



EQUITY CROWDFUNDING: FINANCING INSTRUMENTS MSMEs COMPILATION OF PERSPECTIVE SHARIA ECONOMIC LAW

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Abstract: This study aims to analyze financing instruments for micro, small and medium enterprises (MSMEs) through equity crowdfunding and examine equity crowdfunding in the perspective of compilation of Sharia economic law (KHES). This type of research is descriptive qualitative research, namely research that seeks to describe and explain the data obtained with secondary data. This study uses a literature research approach, where the data sources are obtained from literature studies and various kinds of literature that are worthy of discussion, including the study of OJK Regulation No. 37/POJK.04/2018 and DSN MUI Fatwa No. 117 /DSN-MUI/II/2018. The results of this study indicate that the financing instrument carried out contains business actors, investors and fund distribution institutions. While the review of Islamic economic law regarding equity crowdfunding leads to 2 types of contracts, namely *mudharabah* and *musyarakah* contracts that can be used as references.

Keywords: *Crowdfunding, Financing, MSMEs, KHES.*

1. INTRODUCTION

The development of fintech in Indonesia is quite rapid, this is indicated by the total value of fintech investment (disclosed) in Indonesia with an exchange rate of Rp. 14,500/US dollar in 2019 reached around US\$ 22.34 million or around Rp. 234 billion. Transaction value growth is estimated to grow 16.13%/year, and the largest fintech market share is in the payments sector at 38% and loans reaching 31%. In March 2020, the loan disbursed was Rp. 4.47 trillion and fintech loan growth reached 74.6%. This rapid growth is also supported by the large number of internet users in Indonesia reaching 202.6 million in 2020 (Ramadhani Irma, 2020). Referring to the growth of fintech in the loan category above, it is estimated that the loan potential in the following year will reach Rp. 7.8 trillion. This achievement is still far from the financing of Islamic commercial banks and sharia business units of IDR 282.1 trillion as of February 2020. However, credit growth is much faster for fintech, where in mid-2018 the growth of financing in Islamic banks only reached 4.1%. Thus, fintech services can fill the market or society, where around 50-60% of adults in Indonesia do not have an account or have not been served by a bank (Miswan Ansori, 2021).

On the other hand, the problem that is often faced by business actors is capital or funding sources, especially for small businesses, namely Micro, Small and Medium Enterprises (MSMEs) or it can also be called start-up. There are several things that are faced in this case, firstly, banks have not been able to serve people who are far from reach so that the costs borne by banks become inefficient. Second, the cash flow or income of startups or MSMEs is still limited so that they have not been able to bear the obligation to repay the loan principal and pay interest or profit sharing in the short term. Third, business actors do not have sufficient assets to be used as collateral or collateral (Saripudin et al, 2021).

With the development of current fintech services, business people in start-up companies or MSMEs can choose alternative funding through crowdfunding, both loan-based crowdfunding (peer-to-peer lending) and equity-based crowdfunding (equity crowdfunding). The concept of crowdfunding is generally accepted, especially peer-to-peer lending. However, equity crowdfunding can be considered for start-up and MSMEs because the costs are



relatively cheaper than loans (Sentot Imam Wahjono, 2019). Funding without burdening the obligation to pay interest and principal is known as equity crowdfunding (ECF). With equity crowdfunding, the fundraising company only needs to offer a share of the shares issued by the start-up company or MSMEs as compensation for the investment made. The function of fundraising companies is almost the same as securities companies in the primary market. That way, investors will get a share of ownership from the start-up company or MSMEs, and will get a return in the form of dividends from the start-up or MSMEs according to the size of the shares they have (Novi, 2019).

As with funding activities, in addition to returns, there are also risks to be faced, including: losses, fraud, the risk of illiquid shares, the risk of failing to pay dividends and so on. To minimize this risk, OJK has set rules for implementing equity crowdfunding and these rules are made so that equity crowdfunding can be utilized by the community to the lowest level. Some of these rules, among others, stipulate that equity crowdfunding does not need to be sandboxed (limited testing space), because equity crowdfunding will have a lot to do with the capital market or stock exchange (A.T.R.C, 2020).

Seeing that equity crowdfunding is linked to the capital market. Then the risks that will be faced are risks related to investment, especially in the capital market. However, due to the lack of knowledge and understanding of the community about this, its development is also hampered. Equity crowdfunding should be a promising capital field for novice businessmen or MSMEs who need funds and develop their businesses if managed properly (Halim, 2020). Therefore, the existence of equity crowdfunding which can later open up opportunities for startup or MSMEs, it must be ensured that the funds collected in equity crowdfunding are funds that are far from the elements of MAGHRIB (Maysir, Gharar, Haram, Riba and Batil). This is because it will be used for capital for startup and MSMEs, all of which are run according to sharia principles (Kamaludin, 2019). From this, it is necessary to assess the extent of the financing instruments for Micro, Small and Medium Enterprises (MSMEs) through equity crowdfunding and equity crowdfunding in the perspective of the Sharia Economic Law Compilation (KHES).

2. RESEARCH METHOD (OPSIONAL) (CAMBRIA: 11, KAPITAL, TEBAL)

The research method used is qualitative with the research approach used is library research with descriptive analysis methods, which is a study used to collect information and data with the help of various materials in the library such as documents, books, magazines, historical stories, and so on (Jain, 2019). Data collection is done through a literature review with the object in question, namely reviewing books that have relevance to the discussion (Sugiono, 2020). The data collection technique needed in this research is literature study and documentation. The data analysis technique used is descriptive analysis method: (1) content analysis, (2) critical analysis and discussion methods: (a) inductive method, (b) deductive method, and (c) comparative method.

3. RESULT AND DISCUSSION

3.1 Micro, Small and Medium Enterprises (MSME) Financing Instruments Through Equity Crowdfunding

Bank Indonesia Regulation (PBI) Number 19/12/PBI/2017 article 3 states that fintech operations are categorized into: (a) payment systems, (b) market support, (c) investment management and risk management, (d) loans, financing, and the provision of capital, and (d) other financial services. Crowdfunding is one type of fintech service that falls into this category, including equity crowdfunding and peer-to-peer lending.

There are various definitions of crowdfunding from some academic literature, here are some of them. According to Ordanini (et al. 2018), crowdfunding is a collective effort of people who are interconnected and then they raise money together, usually via the internet, to invest to support efforts initiated by another person or an organization. An interesting illustration of crowdfunding is from Fikar D. S Gea's scientific work (2019) which describes crowdfunding

from the point of view of gotong royong in accordance with local wisdom in Indonesia, which is known for its gotong royong culture, but is now decreasing, experienced a shift and a decrease in value. Crowdfunding contains the values of gotong royong which are re-embodied in people's lives, but in a different social space, namely the internet as a new medium (Alesasando, 2015).

There are various types/categories of crowdfunding, where each category has different benefits for crowdfunding companies and also for investors. Crowdfunding consists of four categories according to the funding base offered by the crowdfunding platform, namely: pre-sales, donations, loans, and equity crowdfunding (Hutchinson et al, 2016). Crowdfunding is also grouped into 4 types, consisting of: (1) Reward crowdfunding, in this type investors who buy shares get non-financial returns. The greater the reward received, the greater the funds donated. The advantage for business people is that the cost for rewards is not expensive. Generally to fund creative projects and use a tiered system.

(2) Debt crowdfunding, in this type investors will get a return in the form of interest. The advantage of this funding is that business people get a source of funding that is cheaper than bank interest, it is easier to get support because investors get a return. However, this debt crowdfunding business should have revenue, to bear the fixed burden. (3) Equity crowdfunding, where investors will get a return in the form of a small number of shares from business people. This type is suitable for business people who are focused on growth or growth. (4) Donation crowdfunding, this type is designed for charity or social projects, and usually there is no reward for investors (Smith, 2018).

Starting from OJK Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Shares Offering (Equity Crowdfunding) Chapter I article 1, that equity crowdfunding or crowdfunding services through information technology-based share offerings, hereinafter referred to as Crowdfunding Services is a share offering service carried out by the issuer to sell shares directly to investors through an electronic system using the internet network.

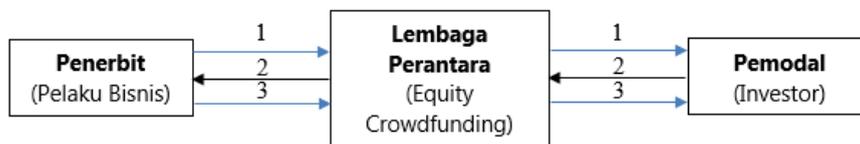


Figure 1. The equity crowdfunding scheme

Information:

- (1) Flow of shares/bonds/sukuk
- (2) Financing Flow
- (3) Return flow

There are three stakeholders in equity crowdfunding, namely companies that need funds or business actors or publishers, crowdfunding platforms or fundraising companies or intermediary institutions or organizers, and investors or supporters. (1) Business actors who need funds tend to be companies with small business scales such as MSMEs or startups because they are in accordance with the funds to be invested in small amounts. It is called a publisher because it will submit ideas and requests for funding by issuing shares through an online portal intermediary called a crowdfunding platform to be offered to investors. (2) Investors/investors (supporters) will see investment opportunities and then commit to funding and then will get a return on investment. (3) The crowdfunding platform acts as an intermediary/intermediary institution that brings together investors and issuers.

These stakeholders must meet the requirements as stated in OJK Regulation Number 37/POJK.04/2018. The requirements that must be met by



intermediaries/organizers/crowdfunding platforms include: (1) Having a business license from the OJK, (2) Registering as an electronic system operator at the ministry of communication and informatics, (3) The legal entity administering it is an Indonesian legal entity, may be in the form of a Limited Liability Company (PT) or cooperative, may be in the form of a Securities Company that has obtained approval from the OJK to carry out activities as a Provider, (4) The Operator must have paid-in capital and own capital of at least IDR 2.5 billion at the time of applying for a permit, (5) Operators are required to have human resources (HR) with expertise and/or Information Technology (IT) background and HR with expertise in reviewing issuing companies, and must improve the quality of human resources through education and training programs that support development equity crowdfunding service. The issuer is an Indonesian legal entity that issues/offers shares through an operator. In practice, publishers focus on MSMEs and start-ups that are just developing their business. The requirements that must be met by the issuer are: (1) the number of shareholders is not more than 300 parties, (2) the total paid-up capital is not more than Rp. 18 billion, (2) the issuer must be in the form of a PT, (3) have assets of more than Rp. 10 billion (excluding land and buildings). (4) The issuer is not a company controlled either directly or indirectly by a business group or conglomerate; a public company (tbk) or a public subsidiary.

Investor/Investor is the party who buys the shares of the issuer through the operator. The requirements that must be met by investors/investors include: (1) Having the ability to buy shares of the issuer, (2) Having the ability to analyze the risk of the issuer's shares, (3) Meeting the investor criteria as stipulated in the POJK above. Every investor with an income of up to IDR 500 million per year, can buy shares through crowdfunding services for a maximum of 5% of annual income. (4) Investors with an income of more than IDR 500 million per year can buy shares through crowdfunding services for a maximum of 10% of their annual income. Investor criteria and restrictions on the purchase of shares do not apply if the investor is a legal entity and is a party who has experience investing in the capital market as evidenced by ownership of a securities account for at least 2 years prior to the share offering.

As with other investment instruments, apart from generating profits, on the other hand it also contains risks (Pardo, 2020). These risks include: First, the failure of the business actors, so that the investment value can be completely lost if at the time of liquidation the business actors cannot provide their share to investors. Second, business actors may experience dividend failure to pay (return) dividends to investors, especially in the early years, this is because business actors are start-up companies. Third, the investment is illiquid, because it does not allow investors to resell their shares on the stock exchange because the shares are not listed on the stock exchange. Fourth, Security. This service is based online, so the possibility of fraud, forgery and fraud is very large. The people involved in it do not know each other well, how honest they are, their capacities, their abilities and so on, so it is easier to act dishonestly, cheat or cheat, and the chances of cybercrime are also high. Fifth, according to Philips et al (2019), in new media there are three important elements that make up it, namely platform (devices), channels (channels) and context (context).

Platforms; is a device used to access the internet and its knowledge with an operating system (OS), including: computers, laptops, cellular phones, and others channel; this is a channel to access information, such as: instant messaging, SMS, website, email, social media (facebook, twitter, etc.), and various other channels. Context; is a space/place to access information, for example: at home, at work, on a trip, when the atmosphere is favorable, in different time zones and places, and so on (Crowdsourcing, 2022). Thus, these three elements must always be maintained, if one of them does not work it will pose a risk of service delays, one example is when the internet channel is not reachable from the user's place, causing the user to be unable to do the same. crowdfunding service.

Meanwhile, the advantages of equity crowdfunding include: (1) High risk high return. Investors will get a large rate of return when buying stocks that have the potential to grow and generate large profits. Success stories such as Alibaba's \$1 billion purchase of Lazada, and Facebook's \$19 billion acquisition of WhatsApp, illustrate the huge benefits gained through



crowdfunding equity investments, namely in the form of equity participation in startups. (2) Ease of investing. OJK has made regulations related to equity crowdfunding to make it easier for all stakeholders. Publishers get alternative funding with relatively cheap cost of funds, open access for all investors, both accredited and those who have not met the requirements. Meanwhile, the organizers carry out the selection process, legal due diligence and documentation, finance, and administration for the investment process.

Thus investors can determine safe investments, and make these investments easily and efficiently. In Indonesia, equity crowdfunding includes financial services activities under the auspices of the capital market (Febriyanti, 2020). However, in the equity crowdfunding scheme, startups are not required to go through the Initial Public Offering (IPO) process or public offering on the Indonesia Stock Exchange (IDX) in conducting their share offering. This is in accordance with POJK No. 37 of 2018 article 3, namely the offering of shares through the Crowdfunding Service (equity crowdfunding) is not a public offering as referred to in the Law of the Republic of Indonesia (UURI) Number 8 of 1995 concerning the Capital Market. The scale of the share offering through equity crowdfunding is smaller than that of an IPO, with a maximum period of 12 (twelve) months, the value of shares offered to investors is a maximum of Rp. 6 billion rupiah. At the time the issuer offers shares, it can only go through 1 (one) equity crowdfunding at the same time.

In the event that the investor intends to resell his shares in the secondary market, then it is regulated in POJK Number 37 of 2018 article 30, namely: "(1) Based on an agreement with the issuer, the operator may organize and provide a system and/or means to bring together selling offers and offer to buy shares of issuers on the secondary market through the organizer's website. (2) Trading on the secondary market as referred to in paragraph (1) can only be carried out between investors registered with the operator".

On January 8, 2020, OJK through its official website (ojk.go.id) announced the entry of Crowd dana as the third equity crowdfunding company licensed by the OJK. The following is a list of operating companies that have obtained permission from the OJK as of December 31, 2019.

Table 3.1 List of Equity Crowdfunding Companies

No.	Name Platforms	Website	Nama Company	Licensed Mark	Date
01.	Santara	Santara.co.id	PT. Santara Daya Inspiratama	KEP- 59/D.04/2019	September 06, 2019
02.	Bizhare	Bizhare.co.id	PT. Investama Digital	KEP- 71/D.04/2019	November 06, 2019
03.	Crowddana	Crowddana.co. id	PT. Crowddana Teknologi Indonesia	KEP- 93/D.04/2019	December 03, 2019

Like shares traded on the IDX, shares issued through the equity crowdfunding platform are also stored at the Indonesian Central Securities Depository (KSEI). Similar to shares on the IDX, these shares also incur capital costs for issuers in the form of dividends distributed to investors. In addition, the issuing entity must also pay an annual fee to the organizer as a crowdfunding service provider company (Shang, 2019). Other costs that must be incurred by the issuer are related to the cost of preparing a prospectus and business profile, reports on the use of funds, monthly financial reports, semi-annual financial reports, and annual reports that must be submitted to the OJK. These costs must be taken into account by prospective issuers of shares in considering whether to raise funds through equity crowdfunding or not, considering that the maximum amount of funds that can be raised



through the equity crowdfunding platform for a maximum period of 12 months is 10 billion rupiah.

Equity crowdfunding is a new alternative funding solution for business entities, especially MSMEs. As of mid-October 2020, there have been more than 130 issuing entities with more than 70 billion funds invested through the equity crowdfunding platform in Indonesia, and more than 160,000 investors have channeled their funds to MSMEs businesses that issue shares through the platform. As quoted from Santara.co.id, there are various business entities that issue shares through the organizer's platform, such as: (1) providing accommodation and food and drink; (2) farms; (3) agriculture, hunting, and forestry; (3) financial intermediaries; (4) health services and social activities; (5) fisheries; (6) wholesale and retail trade; (7) processing industry; (8) construction; (9) transportation, warehousing, and communication; (10) mining and mining quarrying; (11) electricity, water and gas; (12) real estate; (13) rental business and company services; (14) educational services; and (15) other community and individual services. These various business categories provide many options for placement of funds for potential investors.

3.2 Equity Crowdfunding in the Perspective of the Compilation of Sharia Economic Law (KHES)

Equity crowdfunding arises from the concept of gotong royong or gotong royong which is the essence of humans as social beings. In the religious aspect, it is also recommended to work hand in hand to help realize something good. For example, prayer which is the main obligation and commandment in Islam is prioritized to be done in congregation with the reciprocity of getting more rewards than doing it alone. The business concept is the same as the command to pray. It will be easier and get more profit if it is managed and funded in mutual cooperation and together. So that a large load will also feel smaller. The following is the basis of the verse in Q.S. Al-Maidah [5] verse 2:

لَا تَتَّبِعُوا الْاَسْوَءَ الْاَلْحَادَ لِضَرْبِهِمْ وَلَا تَكُونُوا لَهُمْ عَٰلِدًا
وَلَا تَتَّبِعُوا الْاَسْوَءَ الْاَلْحَادَ لِضَرْبِهِمْ وَلَا تَكُونُوا لَهُمْ عَٰلِدًا

"Help you in (doing) righteousness and piety, and do not help in sins and transgressions."

The implementation of equity crowdfunding must still be guided by the Qur'an and al-Hadith, must offer halal projects and products, the money that will be used in the funding process must be guaranteed halal. To determine the halalness of a project or product, it is necessary to establish a Sharia Supervisory Board. The function of the Sharia Supervisory Board is to ensure and guarantee that the money collected and will be used as funding for a project or production is truly halal and the source is halal (Suhel, et al, 2022).

The majority of crowdfunding platforms still use conventional economic methods. Even though the concept of Islamic economics is also in great demand by the Muslim community and even non-Muslims. In addition to the interests of the group, the concept of sharia also has a positive impact on the whole community. It is shown that the concept of Islamic economics is not only considered correct for the Muslim community, but is also a good alternative for the world community. This is evidenced by the number of Islamic banks in countries where the majority of the population is non-Muslim (al-Baari, 2022). So it is necessary to form a crowdfunding concept that is in accordance with sharia.

The author divides the aspects that are in accordance with sharia into 2 parts. The first is the forbidden aspect. A concept of Islamic economic products must be separated from the elements of MAGHRIB (Maysir, Gharar, Haram, Riba and Batil). So the concept of sharia crowdfunding that is in accordance with sharia values must be separated from these 5 elements. The second is the halal aspect. The concept of crowdfunding in accordance with sharia values must pay attention to the halal aspect, namely the contract used between several parties in the transaction, the project to be financed, the source of investor funds to be submitted, and profit sharing. between the parties, and the platform to be used. The first aspect can be used as the basis for analyzing Equity Crowdfunding with Islamic law (Zaki,



2019).

Crowdfunding is an online fundraising scheme that is small in scale but comes from many people so that significant funds are raised. Meanwhile, Equity Crowdfunding is a fundraising scheme using the internet with the aim of finding donors as funders, who will later receive compensation in the form of equity or income arrangements or profit sharing from the results of the fundraising project (Nafik, 2020). It can be concluded that Equity Crowdfunding is a project campaign to find investors as buyers of shares in the project.

So the mechanism of the Equity Crowdfunding site is to connect project owners and financiers. There are 3 parties, namely crowdfunding service providers, project publishers (startups), and investors (investors). Crowdfunding Service Providers are Indonesian legal entities that provide, manage and operate Crowdfunding Services (Hassanudin, 2021). The issuer of project shares (startup) is an Indonesian legal entity in the form of a limited liability company that sells its shares through a Crowdfunding Service Provider. Investor is a Party that buys Issuer's shares through Crowdfunding Service Provider (investor).

The Equity Crowdfunding Service Mechanism has been regulated in Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Crowdfunding). This regulation has explained in detail the parties and the mechanism of the Equity Crowdfunding transaction. Then the author will analyze the Equity Crowdfunding Service transaction based on POJK No 37/POJK.04/2018. Basically carrying out economic activities is legal. Ability to perform *muamalah* aspects, whether selling, buying, renting or others. In the rules of fiqh it is stated: "The basic principle of *muamalah* is that it is permissible unless there is evidence that forbids it."

Carrying out economic activities is human nature, but not all economic activities are justified by Islamic law, namely if these activities cause injustice, injustice, and harm others. So, in an equity crowdfunding transaction, as long as it does not violate Islamic law, the law of this transaction is allowed. *Muamalah* transactions between stock issuers and investors usually use 2 types of contracts, namely *mudharabah* contracts and *musyarakah* contracts. (1) *Mudharabah* is a contract between the owner of capital (assets) and the manager of the said capital, provided that the profits are obtained by both parties in accordance with the amount of the agreement. Meanwhile, *Musyarakah* is a contract made by people who bind themselves to work together, where each party has the right to take legal action on the managed capital. Then the type of *mudharabah* contract in the equity crowdfunding mechanism is *Mudharabah mutlaqah*. It can be concluded that, due to the form of cooperation between shareholders and workers/entrepreneurs in crowdfunding equity transactions as regulated in POJK Number 37/POJK.04/2018, the form of business is not determined and is not limited by shareholders (investors). While the results of the operation will be divided according to the initial agreement as outlined in the deed of agreement of the parties.

The review of the Crowdfunding Service mechanism through Information Technology-Based Share Offering (Crowdfunding) can also use a *musyarakah* contract. (2) *Musyarakah* from the *syirkah* model is a concept that can precisely solve capital problems. On the one hand, Islamic principles equate that everything that is used by others is entitled to a mutually beneficial reward, whether for capital goods, labor, or rented goods. According to the majority of scholars, there are three pillars of *shirk*, namely: '*aqidain* (both parties), *ma'qud alaih* (goods), and *shighat* (ijab qabul) (Zahra, et al, 2021).

However, what distinguishes the two contracts is that the parties in the equity crowdfunding service mechanism have their own duties, in which the investors and organizers do not participate in managing the project of the issuer of shares. However, more precisely, investors who later become shareholders can be adjusted to the *amlak syirkah* contract. *Amlak syirkah* is joint ownership and its existence arises when two or more people by chance acquire joint ownership of a property (Indriana, 2022). From these facts, it can be concluded that the mechanism carried out by the equity crowdfunding service in POJK Number 37/POJK.04/2018 is in accordance with Islamic economics.



Because the mechanism can be adjusted to the *mudharabah* and *musyarakah* contracts, and also apart from the 5 elements of Maghrib (Maysir, Gharar, Haram, Riba and Batil). However, the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Shares Offerings (Crowdfunding) still does not regulate in detail several important points. The first point, what business is allowed and what is prohibited. The second point is the clarity of the origin of the investor's funds being channeled to stock issuers. The third point is the unclear distribution of profits/commissions, so that it has the potential to harm one party.

4. CONCLUSION

There are many definitions of equity crowdfunding, but the most interesting is the description of the definition from the perspective of gotong royong. So that equity crowdfunding is a method to facilitate between business actors who need capital and investors/investors through internet-based intermediary companies/providers based on the spirit of gotong royong. Meanwhile, the mechanism carried out by the equity crowdfunding service in POJK Number 37/POJK.04/2018 is in accordance with the perspective of Islamic economic law. Because the mechanism can be adjusted to the *mudharabah* and *musyarakah* contracts, and also apart from the 5 elements of MAGHRIB (Maysir, Gharar, Haram, Riba and Batil). However, as an implication, the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Shares Offerings (Crowd Funds) still does not regulate in detail several important points. The first point, what business is allowed and what is prohibited. The second point is the clarity of the origin of the investor's funds being channeled to stock issuers. The third point is the lack of clarity in the distribution of profits/commissions, so that it has the potential to harm one party.

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