

The Constitutional Interpretation of Constitutional Court Decision Number 128/PUU-XXIII/2025 Regarding The Prohibition of Ministers and Deputy Ministers Holding Multiple Positions in Indonesia

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Abstrak

Indonesia merupakan negara yang menganut sistem pemerintahan presidensial, dari sistem tersebut seorang Presiden terpilih dibantu oleh Menteri dan Wakil Menteri untuk menjalankan tugas kenegaraan. Hal ini ditegaskan didalam Undang-Undang Dasar NRI 1945 Pasal 17 ayat (1 sampai 3). Namun yang menjadi problematika dari Menteri dan Wakil Menteri tersebut diera pemerintahan sekarang terdapat 32 Menteri dan Wakil Menteri yang merangkap jabatan diperusahaan BUMN dan di instansi lain seperti partai politik. Larangan rangkap jabatan bagi Menteri dan Wakil Menteri diatur Undang-Undang No. 39 Tahun 2008 tentang Kementerian Negara Pasal 23 yang secara tegas melarang bagi Menteri untuk rangkap jabatan, kemudian terdapat di Putusan Mahkamah Konstitusi Nomor 128/PUU-XXIII/2025 tentang larangan bagi Menteri dan Wakil Menteri rangkap jabatan. Dari latar belakang permasalahan tersebut penulis menguraikan rumusan masalah yakni bagaimana perwujudan prinsip-prinsip tata kelola kelembagaan negara yang baik? bagaimana kerugian konstitusional bagi masyarakat sipil mengenai Menteri dan Wakil Menteri yang merangkap jabatan di BUMN dan Partai Politik? bagaimana *ratio decidendi* Hakim Mahkamah Konstitusi terhadap putusan No. 128/PUU-XXIII/2025? Jenis penelitian ini menggunakan penelitian normatif adapun pendekatan penelitian ialah *statute approach* dan *case approach*. Hasil penelitian ini berupa konflik kepentingan dari Menteri dan Wakil Menteri yang merangkap jabatan akan tercipta penyalahgunaan kekuasaan *abuse of power* sehingga berdampak kepada penyelenggaraan pemerintahan yang tidak baik. Prilaku rangkap jabatan seringkali menjadi faktor konflik kepentingan *conflict of interest* antara jabatan Menteri dan Wakil Menteri terhadap jabatan struktural di BUMN dan Partai Politik. Dengan demikian fenomena rangkap jabatan tersebut akan mempengaruhi kinerja dalam tugas dan fungsi disetiap kementerian, serta tidak mematuhi peraturan perundang-undangan yang berlaku.

Kata Kunci: Menteri dan Wakil Menteri, Rangkap Jabatan, Putusan Mahkamah Konstitusi.

Abstract

Indonesia is a country that adopts a presidential system of government. In this system, an elected President is assisted by Ministers and Deputy Ministers in carrying out state duties. This is affirmed in the 1945 Constitution of the Republic of Indonesia, Article 17, paragraphs (1) to (3). However, the problem with these Ministers and Deputy Ministers in the current government is that 32 Ministers and Deputy Ministers hold dual positions in state-owned enterprises and other institutions, such as political parties. The prohibition on dual office-holding for Ministers and Deputy Ministers is regulated by Law No. 39 of 2008 concerning State Ministries, Article 23, which explicitly prohibits Ministers from holding dual office. This is further addressed in the Constitutional Court Decision Number 128/PUU-XXIII/2025 regarding the prohibition on dual office-holding for Ministers and Deputy Ministers. Based on the background of the problem, the author formulates the research question: How can the principles of good governance of state institutions be realized?

What are the constitutional losses for civil society regarding Ministers and Deputy Ministers who hold dual positions in SOEs and Political Parties? What is the ratio decidendi of the Constitutional Court Justices regarding Decision No. 128/PUU-XIII/2025? This type of research uses normative research, and the research approaches are the statute approach and the case approach. The results of this study indicate that conflicts of interest arising from ministers and deputy ministers holding multiple positions will lead to abuse of power, thereby negatively impacting good governance. Dual office-holding often leads to conflicts of interest between the positions of Minister and Deputy Minister and structural positions in state-owned enterprises and political parties. Thus, this phenomenon of dual office-holding will affect performance in the duties and functions of each ministry, and will not comply with applicable laws and regulations.

Keywords: Ministers and Deputy Ministers, Dual Office Holding, Constitutional Court Decision.

1. Introduction

Indonesia, in the post-independence era, experienced constitutional dynamics regarding the adoption of a system of government, which resulted in two opinions from constitutional law experts. First, Sri Soemantri argued that Indonesia adopted a parliamentary system of government after independence, while the second, A. Hamid S. Attamimi, argued that Indonesia's constitutional product (the 1945 Constitution) resulted in a presidential system of government. This is interesting when tracing the historical aspects of Indonesian constitutionalism, because when referring to the system of government, the theoretical aspect must discuss the relationship between each state institution (Saldi Isra, 2020, page 5).

In the early days of the Indonesian government, Sukarno and Mohammad Hatta, as the first Indonesian president, were unanimously elected by the Indonesian Independence Preparatory Committee (Zainal Arifin Mochtar & Muhibin M. Dahlan, 2025, page 3). In addition, the President and Vice President are elected directly by the People's Consultative Assembly using a majority vote system (Ahsanul Khuluqi & Muwahid, 2024, page 173). Based on this data, the author agrees that the early Indonesian government after independence used a parliamentary system of government. Another practical aspect of a parliamentary system of government is the election mechanism, whereas the President and Vice President are not elected through general elections but are directly elected by the legislature, which is also known as a legislative heavy system (Taufik, 2020, page 129).

Throughout Indonesia's independence, when viewed from a historical perspective, namely from 1945 with the issuance of the Vice-Presidential Decree No. X of 1945 to the issuance of the Presidential Decree of 1959, our constitution was divided into: the 1945 Constitution, the 1949 RIS Constitution, the 1950 Provisional Constitution, which still adhered to a parliamentary system of government. It was only after the reform period and the beginning of the amendments to the 1945 Constitution in 1999-2001 that Indonesia found its own spirit regarding the presidential system of government. This was because the People's Consultative Assembly (MPR) carried out a purification process, whereby the President and Vice President were no longer elected by the MPR but were directly elected by the people. From this historical record, Indonesia has indeed experienced complex dynamics regarding its system of government before finding its own spirit, which is felt today in accordance with the ideas of the nation's founders (Saldi Isra, 2020, page 7-8). According to the author, the transition from a parliamentary system of government to the current presidential system is a purely ideological move, devoid of any liberal concepts, and is in line with the will of the people.

The presidential system of government divides the duties of the President into two roles: head of state and head of government. As head of state, the President leads various government departments and is the symbol of the state. As head of government, the President has sole power in the executive branch and has

the prerogative to appoint and dismiss ministers, who are fully accountable to the President rather than to the People's Consultative Assembly (MPR), the House of Representatives (DPR) or the Regional Representative Council (DPD) (Septiana Rizco Nurfaizi, 2020, page 236). According to Jimly Asshiddiqie, the presidential system of government has strong principles upheld by the President, including: *first*, the President and Vice President are the highest authorities in the executive; *second*, they are directly elected by the people; and *third*, ministers are assistants to the President who are appointed and dismissed at the President's discretion (Rannie, 2021, page 98).

Based on Article 17, paragraph 1 of the 1945 Constitution of the Republic of Indonesia, '*The President shall be assisted by ministers of state*,' and paragraph 2 further stipulates that '*Ministers shall be appointed and dismissed by the President*' (1945 Constitution of the Republic of Indonesia, Article 17). From this, it is clear that the position of Minister is a political position that is directly appointed by the President and is fully accountable to the President. In addition, Ministers carry out specific duties within the government in accordance with their respective main tasks and functions (Pondaag & Umboh, 2022, page 3). Historically, the position of Deputy Minister was first established after the proclamation of independence on 17 August 1945 – 14 November 1945. In this case, the Minister is assisted by the Deputy Minister in carrying out the main duties, functions, and administration of the ministry in accordance with their respective fields until the current administration (Tenrilawa & Syam, 2022, page 39–40).

Recently, the Prabowo Subianto – Gibran cabinet consists of 53 ministers and 56 deputy ministers (M. Agus Yozami, 2025). However, a serious issue during this administration is the phenomenon of ministers and deputy ministers holding multiple positions. There are 33 ministers and deputy ministers who hold positions outside their ministries, namely as directors/commissioners of state-owned enterprises and leaders of political parties. In constitutional theory, the phenomenon of holding multiple positions is prohibited because it can lead to arbitrary actions. In addition to leading to arbitrary actions, this is also a form of abuse of power (Putri & Mahanani, 2022, hlm. 62). This is because Article 23 of Law No. 39 of 2008 states that '*ministers are prohibited from holding concurrent positions, either as state officials or commissioners and/or directors of state-owned or private companies, as well as leaders of organisations funded by the state budget*' (Law No. 39 of 2008, Article 23).

In addition to these legal norms, Law No. 19 of 2003 on State-Owned Enterprises (SOEs) Article 33 Paragraph 1 states that '*members of the board of directors of SOEs, regional-owned enterprises (BUMDs), private-owned enterprises (BUMS) and other positions in accordance with laws and regulations are prohibited from holding concurrent positions*' (Law No. 19 of 2003 Article 32). This is constitutionally contrary to Article 28D Paragraph 1 of the Constitution of the Republic of Indonesia, which states that '*there shall be guarantees of certainty before the law and equal treatment before the law*', and Paragraph 2, which states that '*there shall be the right to equal opportunity in government*' (1945 Constitution of the Republic of Indonesia, Article 28D). Therefore, this dual position will institutionally change the bureaucratic structure within the government and will make it very easy to commit criminal acts of corruption (May Lim Charity, 2016, page 1). The purpose of changing the bureaucratic structure is to mix the interests of ministries with other interests, which, by reasonable reasoning, will easily create conflicts of interest.

Constitutional reasoning on dual positions is detrimental and deprives individuals of their constitutionally guaranteed rights as stipulated in Article 28D paragraphs 1 and 2. Dual positions also have two negative elements, as described by Moh. Basir Siregar. The first is power imbalance, which is categorized as the suboptimal performance of an individual due to holding two or more positions. The second is abuse of power, which is a phenomenon where two positions are easily abused because they allow the holder to act beyond the limits of their authority (Siregar et al., 2021, page 91–92).

In terms of governance, as outlined in the General Principles of Good Governance (AUPB), among other things, first, not abusing authority, the phenomenon of dual positions held by ministers and deputy ministers will make it very easy to abuse the authority they have. As Lord Acton said, 'power tends to corrupt, and absolute power corrupts absolutely,' meaning that excessive power will lead to fatal mistakes such as corruption. Second, the principle of balance in holding multiple positions will create an imbalance between positions in ministries and positions as directors/commissioners of state-owned enterprises. Third, the principle of professionalism is affected by the imbalance between the scope of power and the domain of power, because those who should hold certain positions no longer hold other positions in government or private institutions (Septiani, 2021, page 7).

The prohibition of concurrent positions for Ministers and Deputy Ministers is not only regulated in legislation, but also reinforced by Constitutional Court Decision No. 80/PUU-XVII/2019, which was reviewed by Bayu Segara and Novan Lailathul Rizky regarding the prohibition of concurrent positions for Deputy Ministers (Constitutional Court Decision No. 80/PUU-XVII/2019). Subsequently, Constitutional Court Decision No. 128/PUU-XXIII/2025 reinforced the previous decision regarding the prohibition of holding multiple positions, stating that it applies not only to Deputy Ministers but also to Ministers (Constitutional Court Decision No. 128/PUU-XXIII/2025). The problem with this decision is that there is no compliance by the addressees, namely Ministers and Deputy Ministers, to comply with the prohibition on holding multiple positions as stipulated in the a quo decision, even though Constitutional Court decisions are erga omnes (applicable to all) from the moment they are read out and have binding legal force as the final interpretation of the constitution (Ningrum et al, 2022, page 343). Therefore, in this case, the author is interested in examining the Institutional Arrangement of the State and the Indonesian Constitution by raising the constitutional interpretation of the constitutional court decision number 128/PUU-XXIII/2025 regarding the prohibition of ministers and deputy ministers holding multiple positions in Indonesia.

2. Method

This research method uses a normative method, which is a purely legal study to examine applicable legal norms in order to achieve legal certainty and the usefulness of the law to be applied in society (Munir Fuady, 2018. p. 132). Therefore, in this case, the author examines Constitutional Court Decision No. 128/PUU-XXIII/2025 as the primary data in this study. The approach used in this research is the statute approach and case approach. The statute approach is an approach based on the text of legislation, such as the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 2008 concerning State Ministries, Law No. 19 of 2003 concerning State-Owned Enterprises, and Constitutional Court Decision No. 128/PUU-XXIII/2025 concerning the Prohibition of Concurrent Positions for Ministers and Deputy Ministers.

Besides, researchers also used a case approach that originates from the real situation. The case in this research is the phenomenon of Ministers and Deputy Ministers who concurrently hold the position of Directors/Commissioners of State-Owned Enterprises. Both approaches have relevance between das sollen and das sein. To support the quality of this research, the author includes primary data in the form of: legislation, journal articles, books, news, etc., while secondary data in the form of opinions of academics, practitioners relevant to scientific track records.

3. Good Governance

3.1. Principles of Good Governance of State Institutions

Theoretically, a good state institution requires an effective form of oversight for the implementation of government. This oversight pattern can only be achieved through the relationship between the executive power (President & Ministers) and the legislative (DPR, DPD, MPR). For example, in the theory of state science *algemeine staatslehre*, it is emphasized that the state system, whether monarchical or republican, requires a system of checks and balances to create good institutions in a country. According to Saldi Isra, the general problem of a presidential system of government like in Indonesia is managing the relationship between the president and the people's representatives because both receive the same mandate from the people (Isra, 2016, page 403).

Good state institutions require aspects that must be implemented to achieve a goal, namely, good governance. These aspects include: participation, law enforcement, transparency, responsibility, consensus orientation, equality, effectiveness, accountability, and strategic vision. To realize good state institutions in Indonesia, support from the government, the private sector, and the general public is also necessary. These three elements play a crucial role in realizing good governance, as they control natural resources, the environment, the economy, and social issues. If managed well, all state institutions will also perform well (Ipan Nurhidayat, 2023, page 44–45).

According to Bagus Muljadi, *incompetence* kills more people than even crime (Bagus Muljadi, 2025). According to the author, the correlation between competence and the principles of good governance is an influential variable. If a state institution is led by an incompetent individual, it becomes an empty institution with no future progress.

The government has full responsibility for all state institutions to create good governance. Therefore, its implementation practices are controlled by law to prevent any deviant actions. Deviant/violating the law by Ministers and Deputy Ministers holding concurrent positions is a phenomenon of non-compliance; this violation of the law is committed consciously. The impact of such actions will prevent the achievement of good governance (Lestari, 2025, page 3643). Because the legal norms clearly state the prohibition of holding dual positions, vide Article 23 of Law No. 39 of 2008, Article 19 of Law No. 19 of 2003, Court Decision No. 80/PUU-XVII/2019, and Constitutional Court Decision No. 128/PUU-XXIII/2025.

The correlation between accountability and good governance is that it serves as a performance indicator and measurement of work performance to achieve good results. Accountability in the management of state institutions needs to be implemented significantly for better conditions. Specifically, accountability is divided into: accountability for honesty of attitude and law, accountability for work programs, and accountability for processes. If a Minister and Deputy Minister hold concurrent positions in other agencies, their accountability attitude is divided and will ultimately violate the law and affect the quality of the work program because the focus of performance is divided into two or more (Riwukore dkk., 2022, page 5).

We believe that achieving high-quality state institutions requires encouragement from government actors, such as ministers and deputy ministers, who must demonstrate a strong sense of accountability. This will prevent the phenomenon of dual positions in ministries from recurring with each new administration. This factor often leads to poor performance, abuse of power, conflicts of interest, and a decline in public trust.

4. The Violation of Constitutional Rights

4.1. The Constitutional Losses to the Public from Ministers and Deputy Ministers Who Hold Positions in State-Owned Enterprises and Political Parties

Constitutionally, the losses to the public against Ministers and Deputy Ministers who hold concurrent positions are divided as follows: there are clear violations against Ministers and Deputy Ministers who hold concurrent positions on the Board of Directors, Commissioners/Deputy Commissioners of BUMN (State-owned Enterprises), receiving double income between salaries and allowances for Ministers and Deputy Ministers as heads of ministries/deputy ministries while simultaneously receiving salaries and allowances as commissioners. So, in this case, it will be very easy to give rise to corrupt behavior and will quickly respond to conflicts of interest between positions in the Ministry and other positions, such as state-owned companies (Bagus Pradana, et al. 2025)

The practice of holding dual positions in Indonesia has existed since the leadership of President Joko Widodo to President Prabowo Subianto, to the point that the practice of conflict of interest is considered a historical legacy of the predecessors so that the reality in the field of dual positions will reduce performance and public decisions that are considered not good due to the existence of dual positions (Sari et al., 2023, page 609). In addition to holding concurrent positions as state-owned enterprise commissioners, some also serve as general chairmen of political parties. From a regulatory perspective, Article 23 of Law No. 39 of 2008, letter (c), states that political parties are included in institutions funded by the state budget (APBN) (Siregar dkk., 2021, hlm. 96). The APBN allocated to political parties is generally for the operational needs of the party and political education for the public, but this is not implemented properly by political party administrators (Sukma, 2021, hlm. 1466). Based on Law No. 2 of 2011 concerning Political Parties and Government Regulation No. 1 of 2018 concerning Political Party Assistance, political party assistance from the APBN is IDR 1,000 per valid vote (Law No. 2 of 2011 and Government Regulation No. 1 of 2018).

The political parties that passed the 2024 Parliamentary Election are summarized as follows (Aditya Priyatna Darmawan & Inten Esti Pratiwi, 2025).

1. PDI-P with 25,387,279 valid votes (16.72%)
2. Golkar Party with 23,208,654 valid votes (15.29%)
3. Gerindra Party with 20,071,708 valid votes (13.22%)
4. PKB Party with 16,115,655 valid votes (10.62%)
5. Nasdem Party with 14,660,516 valid votes (9.66%)
6. PKS Party with 12,781,353 valid votes (8.42%)
7. Democratic Party with 11,283,160 votes (7.43%)
8. PAN Party with 10,984,003 valid votes (7.24%)

Researchers found, as stipulated in Law No. 2 of 2011 Article 34 letter (c) and Government Regulation No. 1 of 2018 Article 5, that the APBN budget of Rp. 1,000 per valid vote is allocated to political parties. Therefore, in this case, political parties receive income from the APBN as follows:

Table 1. List of Party Funding Acquisitions by the 2024 APBN Budget

No.	Political Party	Valid Votes	Budget from APBN
1.	PDI-P Party	25.387.279 x Rp 1.000	Rp 25.387.279.000
2.	Golkar Party	23.208.654 x Rp 1.000	Rp 23.208.654.000
3.	Gerindra Party	20.071.708 x Rp 1.000	Rp 20.071.708.000

No.	Political Party	Valid Votes	Budget from APBN
4.	PKB Party	16.115.655 x Rp 1.000	Rp 16.115.655.000
5.	Nasdem Party	14.660.516 x Rp 1.000	Rp 14.660.516.000
6.	PKS Party	12.781.353 x Rp 1.000	Rp 12.781.353.000
7.	Demokrat Party	11.283.160 x Rp 1.000	Rp 11.283.160.000
8	PAN Party	10.984.003 x Rp 1.000	Rp 10.984.003.000
Total			Rp 134.492.328.000.000

Sources: Law no. 2 of 2011, Article 34, letter (c), and Government Regulation no. 1 of 2018, Article 5

It can be seen from Table 1 there are around Rp 134.492.328.000.000 was allocated for 2024 election. Therefore, in this case, the Minister's dual position as the general chairman of a political party also has the same negative aspects as a Deputy Minister who serves as a Director/Commissioner in a BUMN (I Komang Trisna Adi Putra, 2022, page 441). The real potential for losses to the public regarding the dual positions held by the Minister as the leader of a Political Party and the Deputy Minister as a commissioner of a State-Owned Enterprise are as follows: conflicts of interest, abuse of power, bureaucratic inefficiency, ease of corruption, and declining quality of performance due to holding two positions simultaneously (Sri Pujianti, 2025).

5. Legal Considerations

5.1. The *Ratio Dicendendi* Judges of the Constitutional Court Decision No. 128/PUU-XXIII/2025

The legal reasoning of the *ratio dicendendi* is a summary of the court's decision regarding the disputed case. Legal considerations are also included as annotations in Constitutional Court decisions, given that Constitutional Court decisions are *erga omnes* (for alls), final, and binding. As well as, It also contains a judicial order that must be complied with (Prabowo, 2022, hlm. 74). In addition to containing judicial orders, Constitutional Court decisions are fundamental in upholding the constitution. Therefore, in this regard, the Constitutional Court's decisions also constitute *landmark* decisions. These decisions are final and binding, and there is no further legal recourse against them (Nope dkk., 2025, hlm. 177). Regarding the legal considerations of the Constitutional Court judges regarding decision No. 128/PUU-XXIII/2025 which was appealed by Viktor Santoso Tandiasa and Didi Supandi, the legal considerations of the *ratio decidendi* include the following:

"Based on the main point of the previous petition, namely Decision No. 80/PUU-XVII/2019, in fact, the prohibition on holding dual positions is clearly unlawful, as regulated in Law No. 39 of 2008, Article 23 has the same applicable nature because the positions of Minister and Deputy Minister have the same position within the state ministry institution. The placement of the same position is included in the previous decision, because the court's legal considerations contain a court order/judicial order to the government to adjust to the Constitutional Court's decision. In fact, the basis for the Constitutional Court's consideration regarding the prohibition for Deputy Ministers holding dual positions is because state officials must focus on the workload in the ministry, this basis of consideration is also the basis for the Constitutional Court to equalize the positions of Ministers and Deputy Ministers even though in Article 23 of a quo Law there is no diction of Deputy Minister." [Vide Constitutional Court Decision No. 128/PUU-XXIII/2025, p. 47]

The legal consideration of the *ratio decidendi* of the Constitutional Court above is the equalization of the nomenclature of duties, functions, and authorities between Ministers and Deputy Ministers as stated in decision No. 128/PUU-XXIII/2025 in casu of decision No. 80/PUU-XVII/2019. Therefore, in this case, although

the open legal policy in the preparation of the Law on State Ministries does not find or include the diction "Deputy Minister" in article 23, it is clear from the a quo decision that Ministers and Deputy Ministers are not permitted to hold concurrent positions either in state-owned companies, private companies, or organizations funded by the APBN.

"That regarding the dual position of the Deputy Minister as a commissioner of a BUMN as the argument submitted by the applicant is clearly contrary to Article 33 letter b of Law No. 19 2003, in addition to a quo Law contained in PER-3 / MBU / 03/2023 concerning BUMN Organization and Human Resources to be appointed as commissioners can provide sufficient time to carry out their duties. Regulations regarding the prohibition of dual positions are related on the principles of clean state administration, free from conflicts of interest, and the implementation of good governance." [Vide Constitutional Court Decision No. 128 / PUU-XXIII / 2025, p. 48 paragraph 3.13.2].

Therefore, in the context of a Minister holding dual positions as Chair of a Political Party and Deputy Minister as Commissioner of a State-Owned Enterprise (BUMN), reforms to the reshuffling of State Ministries are necessary to ensure good governance. (Sari et al., 2024) This also ensures good governance and prevents conflicts of interest and abuse of power, which could potentially lead to corruption.

6. Conclusion

Based on the results of the study, it can be concluded that constitutionally the phenomenon of the dual position of Minister as the leader of a Political Party and Deputy Minister as a Commissioner of a State-Owned Enterprise is contrary to the laws and regulations, as stated in Article 23 of Law No. 39 year 2008 concerning State Ministries, Articles 19, 33 of Law No. 19 year 2003 concerning State-Owned Enterprises, Constitutional Court Decision No. 80/PUU-XVII/2019, Constitutional Court Decision No. 128/PUU-XXIII/2025, and PER-3/MBU/03/2023 concerning Organization and Human Resources of State-Owned Enterprises. These legal norms must be complied with by the relevant parties because they clearly rob equal opportunities in government and decent work for civilians as regulated in Article 28D of the 1945 Constitution of the Republic of Indonesia.

Besides causing constitutional harm, holding dual positions as a minister and deputy minister creates an imbalance between dual positions and work performance. Furthermore, ministerial institutions require effective management. The issue of dual positions for ministers and deputy ministers is highly susceptible to abuse of power and potential conflicts of interest. Therefore, structural reform of ministerial positions is necessary to address this phenomenon.

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