological child. The public Prosecutor in

handling this criminal case in conducting pre-prosecution only focuses on the formulation of the crime of the act committed by the suspect, so he often ignores the inclusion of Article 35 paragraph (1) fifth in conjunction with Article 37 paragraph (1) of the Criminal Code in the Public Prosecutor's indictment as an additional criminal penalty. Therefore, in order to provide legal protection for children, the implementation of the authority of the State Attorney in enforcing civil law related to the handling of marriage law and family law, in terms of applying for the revocation of *ouderlijke macht*, can be optimized by including additional criminal penalties in the form of the revocation of certain rights, namely the right to exercise paternal authority over the handling of criminal cases where the perpetrator is a father against his biological child.

A court decision that grants the revocation of *ouderlijke macht* can be categorized as a decision that is constitutive, meaning that the decision issued by the judge in his ruling creates a new legal situation, either one that eliminates a legal situation or one that creates a new legal situation. In a decision that grants the revocation of *ouderlijke macht*, the decision that eliminates the legal situation is seen in the absence of parental authority in a father or mother over their biological child. Along with this, a new legal situation arises, namely with the revocation of *ouderlijke macht*, then the Court needs to appoint a guardian for the child. In this case, the author takes an example of 2 (two) decisions that grant the lawsuit for the revocation of *ouderlijke macht*. The first is the Decision of the Kuala Tungkal District Court Number: 16/Pdt.G/2022/PN Klt dated July 25, 2022, the ruling of which is: 1. Declaring that the Defendant was not present at the trial even though he had been legally and properly summoned; 2. Granting the Plaintiff's lawsuit in its entirety by default; 3. Declaring that the Defendant's authority as a parent has been revoked, namely the Father of Ms. Kasihani Zain alias Bute and Mr. Kenangan Hati Zain alias Si Ucok, but not severing the blood relationship between the child and his biological parents and not eliminating the obligation of parents to support their children's lives; 4. Determining Sokhinaso Zai alias Mr. Angel, Son of Fagilala Zai as the Guardian of Ms. Kasihani Zain alias Bute and Mr. Kenangan Hati Zain alias Si Ucok; and 5. Sentencing the Defendant to pay all costs incurred in this case amounting to IDR 470,000.00 (four hundred and seventy thousand rupiah). The second decision is the Decision of the Muara Sabak Religious Court Number: 313/Pdt.G/2022/PA.MS dated November 7, 2022 with the following decision: 1. Declaring that the Defendant who had been officially summoned and was appropriate to attend the trial was not present; 2. Granting the Plaintiff's lawsuit by default; 3. Revoking the Defendant's (Antoni alias Toni bin Mansyur) power over children named Repa Gustiyani, Nasya Novita Sari, Ananda Sella Mareta, Syafira Khoirunnisa, and Syaqla Putri Antoni; 4. Determining Yatini binti Wardoyo as the holder of power over children named Repa Gustiyani, Nasya Novita Sari, Ananda Sella Mareta, Syafira Khoirunnisa, and Syaqla Putri Antoni; and 5. Ordering the Defendant to pay court costs in the amount of Rp. 605,000 (six hundred and five thousand rupiah).

Based on the rulings in both decisions, it can be seen that there is a legal state of elimination in this case, namely the revocation of the Defendant's authority as a parent as a father and at the same time, a new legal state arises for the person who is appointed as the guardian of the child. The

author tries to compare the two decisions. In one decision, there is a phrase that "but does not sever the blood relationship between the child and his biological parents and does not eliminate the obligation of parents to support their children." In the other decision, there is no such phrase. If we look at the provisions in Article 319j of the Civil Code, it is explained that a person who is released or dismissed from parental authority is obliged to provide support to the guardianship council for the maintenance and education costs of the children who have been withdrawn from his authority, every week, every month, or every three months, in the amount determined by the District Court at the request of the guardianship council. This means that whether or not the phrase is present in the decision, it still has the same legal consequences, namely not severing the blood relationship between the child and his biological parents, and the biological parents are still obliged to support their child for the child's livelihood and education. Parents whose authority is revoked must submit a certain amount of fees to the guardianship council, the amount of which is determined by the judge. A court decision grants the revocation of *ouderlijke macht*, which has permanent legal force (*Eintracht*), has executory power, and is binding to be implemented. This means that the parties who have been decided and determined in the verdict must submit to and obey the decision that has been issued. Parents who have been decided by the court to have their authority over their biological child revoked must, of course, submit to the decision that has been issued. For someone who the judge has appointed to be the guardian of a child whose parents have been revoked from parental authority, then the status of guardianship, including the responsibility as a guardian, has been attached to him since the verdict was read and notified to someone who has been appointed as the guardian of the child.

Article 319k of the Civil Code explains that every decision containing the release or dismissal of parental authority must be immediately notified by the court clerk in the form of a copy to the party receiving the parental authority or to the party assigned to carry out guardianship, as well as to the guardianship board. Then, in Article 319h of the Civil Code, it is explained that if children who are still minors are not clearly under the authority of a person or administrator of an association, foundation, or charitable institution who is tasked with carrying out parental authority or guardianship based on a judge's decision, or under the authority of a parent or guardianship board to whom the children may be entrusted based on a stipulation, then the decision must also order the handover of the children to the party who based on the decision has authority over the children who are still minors. If the person holding actual authority over the children who are still minors refuses to hand over the children, then the party who, according to the judge's decision, has authority over the children can try to have the handover carried out by a Bailiff who he tasks to carry out the decision. The decision may not be executed before it is communicated to the party whose authority over the children has been revoked and to the party whose actual authority the minors have. If there is real resistance, the Bailiff may request security assistance from the Police. In this case, the Bailiff may enter any place where the minors are or are thought to be. However, suppose the minors are or are thought to be in a house to which the occupants have forbidden entry or whose doors are locked. In that case, the Bailiff may contact the local, regional head or an employee

appointed by the regional head to enter the house. The presence of the regional head or an employee and what is done in his presence must be stated in the minutes of implementation, which must also be signed by him. Based on the provisions of Article 54 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law), it is explained that the implementation of the execution of court decisions in civil cases is carried out by the Court Clerk and Bailiff, and is led by the Chief Justice. Therefore, the party authorized to execute the decision to revoke the *ouderlijke macht* is the Clerk and Bailiff led by the Chief Justice. In executing the court decision granting the revocation of the *ouderlijke macht*, the State Attorney can no longer play an active role and is not authorized to execute the decision.

The court decision granting the application for revocation of *ouderlijke macht* can be executed in real terms in the case of the parent who has been released from parental authority and the party who has been appointed as the child's guardian by the court has been present at the reading of the decision granting the application for revocation of *ouderlijke macht* and the appointment of a guardian by the court, then after the decision is read, the parent whose authority has been revoked is obliged to hand over control of his child to the party who has been appointed as the child's guardian. After the child is handed over to the guardian, the parent's authority and responsibility for the child have been transferred to the guardian. In the case of the reading of the decision granting the application for revocation of *ouderlijke macht* and the appointment of a guardian for the child by the court is not attended by the Defendant, then the application is decided by default by the Panel of Judges. Then, the Chief Judge orders the Clerk and Bailiff to send a copy of the court decision and the letter of determination of the appointment of a guardian to the parties. After the parties receive the letter, the parents who have been released from parental authority are required to hand over control of their child to the guardian who has been appointed by the court, and the authority has been transferred to the child's guardian. After the authority is transferred to the guardian, the guardian of the child must immediately update the population data at the relevant agency (in this case, the Population and Civil Registration Agency) based on a copy of the court decision revoking the *ouderlijke macht* and the letter of appointment of the guardian for the child. The Chief Justice can also directly send a letter to the relevant agency to update the population data for the child. Regarding guardianship, the State Attorney at the Tanjungpinang District Attorney's Office recently succeeded in determining the guardianship of orphans for three Tanjungpinang Child Welfare Institutions (LKSA). This Guardianship activity was carried out for the first time by the State Attorney. In this case, the principal is a Legal Entity in the form of a Child Welfare Institution (LKSA), as one of the Legal Entities that can be appointed as a Guardian for Minors, as regulated in Article 7 paragraph (1) of the Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian. Therefore, the Head of the Tanjungpinang District Attorney's Office as the State Attorney has the legal standing to become the Applicant's Attorney in submitting a Request for Determination of Guardianship to the Tanjungpinang District Court, where in this case, the guardianship concerns the management of the education of the children..

Conclusions and Suggestions

Based on the problems and discussions above, the author can conclude that the revocation of parental authority (*ouderlijke macht*) in Indonesia is specifically regulated in Article 319a of the Civil Code (KUH Perdata) which explains that *ouderlijke macht* can be revoked for children (all children or one or several children) upon the application or request of the Guardianship Council or the Prosecutor's Demand if in reality a father or mother who has obtained such authority is unable and incompetent in carrying out their obligations to educate and care for their children. The implementation of the authority of the State Attorney in enforcing civil law relating to family and marriage law, one of its authorities is to apply to a father or mother to be released from their authority as parents or restored from the release of their authority as parents. This is in accordance with Article 18 paragraph (1) and paragraph (2) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office and is regulated in the Republic of Indonesia Prosecutor's Office Regulation Number 7 of 2021. In its development, the State Attorney rarely uses this authority in implementing law enforcement in the civil sector, especially regarding family and marriage. State Attorneys have only used this authority in Indonesia 3 (three) times. The court decision that revokes the *ouderlijke macht* originating from a lawsuit or application is included in the scope of civil law, so it refers to the provisions in Article 319k of the Civil Code. If the court decision has granted the request to revoke the *ouderlijke macht* by the State Attorney, the State Attorney is no longer authorized to carry out the execution.

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