



# Safeguarding Environmental Justice: Analyzing Corporate Criminal Liability in Illegal Hazardous Waste Disposal Cases

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## ABSTRACT

In the backdrop of global economic development driven by modern corporations and industries, the unintended consequences of rapid industrial growth, extensive production, and resource-intensive practices have resulted in severe environmental threats. Among these, environmental pollution, particularly stemming from the improper disposal of hazardous materials, stands out as a significant concern. This research focuses on the concept of corporate criminal liability as a means of protecting communities from environmental crimes, specifically in cases involving the illegal disposal of toxic waste. Utilizing qualitative methods with a normative juridical approach, the study relies on primary, secondary, and tertiary legal materials as sources. The research findings highlight the inadequacies in addressing corporate criminal acts related to hazardous waste disposal. Challenges in investigation, prosecution, and establishing environmental impacts contribute to a deficiency in delivering complete justice. Consequently, the research suggests the consideration of the doctrine of strict liability in cases of environmental pollution, especially those involving hazardous waste dumping. The implementation of strict liability for corporations in the prosecution of environmental criminal acts, such as toxic waste dumping, eliminates the necessity to prove intent or negligence, as well as the motive behind the corporation's actions, thereby addressing inherent shortcomings in the current legal framework.

**Keywords:** : *Law, Corporation, Dumping, Waste, Toxic Hazardous Materials, Environment*

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## 1. | INTRODUCTION

The evolution of the judicial system in Indonesia mirrors the ongoing and evolving dynamics of its legal framework.<sup>1</sup> A crucial mechanism within this system is the avenue of judicial review, which serves as a fundamental instrument supporting the principles of justice and transparency in the Indonesian judiciary.<sup>2</sup> Despite its complexity and the need for a profound understanding of the law, judicial review provides disputing parties with the opportunity to advocate for their rights, ensuring that court decisions are based on truth and justice.<sup>3</sup> Judicial review offers space for disputing parties to seek justice if they believe the court's decision is unjust or violates applicable laws.<sup>4</sup>

Law No. 14 of 1985 concerning the Supreme Court serves as the legal foundation for implementing judicial review, with the spirit of justice underpinning this endeavor. The primary criterion for initiating judicial review is the identification of falsehood, deception, or falsified evidence declared by criminal judges. This underscores that judicial review cannot be filed arbitrarily; it must be based on strong and clear reasons, especially those related to dishonesty or incorrectness in the judicial process.<sup>5</sup> Judicial review provides an opportunity for aggrieved parties to prove anomalies or legal violations in a court decision that has gained legal force. The 180-day time limit for filing judicial review, as regulated by Article 67 of Law No. 14 of 1985, is a

crucial aspect that demands attention. This relatively extended period provides parties with ample time for reflection, evaluation, and deciding whether to pursue judicial review. The decision to engage in judicial review is a serious step requiring careful consideration, and the sufficient time limit ensures procedural justice for all involved parties.<sup>6</sup>

The flexibility within the judicial system, particularly concerning the time limit for filing judicial review, raises questions about the effectiveness and efficiency of the system. A relatively lengthy time frame, as regulated by Article 67 of Law No. 14 of 1985, can have both positive and negative impacts on achieving swift and accurate justice. The advantage of an extended time frame is that it provides disputing parties with the opportunity for thoughtful consideration of legal actions.<sup>7</sup> This can be viewed as a positive aspect, granting parties the right to thoroughly ponder the legal steps they intend to take.<sup>8</sup> However, on the flip side, an extended time frame may pose challenges to the swift delivery of justice. Calculating the time limits for each judicial review reason is indeed an aspect that needs careful consideration.<sup>9</sup> Moreover, judicial review based on conflicting decisions involving the same parties initiates a countdown from the date of the last conflicting decision. The complexity of comparing decisions and calculating time limits in this

<sup>1</sup> M. Beni Kurniawan, "Implementation of Electronic Trial (E-Litigation) On The Civil Cases In Indonesia Court As A Legal Renewal Of Civil Procedural Law," *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 43.

<sup>2</sup> Agus Nurudin, "Upholding the Impartiality of Judges in Judicial Systems," *Hasanuddin Law Review* 6, no. 1 (2020): 80.

<sup>3</sup> Airlangga Gama Shakti, Maharani Wicahyaning Tyas, and M. Lutfi Rizal Farid, "The Integration of Judicial Review in Indonesia," *Syiah Kuala Law Journal* 6, no. 3 (2022): 212.

<sup>4</sup> Rahmawati, Abdul Madjid, and Setiawan Noedajasakti, "The Submission of Judicial Review by the Public Prosecutor Following the Decision of the Constitutional Court No 20/PUU-XXI/2023 (Indonesia): an Examination of Legal Protection for the Rights of the Convicted," *Path of Science* 9, no. 8 (2023): 1037; See also, Eko Wiyono et al., "Legal Remedies for Judicial Review for Investigators of Pretrial Decisions Regarding the Invalidity of the Order to Terminate the Investigation in the Perspective of Law Enforcement with Certainty," *International Journal of Multicultural and Multireligious Understanding* 8, no. 10 (2021): 355.

<sup>5</sup> Tanto Lailam and M. Lutfi Chakim, "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 148.

<sup>6</sup> Eka Putu Pitriyanti and Ni Luh Gede Astariyani, "Consequences of Non-compliance with the Constitutional Court Decision in Judicial Review of the UUD 1945," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 4 (2021): 702.

<sup>7</sup> Simon Butt, "Judicial reasoning and review in the Indonesian supreme court," *Asian Journal of Law and Society* 6, no. 1 (2019): 67.

<sup>8</sup> Elisa, "Law Enforcement of Patent Rights in Indonesia in Decree Number 25 PK/Pdt. Sus-HKI/2015 Jo. Decree Number 295 K/Pdt. Sus-HaKI/2013 Jo. Decree Number 53/Patent/2012/PN. Niaga. Jkt. Pst," *International Journal of Multicultural and Multireligious Understanding* 10, no. 5 (2023): 207.

<sup>9</sup> Petra Mahy, "Indonesia's Omnibus Law on job creation: legal hierarchy and responses to judicial review in the labour cluster of amendments," *Asian Journal of Comparative Law* 17, no. 1 (2022): 51. See also, Han-Ru Zhou, "Legal principles, constitutional principles, and judicial review," *The American Journal of Comparative Law* 67, no. 4 (2019): 899.

situation can pose additional challenges.<sup>10</sup> Clarity is required in comprehending the procedures and criteria that must be met to file judicial review. As a result, there is an ongoing debate on how to strike a balance between providing ample time for parties to seek justice and ensuring that the judiciary system remains efficient, delivering prompt and accurate decisions.<sup>11</sup> Continuous efforts to evaluate and improve the judicial review process, along with providing clearer guidelines, can be steps toward enhancing the effectiveness and efficiency of the judicial system in Indonesia.<sup>12</sup>

Ethical questions regarding the rights of parties eligible to file judicial review underscore the importance of ensuring justice and recognizing human rights within the judicial system. This involves specific considerations regarding inheritance rights or representation that can influence legal decisions.<sup>13</sup> Inheritance rights or representation must ensure that they have the legitimacy to file a judicial review. This can involve ethical considerations about how the rights of a group or individual are fulfilled in the legal context and whether legal decisions adhere to human rights principles.<sup>14</sup> The process of filing a judicial review must also ensure that formal requirements are met. Involving the chairman of the first-instance court, payment of court fees, and written submissions are crucial steps to maintain the integrity of the legal process. Meeting

these formal requirements also reflects a commitment to justice and transparency in the legal process.<sup>15</sup> In the next stage, when providing a copy of the application to the opposing party, it is important to pay attention to the established deadlines. This involves a balance between transparency and the need to ensure that the legal process remains efficient.<sup>16</sup>

The examination of judicial review cases by a panel, the review based on documents, and the possibility of additional examination are critical stages to ensure the sustainability and accuracy of decisions. This examination process must be carried out carefully to avoid errors or biases that could influence the final decision. It also involves ethical aspects related to transparency, justice, and the fulfillment of human rights.<sup>17</sup>

The primary aim of this research is to critically examine the judicial review process of civil cases within the Indonesian legal system and its implications for justice and transparency. By investigating the intricate dynamics and ethical considerations surrounding the rights of eligible parties to file judicial review, the research seeks to shed light on the challenges and potential improvements within the system. Specific focus will be given to the role of inheritance rights or representation in influencing legal decisions, emphasizing the need for legitimacy in filing

<sup>10</sup> Catur Wido Haruni, "Constitutionality of monitoring and evaluation of regional regulation drafts and regional regulations by Regional Representative Council," *Legality: Jurnal Ilmiah Hukum* 30, no. 1 (2022): 103.

<sup>11</sup> Rosalind Dixon, "The forms, functions, and varieties of weak (ened) judicial review," *International Journal of Constitutional Law* 17, no. 3 (2019): 904. See also, Tarigan et al., "Tinjauan Yuridis Upaya Hukum Peninjauan Kembali Yang Diajukan Oleh Penuntut Umum Dalam Perkara Pidana," *Locus Journal of Academic Literature Review* (2022): 308.

<sup>12</sup> Yofi Permatasari, Andika Jinaratana, and Rasji Rasji, "Proses Peninjauan Kembali Sebagai Wewenang Mahkamah Agung Berdasarkan Undang-Undang Kekuasaan Kehakiman," *Comserva* 2, no. 8 (2022): 1539.

<sup>13</sup> Muharrir, Jefrie Maulana, and Muhammad Nahyan Zulfikar, "Kekuatan Hukum Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 tentang Petunjuk Bagi Hakim dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar-Umat yang Berbeda Agama dan Kepercayaan," *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 7, no. 1 (2023): 70.

<sup>14</sup> Mali Diaan and Sri Ayu Astuti, "Kewenangan Jaksa Penuntut Umum (JPU) dalam Melakukan Upaya Hukum Luar Biasa (Peninjauan Kembali) Ditinjau dari

Hukum Pidana (Studi Kasus Djoko Chandra)," *Pakuan Justice Journal of Law (PAJOUL)* 1, no. 2 (2020): 60. See also, Ita Wardatul Janah, "implikasi kasasi sebagai upaya hukum terakhir pada pengadilan hubungan industrial (studi surat edaran mahkamah agung nomor 3 tahun 2018 tentang pemberlakuan hasil rumusan pleno kamar mahkamah agung)," *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (2023): 1345.

<sup>15</sup> Sembiring et al., "Dasar Pertimbangan Hakim Pada Upaya Peninjauan Kembali dalam Kasus Gratifikasi," *Locus Journal of Academic Literature Review* (2023): 203.

<sup>16</sup> Tami Rusli and Rahmad Apriyandi, "Analisis Yuridis Faktor Penghambat Pelaksanaan Eksekusi Putusan Peninjauan Kembali Nomor 199PK/pdt/2007 (Studi Kasus Eksekusi Tanah Di Kec. Jati Agung Desa Jatimulyo)," *Jurnal Pahlawan* 4, no. 2 (2021): 10. See also, Fitria Indah Damayanti and Hari Soeskandi, "Kewenangan Jaksa Penuntut Umum Dalam Upaya Hukum Peninjauan Kembali," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 280.

<sup>17</sup> Yoni A. Setyono, "Tinjauan "Novum" Dalam Peninjauan Kembali Sengketa Tata Usaha Negara," *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 136.



judicial review. The study also aims to analyze the formal requirements of the judicial review process, such as the involvement of the chairman of the first-instance court, court fees, and written submissions, to maintain the integrity of the legal process. By conducting a comprehensive examination, the research aims to contribute valuable insights into the ethical dimensions of the judicial review system and propose recommendations for enhancing its effectiveness and transparency.

The research's broader objective is to provide a nuanced understanding of the interplay between the legal, ethical, and procedural aspects of judicial review in Indonesia. Beyond a descriptive analysis of the existing legal framework, the research aims to contribute to the academic discourse by critically evaluating the implications of a relatively lengthy timeframe for filing judicial review of civil cases, as regulated by Article 67 of Law No. 14 of 1985. Additionally, the study intends to explore the delicate balance between transparency and efficiency in the judicial process of civil cases, especially concerning established deadlines during the exchange of applications between opposing parties. By addressing these complex issues, the research aims to offer not only a comprehensive overview of the challenges within the judicial review system but also practical recommendations for policymakers and legal practitioners to enhance the system's fairness, efficiency, and adherence to human rights principles.

## 2. | RESEARCH METHODS

This research employs a qualitative, normative juridical approach with the objective of investigating the judicial review of civil cases in Indonesia. The primary focus is on the analysis of laws related to judicial review, especially Law No. 14 of 1985, Supreme Court regulations, and court processes related to the judicial review of civil cases. The chosen research method aims to provide a comprehensive understanding of the key aspects involved in civil case review efforts, intending to present a clear picture of the complexity and challenges in implementing this system.

The study heavily relies on analyzing legal texts, laws, regulations, and Supreme Court decisions related to civil case reviews. The research aims to map the legal framework that forms the basis for the existence and implementation of civil case reviews in the context of civil cases in Indonesia. Additionally, the examination of court decisions involving civil case review efforts is the focal point of the analysis, scrutinizing legal arguments, considerations, and the impacts of these decisions. This approach is expected to make a significant contribution to understanding the effectiveness and challenges of implementing civil case review efforts in Indonesia. The analysis technique is by using a descriptive approach, intending to provide a detailed account of the various aspects under investigation.

## 3. | RESULTS

### 3.1. Criteria and Grounds for Judicial Review in Indonesian Legal Proceedings

The legal review system, known as Request Civiël (RC) or Rekes Civiël in civil cases, is not explicitly regulated in the *Herziene Indonesia Reglement* (HIR), the governing procedural law in Indonesia. However, the practice of legal review has a lengthy history in both criminal and civil procedural law, guided by previous regulations. Article 393 of the HIR presents an opportunity to utilize procedures not explicitly outlined in the HIR, including the adoption of Request Civiël following the principles of the *Reglement op de Rechtsvordering* (RV), which governs European civil procedural law.<sup>18</sup> Several instances in the history of Indonesian courts highlight the use of legal review against decisions that have attained permanent legal force.<sup>19</sup> For example, in the *Landraad Padang* case, an heir sold heritage without informing the family. Despite the decision's finality, the *Landraad Purworejo* entertained a legal review lawsuit on the grounds of fraud.<sup>20</sup> A parallel situation unfolded in the Surabaya court, where a divorce decision was overturned due to evidence of fraud. The application of civil reviews exhibits variation in implementation across different courts.<sup>21</sup> For instance, the High Court Medan may either

<sup>18</sup> Neni Sri Imaniyati and Panji Adam, *Pengantar hukum Indonesia: Sejarah dan pokok-pokok hukum Indonesia* (Yogyakarta: Sinar Grafika, 2021), 119.

<sup>19</sup> Sudikno Mertokusumo, *Hukum acara perdata Indonesia* (Yogyakarta: Liberty, 2006), 163

<sup>20</sup> Simon Butt and Nicholas Parsons, "Judicial review and the Supreme Court in Indonesia: a new space for law?," *Indonesia* 97 (2014): 55.

<sup>21</sup> M. Yahya Harahap, *Kekuasaan Mahkamah Agung: Pemeriksaan, Kasasi, dan Peninjauan Kembali Perkara Perdata* (Jakarta: Sinar Grafika, 2008), 487-490. See also: Herri Swantoro, *Harmonisasi keadilan dan kepastian dalam peninjauan Kembali* (Jakarta: Kencana, 2017), 304.

reject or accept civil reviews based on the principles of Article 385 RV, while the Surabaya court annulled a legally binding decision due to fraud. Despite these variations, the utilization of civil reviews in Indonesia underscores the necessity for a legal review process aligned with the evolving developments in Indonesian procedural law. Legal review of civil reviews is recognized and applicable in civil procedural law in Indonesia, albeit with inherent limitations. Legal review applications can only be submitted based on specific grounds.<sup>22</sup>

The restrictiveness of judicial review is evident in the provisions of Article 67 of Supreme Court Law No. 14 of 1985, explicitly stating that the grounds for judicial review are limited and enumerative. This implies that parties seeking judicial review are confined to referencing only the reasons explicitly listed in the article. Any grounds for judicial review that do not align with the stipulations of Article 67 or fall outside the scope of these reasons will be rejected as applications failing to meet the formal and material requirements. Consequently, efforts for judicial review must adhere to the grounds regulated in this article to gain acceptance by the Supreme Court.<sup>23</sup> Grounds for judicial review justified by law fall within the parameters of Article 67, Letter a, of the Supreme Court Law. This includes situations where a verdict is founded on deception or fraud by the opposing party, a revelation that surfaces only after the case has reached a final and binding legal force decision. Furthermore, judicial review is permissible if a criminal judgment confirms that the evidence presented by the opposing party during the examination process is proven to be false. However, to satisfy the requirements of this judicial review ground, the deception or fraud must be disclosed after the final and binding civil decision and validated by a criminal judgment confirming the falsity of the evidence submitted by the opposing party.

Court practices suggest that instances of judicial reviews based on deception or fraud are infrequent. Substantiating deception or fraud in a verdict in a tangible and objective manner poses a considerable challenge, unless there is a criminal court decision confirming the falsehood of the evidence used by the opposing party in the civil case after the final and binding civil decision. When dealing with cases involving deception or fraud, a meticulous and detailed exposition of its existence becomes imperative to establish a robust foundation for initiating judicial

reviews. The success of filing judicial reviews based on this ground hinges on the applicant's capacity to clearly delineate where the deception or fraud is situated in the civil decision, aligning with the criteria set by the Supreme Court Law.

The second permissible ground for judicial review, as per Article 67, Letter b, of the Supreme Court Law, is if crucial documentary evidence is unavailable during the examination process of a civil case but is discovered after the decision attains final and binding legal force. The documentary evidence serving as the basis for judicial reviews must adhere to specific criteria. It is crucial to note that documentary evidence, as a foundation for judicial reviews, falls into two categories: authentic deeds and underhand deeds. Although testimonies from factual or expert witnesses are recognized in the trial process, the critical documentary evidence referred to in Article 67, Letter b, pertains specifically to certain types of documents. The usage of the term "novum" to describe the ground for judicial reviews in Article 67, Letter b, is deemed somewhat inaccurate since the documentary evidence in question is not entirely new but rather existed previously and was unearthed after the final and binding legal decision.<sup>24</sup>

The documentary evidence forming the foundation for judicial reviews must adhere to specific criteria, categorizing it as either an authentic deed or an underhand deed. For evidence discovered after the binding decision, it must possess the potential to impact the case's outcome. However, not all post-decision documentary evidence automatically qualifies as grounds for judicial reviews; it must constitute decisive evidence, not mere rediscovery. Moreover, when utilizing documentary evidence as grounds for judicial reviews, applicants must include a sworn statement detailing the evidence's discovery date and time, authenticated by an authorized official. Without a valid sworn statement, the evidence is deemed invalid. Another prerequisite is that the documentary evidence must predate the trial process, excluding evidence generated after the binding decision, even during the trial. Article 67, Letter b, mandates that the process of judicial review not only involves rediscovery but necessitates the evidence's existence before the trial. Importantly, the use of undocumented witnesses or experts doesn't meet the specified requirements. The quality of documentary evidence, crucial for judicial reviews, must significantly impact the case's outcome,

<sup>22</sup> Harahap, *Kekuasaan Mahkamah Agung*, 473-477.

<sup>23</sup> Harahap, *Kekuasaan Mahkamah Agung*, 449-450.

<sup>24</sup> Mertokusumo, *Hukum acara perdata Indonesia*, 206.





and applicants must ensure the evidence's discovery and sworn statement are authenticated by an authorized official.

Understanding the stipulations of Article 67, Letter b, of the Supreme Court Law is pivotal, as it pertains to documentary evidence types that exert a substantial influence on decision outcomes. In the context of judicial review, reliance on witnesses or experts is insufficient unless documented as qualifying evidence. Judicial review grounds rooted in documentary evidence, fulfilling specific impact and criteria requirements, can form a robust foundation for initiating the judicial review process. However, it is imperative for judicial review applicants to verify that the documentary evidence, used as grounds for the review, aligns with all requirements outlined in the Supreme Court Law.

The third ground, as mandated by Article 67, Letter c, of the Supreme Court Law, serves as the basis for judicial review and involves two scenarios constituting violations of civil procedural law principles. Firstly, in instances of "decisions granting something not demanded," this occurs when the court awards a claim or action not requested by the party initiating the lawsuit. Governed by Article 50 RV, this situation prohibits judges from rendering decisions on unrequested matters, emphasizing in Article 178, Paragraph (3), HIR, that decisions exceeding the lawsuit's scope are *ultra vires* acts, beyond the judge's authority. Judicial review can be pursued if a decision surpasses the lawsuit's claims, aligning with Article 67, Letter c, of the Supreme Court Law.<sup>25</sup>

In the context prohibited by Article 67, Letter c, the focus is on "decisions exceeding what is demanded." This prohibition aims to prevent judges from delivering decisions that surpass the claims presented in the lawsuit. Governed by Article 50 RV, Article 178, Paragraph (3) HIR, and Article 189, Paragraph (3) RBG, it adheres to the principle of *ultra petitem*, restraining the court from rendering decisions surpassing the parties' claims. While exceptions exist where judges can use discretionary powers to grant claims beyond the *petitum*, such actions must align with the essence of the claims and not violate the case's material essence. Any decision by a judge exceeding the submitted claims can serve as grounds for initiating judicial review, as specified in Article 67, Letter c, of the Supreme Court Law.

Hence, grounds associated with decisions exceeding the made claims (*overclaim*) or granting something not demanded in the lawsuit (*ultra vires*), as outlined in Article 67, Letter c, of the Supreme Court Law, can be utilized as the basis for filing a judicial review. Instances where judges issue decisions inconsistent with the parties' claims or surpass the stated limits of the claims are viewed as violations subject to reassessment through the judicial review process. The fourth ground, as stipulated in the petition for judicial review according to Article 67, Letter d, of the Supreme Court Law, pertains to situations where some claims in the lawsuit remain undecided by the court without providing reasons. This becomes the foundation for initiating judicial review in case of errors by the court in the resolution of claims that ought to have been considered, adhering to the principles in Article 50 RV, Article 178, Paragraph (2) HIR, and Article 189, Paragraph (2) RBG. For example, when the court neglects to decide certain provisional claims, attachment requests, or counterclaims without offering proper reasons. Although infrequent in practice, such errors possess the potential to adversely affect the disputing parties, thereby constituting a valid basis for pursuing judicial review according to Article 67, Letter d, of the Supreme Court Law.

In scenarios where the court neglects certain claims without providing reasons, particularly if it results in harm to one of the disputing parties, initiating a judicial review becomes imperative. Although instances of this nature are infrequent in practice, the court typically rectifies such errors at the appellate or cassation levels. However, should the court at the initial and appellate stages fail to comprehensively decide on the submitted claims, the Supreme Court (MA) at the cassation level possesses the authority to address these errors. While such errors are seldom encountered due to corrections made at higher levels, situations where the entire court fails to fully adjudicate on the submitted claims can serve as a valid foundation for submitting a petition for judicial review under Article 67, Letter d, of the Supreme Court Law. The fifth ground that constitutes the basis for filing a petition for judicial review involves conflicting decisions between the same parties on the same matter or basis, utilizing the same grounds, by the same court or of the same level. Specific conditions must be met for the judicial review ground outlined in Article 67, Letter e, of the Supreme Court Law to be

<sup>25</sup> V. Harlen Sinaga, *Hukum Acara Perdata dengan Pemahaman Hukum Materiil* (Jakarta: Erlangga, 2015), 323.

deemed valid. Firstly, there must be two or more conflicting decisions, an indispensable prerequisite for categorizing decisions as conflicting. Although uncommon, instances may arise where a case is resolved with contradictory decisions between civil and criminal proceedings.

Moreover, the conflicting decisions must involve the same parties, aligning with the principle of *ne bis in idem*, which dictates that a decision's binding force only extends to identical parties within the same legal relationship. Additionally, these conflicting decisions should pertain to a similar matter or basis, even if issued by distinct courts or within different jurisdictions. The congruity of the case or basis emerges as a pivotal factor in identifying the inconsistency between these decisions. Another criterion is that the conflicting decisions must originate from the same court or, at the very least, a court of an equivalent level. For example, decisions from disparate fields of jurisdiction, such as civil and criminal, or from different courts with analogous levels, like the district court and religious court, still meet this requirement. It is crucial to emphasize that the last conflicting decision must have attained legal finality (binding decision) and have been duly notified to the disputing parties. While notification is a legal prerequisite, its absence does not diminish the validity of filing a judicial review. Instances of conflicting decisions, though infrequent, engender confusion and uncertainty about legal certainty. However, the stringent conditions outlined in Article 67, Letter e, of the Supreme Court Law indicate that only situations meeting the established criteria are deemed suitable for initiating a judicial review. Although rare, the importance of legal clarity and consistency in the judicial process remains a primary focus in addressing this condition. Filing a judicial review based on the ground of conflicting decisions is a step toward upholding justice and legal certainty, accompanied by clarity in meeting the established conditions. In this context, ensuring fair law and the protection of the rights of all disputing parties are the primary goals of the stringent conditions regarding

conflicting decisions. The most prevalent and extensively employed ground for judicial review is a palpable error or genuine mistake. This ground is perceived to possess a broad and seemingly boundless scope, resembling a spectrum with a wide range of possibilities. Any considerations and opinions articulated in a decision can be interpreted and framed as a palpable error or genuine mistake without apparent limits. However, due to the susceptibility for misuse in practice, there was a notion or discourse around the 1990s to eliminate or invalidate this ground. Although there was a desire to do so within the draft law team at that time, it was not included as a ground for judicial review. Nevertheless, this aspiration was not realized in Law No. 5 of 2004 amending Law No. 14 of 1985, as Article 67 of Law No. 14 of 1985 remained unchanged and intact as before.

### 3.2. A Critical Examination of Time Limits in Civil Case Reviews under Indonesian Law

The statutory reference time limit for filing a request for a civil case review is 180 (one hundred and eighty) days for all reasons, as stipulated in Article 67 of Law No. 14 of 1985 concerning the Supreme Court. In the context of a dynamic judicial system, this time limit has profound implications concerning access to justice, system efficiency, and the rights of the parties involved in a case. This relatively extended time limit provides the involved parties ample time to reflect, evaluate, and decide whether to file a judicial review.<sup>26</sup> This is crucial as it allows parties to carefully assess the decisions made and consider if there are strong grounds for filing a judicial review. Furthermore, the longer time limit also offers flexibility for parties who may need additional time to gather evidence or plan legal.<sup>27</sup>

However, on the flip side, the extension of this time limit can raise questions about the effectiveness and efficiency of the judicial system. In some cases, prolonged periods may create uncertainty and delay case resolutions, impacting the overall efficiency of the system.<sup>28</sup> Compared to the limited 14-day time limit for filing appeals or cassations, this comparison indicates

<sup>26</sup> Tri Imam Munandar, Nys Arfa, and Syofyan Nur, "Pengaturan Peninjauan Kembali Dalam Perspektif Sistem Peradilan Pidana di Indonesia," *Jurnal Sains Sosio Humaniora LPPM Universitas Jambi* 4, no. 1 (2020): 102.

<sup>27</sup> Aulia Ade Putra, "Analisis dikabulkannya permohonan peninjauan kembali setelah pelaksanaan putusan sengketa gadai tanah ulayat," *JCH (Jurnal Cendekia Hukum)* 4, no. 2 (2019): 243. See also., Sabrina Hidayat, Oheo Kaimuddin Haris, and

Muhammad Sabaruddin Sinapoy, "Putusan Bebas Melalui Permohonan Peninjauan Kembali Tahap Kedua dalam Perkara Tindak Pidana Korupsi (Studi Kasus Perkara No. 108 PK/Pid. Sus/2020)," *Halu Oleo Legal Research* 5, no. 2 (2023): 514.

<sup>28</sup> Lewiario Laia and Anwar Saleh Hasibuan, "Analisis Batasan dan Pemohon Peninjauan Kembali dalam Hukum Pidana Indonesia," *Lectura Lege Journal* 1, no. 1 (2023): 129.



that civil case reviews provide a broader timeframe for disputing parties. Ethical questions arise about whether this longer time limit is genuinely necessary or, conversely, whether it may pose risks of abuse or delays in case resolution.<sup>29</sup> According to Article 67, letter a of Law No. 14 of 1985 concerning the Supreme Court, when the basis for a civil case review is lies or fraud revealed after a legally binding decision, the time limit calculation starts from the date of the discovery of lies or fraud. In this situation, the 180-day period begins from the date of understanding the lies or fraud, which must be documented in writing as valid evidence. Thus, if lies are uncovered several years after the binding decision, a civil case review can still be filed as long as the date of the discovery of lies is recorded in writing.<sup>30</sup>

Meanwhile, for the basis of civil case review related to the discovery of significant determining evidence (novum) according to Article 67, letter b, the time calculation starts from the date of the discovery of this determining evidence. The 180-day period begins from the date of the discovery of the determining evidence identified in the sworn statement officially certified by an authorized official. If the determining evidence is found several years after the binding decision, a civil case review can still be filed within the specified time limit, provided that the date of discovery is validly recorded.<sup>31</sup> Articles 67, letters c and d regarding the basis of civil case reviews related to decisions that annul rights arising from the case (*ultra petita*) or decisions that grant something not requested (*extra petita*), the time calculation starts from the date of the binding decision and the notification of the decision to the involved parties. This calculation process is straightforward as it is based on the date of the binding decision and the official notification to the relevant parties.<sup>32</sup> Lastly, based on Article 67, letter e concerning decisions conflicting between the same parties, the calculation starts from the date of the last conflicting binding decision and has been conveyed to the involved

parties. The 180-day period begins from the date of the last conflicting binding decision, providing an opportunity to file a judicial review, even several years after the first decision becomes legally binding.<sup>33</sup>

With distinct provisions for each basis of civil case review, Law No. 14 of 1985 concerning the Supreme Court provides a flexible timeframe for filing a judicial review, depending on the situation and the underlying basis. This reflects the legislative effort to provide clarity and fairness in determining the time for filing a judicial review.<sup>34</sup> With clear rules and various possibilities in determining the starting point of the time limit, this law seeks to offer a fair opportunity for parties wishing to file a review after discovering its supporting grounds. This flexibility aligns with the spirit of providing a fair chance to parties who feel there is an unjust policy or one that does not comply with the applicable law.<sup>35</sup> The existence of inclusive regulations provides space for parties involved in a case to file a review based on various grounds, such as lies or fraud, the discovery of significant determining evidence, decisions annulling rights arising from the case, decisions granting something not requested, and decisions conflicting between the same parties.<sup>36</sup>

In summary, the statutory time limit of 180 days for filing a request for a civil case review, as stipulated in Article 67 of Law No. 14 of 1985 concerning the Supreme Court, plays a pivotal role in the Indonesian judicial system. This extended time frame offers parties involved in a case ample opportunity to reflect, evaluate, and decide whether to pursue a judicial review, ensuring a careful consideration of the decisions made and the grounds for review. While providing flexibility for parties to gather evidence or strategize, it raises ethical questions about potential abuse and delays in case resolution, especially when compared to the shorter time limits for other legal processes such as appeals or cassations. The legislation's distinct provisions for various bases of

<sup>29</sup> Slamet Prasetyo Sutrisno et al., "Upaya Hukum Luar Biasa Peninjauan Kembali dalam Perspektif Hukum Progresif," *Jurnal Indonesia Sosial Sains* 2, no. 12 (2021): 2109.

<sup>30</sup> Lailam and Chakim, "A Proposal...", 149. See also, Wiyono et al., "Legal Remedies for Judicial Review...", 361.

<sup>31</sup> Pityani Meutia, "Pembatasan Peninjauan Kembali Perkara Perdata Kajian Putusan Mahkamah Konstitusi Nomor 108/PUU-XIV/2016," *Jurnal Legislasi Indonesia* 16, no. 2 (2019): 225. See also, Permatasari et al., "Proses Peninjauan Kembali Sebagai Wewenang...", 1546.

<sup>32</sup> Tarigan et al., "Tinjauan Yuridis...", 320.

<sup>33</sup> Dio Siaga Putra Pulungan and Anzorullah, "Analisis Kewenangan Mahkamah Agung Dalam Judicial Review Terhadap Peraturan Perundang-Undangan di Bawah Undang-Undang," *Limbo: Journal of Constitutional Law* 2, no. 1 (2022): 53.

<sup>34</sup> Janah, "Implikasi Kasasi Sebagai Upaya Hukum Terakhir...", 1352.

<sup>35</sup> Zhou, "Legal principles...", 920. See also, Nurudin, "Upholding the Impartiality...", 88.

<sup>36</sup> Pitriyanti and Astariyani, "Consequences of Non-compliance ...", 705.



civil case review exemplify a legislative effort to balance fairness, clarity, and efficiency. The flexible timeframe, tailored to different situations and grounds, aligns with the objective of providing a fair chance to parties who perceive unjust policies or decisions inconsistent with the law. However, the study also raises concerns about the potential impact on the effectiveness and efficiency of the judicial system, especially when prolonged periods lead to uncertainty and delays in case resolutions. In conclusion, while the legislative framework aims to offer a fair and flexible avenue for civil case reviews, continuous evaluation and consideration of ethical implications are essential to strike the right balance between justice, transparency, and efficiency within the Indonesian legal system.

### 3.3. Procedures for Requesting and Sending Judicial Review Case Files

The filing procedure and submission of case review documents are meticulously regulated by Law No. 14 of 1985 concerning the Supreme Court in Indonesia. In the context of specific rights, the process of filing a review prioritizes a predefined sequence. First, the right to file a review application is granted to the disputing parties. Parties who feel aggrieved or dissatisfied with the court's decision have the right to request a review as a last legal resort.<sup>37</sup> Second, if the disputing parties cannot or no longer file a civil case review, this right can be continued by heirs. Heirs are authorized to continue unresolved legal efforts involving a deceased party.<sup>38</sup> Third, the right to file a review is also granted to representatives. This includes individuals represented by legal representatives or other legitimate parties to file a review on behalf of the concerned party.<sup>39</sup> Finally, if the disputing party or the previous applicant for review has passed away, heirs still have

the right to continue the filing of the civil case review. This principle reflects the continuity of legal efforts in the judicial system, where legal efforts initiated by individuals can be continued by their heirs. With this clear hierarchy of rights, the civil case review filing process is expected to proceed with optimal justice and clarity in the Indonesian judicial system.<sup>40</sup>

The process of filing a civil case review in Indonesia follows a series of formal requirements established by Law No. 14 of 1985 concerning the Supreme Court. In the initial stage, the submission of the review application must be made by sending it to the Supreme Court through the Chief of the district court. This provision is crucial to ensure that the subsequent process can proceed according to the established procedure.<sup>41</sup> Additionally, the payment of court fees specified by regulations is one of the formal requirements that must be met by the party filing the review. Compliance with these formalities serves as the foundation to ensure that the civil case review application can be processed correctly, in accordance with the applicable law.

The next step involves a written submission, where the review application must be submitted in written form.<sup>42</sup> This requirement emphasizes the need for clear and well-documented documents to facilitate further processing and examination. The role of the registrar in providing copies of the application to the opposing party is crucial. Article 72 of Law No. 14 of 1985 stipulates that the registrar is responsible for providing a copy of the application to the opposing party within a maximum period of 14 days after the application is submitted. This is aimed at providing transparency in the judicial system and ensuring that all involved parties have timely access to documents relevant to the case under consideration.<sup>43</sup>

<sup>37</sup> Nur Rohim Yunus, RR Dewi Anggraeni, and Annissa Rezki, "Extraordinary legal efforts against review of court decision in civil cases in the constitutional court decision of the republic of Indonesia," *Journal of Critical Reviews* 7, no. 16 (2020): 1106. See also, Diaan and Astuti, "Kewenangan Jaksa Penuntut Umum (JPU)...," 70.

<sup>38</sup> Enrico Simanjuntak, "The Rise and the Fall of the Jurisdiction of Indonesia's Administrative Courts: Impediments and Prospects," *Indonesia Law Review* 10, no. 2 (2020): 159.

<sup>39</sup> Standy Wico et al., "The Future of Constitutional Complaint in Indonesia: An Examination of Its Legal Certainty," *Indonesian Journal of Law and Society* 2, no. 1 (2021): 59-78.

<sup>40</sup> Munandar et al., "Pengaturan Peninjauan Kembali...," 111. See also, Muhammad Deniardi et al.,

"Criminal law arrangements in Indonesia related to judicial review," *Russian Law Journal* 11, no. 3 (2023): 198.

<sup>41</sup> Tarigan et al., "Tinjauan Yuridis...," 311.

<sup>42</sup> Hidayat et al., "Putusan Bebas Melalui...," 528. See also, Pradhipta and Imanullah, "Tanggung Jawab Notaris Dalam Kelalaian Membuat Akta Jual Beli Tanpa Melihat Dokumen Asli (Studi Kasus Putusan Peninjauan Kembali Perkara Perdata No. 49. Pk/Pdt/2009 Tanggal 16 September 2009)," *Jurnal Repertorium* 6, no. 1 (2019): 10.

<sup>43</sup> Imran Eka Saputra, Muhammad Irwan, and Ali Rahman, "Analisis Normatif Kewenangan Peninjauan Kembali Oleh Kejaksaan," *Sawerigading Law Journal* 1, no. 2 (2022): 101.



Article 72, paragraph (2) of Law No. 14 of 1985 grants the opposing party the right to respond through the submission of an answer or counter civil case review as a response to the review filed by the applicant. This provision explicitly emphasizes the importance of providing a copy of the application to the opposing party, allowing them to provide responses or counter-arguments within the specified legal framework.<sup>44</sup> The goal is to ensure fairness and provide opportunities for all involved parties to actively participate in the review process. The responsibility for submitting the civil case review documents is placed on the registrar, specifically the district court registrar that decided the case.<sup>45</sup> This includes the entire case file and the necessary fees for the review case. This provision is designed to ensure the systematic and comprehensive transfer of relevant documents and required fees for the review case. The aim is to provide the Supreme Court with all the necessary information for a thorough review of the submitted review and to make informed decisions.<sup>46</sup>

The submission of the review case documents, and the settlement of fees are set within a maximum duration of 30 (thirty) days. However, this provision does not have specific reference points for calculating the 30-day period. Therefore, a rational and objective calculation approach is necessary to determine the filing period. Within 30 days from the date of receiving a response if the basis for the review is according to Article 67 letters a or b. The deadline is calculated from the date of receiving a response from the opposing party regarding the submission of the review. Within 30 days from the date of providing or sending a copy of the review application if the basis for the review is according to Article 67 letters c, d, e, or f.

Specifically, Article 67 states that requests for the review of final legal decisions in civil cases can only be submitted based on the following grounds:

- a. If the decision is based on deception or cunning by the opposing party discovered after the case is concluded or is based on evidence later declared false by criminal judges.

- b. If, after the case is concluded, decisive documents are found that could not be located during the case examination.
- c. If something has been granted that was not demanded or more than what was demanded.
- d. If a part of the claim has not been decided without considering the reasons.
- e. If, between the same parties on the same issue, the same court or a court of the same level has issued conflicting decisions.
- f. If a decision contains a judge's oversight or a clear error.

The deadline is calculated from the date of providing or sending a copy of the review application to the opposing party, and this period includes various other bases for review, such as contradictory decisions, decisions based on false evidence, or decisions involving the same parties.<sup>47</sup> This approach provides a clear and measurable timeframe for the civil case review submission process, ensuring clarity in calculating the 30-day period according to the underlying legal basis.<sup>48</sup>

### 3.4. Judicial Review Case Examination

The scrutiny of reconsideration cases, as governed by Article 73 of Law No. 14 of 1985 concerning the Supreme Court, encompasses various facets. A pivotal aspect is the involvement of a panel, underscoring the collective nature of this process. In accordance with this, the Supreme Court undertakes the reconsideration examination with a focus on the reconsideration files forwarded by the district court or high court, indicative of a systematic approach.<sup>49</sup> The Supreme Court holds the authority to mandate additional examinations, which may be directed to the first-instance or appellate courts if deemed necessary. The determination for such supplementary examinations is specified in an interlocutory decision, delineating the issues to be scrutinized by the designated court.<sup>50</sup> Moreover, the Supreme Court is empowered to solicit information and insights from the district court or the court of appeal. This underscores the Supreme Court's commitment to ensuring that the reconsideration examination is

<sup>44</sup> Hidayat et al., "Putusan Bebas Melalui...", 529.

<sup>45</sup> Yunus et al., "Extraordinary legal efforts...", 1106.

<sup>46</sup> Rusli and Apriyandi, "Analisis Yuridis...", 15. See also, Haruni, "Constitutionality of monitoring...", 115.

<sup>47</sup> Butt, "Judicial reasoning and review...", 69.

<sup>48</sup> Damayanti and Soeskandi, "Kewenangan Jaksa Penuntut Umum...", 290. See also, Zhou, "Legal principles...", 927.

<sup>49</sup> Farida Sofa, "Upaya Hukum Peninjauan Kembali Perkara Kepailitan Berdasar Putusan Majelis Hakim Tentang Permohonan Pkpu (Tinjauan Yuridis Putusan Hakim Ma No. 134-PK/Pdt. Sus Pailit/2016)," *Jurnal Hukum Respublica* 22, no. 2 (2023): 21.

<sup>50</sup> Meutia, "Pembatasan Peninjauan Kembali...", 225. See also, Laia and Hasibuan, "Analisis Batasan...", 130.

grounded in comprehensive information and may encompass perspectives from the first-instance or appellate courts.<sup>51</sup> While the reconsideration examination involves a panel, the overarching principles outlined in Article 40, Paragraph (1) of Law No. 14 of 1985 and Article 17, Paragraph (1) of Law No. 4 of 2004 still hold sway. According to these tenets, a case must undergo examination and adjudication by a minimum of three judges, and a decision scrutinized by only one judge is deemed legally void from inception. Consequently, reconsideration cases previously appraised by a solitary judge necessitate re-examination by a panel of judges.<sup>52</sup>

Based on Article 50, Paragraph (1) of Law No. 14 of 1985, the principles governing cassation examination essentially extend to the reconsideration examination. In both processes, the examination is conducted by the Supreme Court based on documents, specifically the cassation or reconsideration case files forwarded by the district court to the Supreme Court. This principle underscores that the reconsideration examination is also subjected to an organized and systematic process, wherein decisions are grounded in written documents.<sup>53</sup> Consequently, the examination does not involve direct interaction with the parties or witnesses but relies solely on information contained in the reconsideration case files. The scrutiny of the parties is founded on the answers, replications, and rejoinders submitted during the trial in the district court, all of which are subsequently compiled in the reconsideration case files.<sup>54</sup> Similarly, the examination of witness statements or expert opinions refers to the trial minutes of the district court meticulously documented in the reconsideration case files. Hence, the principle of examination based on documents mirrors a structured and documented approach in the evaluation and adjudication of a reconsideration case, offering a clear and transparent foundation for the legal process.<sup>55</sup>

Article 73, Paragraph (1) of Law No. 14 of 1985 grants the Supreme Court, particularly the reconsideration panel, the authority to issue orders for additional examination. The Supreme Court can instruct the first-instance or appellate courts to conduct additional examinations if deemed necessary. This order for additional examination is formalized through an interlocutory decision, where the Supreme Court elaborates in detail the matters that the respective court should examine in its considerations (dictum) of the interlocutory decision.<sup>56</sup> The additional examinations conducted by the first-instance or appellate courts are limited to the issues mentioned in the considerations of the interlocutory decision. The results of these additional examinations are then documented in minutes of the additional examination. According to Article 73, Paragraph (3) of Law No. 14 of 1985, these minutes must be promptly sent back along with the case files to the Supreme Court. The task and authority of the court requested to conduct additional examination are limited to performing the examination itself, without the authority to make decisions based on the results of the additional examination.<sup>57</sup> Thus, the Supreme Court maintains a primary role in making the final decision for the respective reconsideration case, using the results of the additional examination as material for consideration and assessment. This mechanism is designed to provide additional relevant and supportive information in the decision-making process by the Supreme Court.<sup>58</sup>

The reconsideration panel has the authority to request any necessary information and considerations from the district court or the court of appeal. When the reconsideration panel requests information and considerations from the Supreme Court, the results provided by the respective court can be used as additional material for consideration and assessment in the decision-making process.<sup>59</sup> If the reconsideration panel issues an order for additional examination or

<sup>51</sup> Setyono, "Tinjauan "Novum" ...," 152.

<sup>52</sup> Pitriyanti and Astariyani, "Consequences of Non-compliance ...," 705.

<sup>53</sup> Sutrisno et al., "Upaya Hukum Luar Biasa...," 2117. See also, Rahmawati et al., "The Submission...," 1046.

<sup>54</sup> Irwan Sapta Putra, "Analisis yuridis Hapusnya Kewenangan Jaksa Terhadap Permohonan Peninjauan Kembali (PK) Atas Putusan Bebas/Lepas Dari Segala Tuntutan Dalam Perkara Pidana di Indonesia Berdasarkan Putusan MK RI Nomor: 20/PUU-XXI/2023," *Jurnal Hukum dan HAM Wara Sains* 2, no. 04 (2023): 259.

<sup>55</sup> Laia and Hasibuan, "Analisis Batasan...," 40.

<sup>56</sup> Syukri Hidayat Nasution and Zaid Alfauza Marpaung, "Analisis Hukum Peninjauan Kembali Terhadap Gratifikasi Penyelesaian Perkara di Pengadilan (Studi Putusan MA Nomor 1 Pk/Pid, Sus/2019)," *Spektrum Hukum* 20, no. 1 (2023): 19.

<sup>57</sup> Saputra et al., "Analisis Normatif Kewenangan Peninjauan...," 111.

<sup>58</sup> Deniardi et al., "Criminal law arrangements in Indonesia...," 170. See also, Meutia, "Pembatasan Peninjauan Kembali...," 236.

<sup>59</sup> Setyono, "Tinjauan "Novum" ...," 152.



requests information and considerations from the first-instance or appellate courts, it indicates that the examination of the reconsideration case is not only limited to the documents received previously.<sup>60</sup> On the contrary, this process will be complemented by the results of the additional examination, or the information and considerations provided by the requested court.<sup>61</sup> The decision of the reconsideration panel can then be influenced by the extent to which the value of additional information or the results of the examination are considered in making the decision. This approach reflects an effort to ensure that the reconsideration process is conducted comprehensively and fairly, taking into account all relevant information to support accurate decision-making.<sup>62</sup>

#### 4. | CONCLUSION

After a comprehensive analysis of the legal mechanisms for civil case review in Indonesia, it can be concluded that this system offers a legal framework for parties to file applications to review previously made decisions. The relatively extended time limit of 180 days provides flexibility for parties seeking to utilize this option. Reviews can be pursued for various reasons, including the discovery of new evidence, instances of fraud, or inconsistencies between decisions involving the same parties. The examination of review cases is centralized and conducted through a panel of judges, relying on document analysis, which encompasses an assessment of prior court decisions.

While the procedures for filing and examining review cases are clear and grounded in a detailed legal framework, there exists a need for clarification regarding the formulation of the time limit for submitting review case files to prevent potential dual interpretations. To enhance the effectiveness of legal efforts in reviewing civil cases, consideration should be given to the prospect of shortening the time limit for filing reviews. This adjustment could serve as an incentive for parties to promptly initiate reviews and diminish the likelihood of decisions being perceived as unjust by the disputing parties.

This research contributes new insights into the complexity and challenges inherent in implementing legal mechanisms to review civil cases in Indonesia. The findings can serve as a basis for evaluation to

enhance and optimize this system to better respond to the practical needs of the legal field. The implications of this research also underscore the urgency of clarifying regulations concerning the time limit for submitting review case files to improve legal clarity and certainty. Therefore, this research lays the foundation for refining the legal system to align more effectively with the evolving needs of society.

<sup>60</sup> Sembiring et al., “Dasar Pertimbangan Hakim...,” 218.

<sup>61</sup> Zhou, “Legal principles...,” 928. See also, Munandar et al., “Pengaturan Peninjauan Kembali...,” 110.

<sup>62</sup> Triara Rizki Utami, Gilang Apriliandi, Fariz Madhani Akbar, Heri Wandono, and Iska Wina Destia, “Eksekusi Putusan dan Implikasi Hukum Bagi Pihak yang Tidak Patuh dalam Perkara Perdata,” *Jurnal Penelitian Serambi Hukum* 16, no. 01 (2023): 144.

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