

## THE LEGAL POLICY ON THE ESTABLISHMENT OF AD HOC AGRARIAN COURTS AS AN INSTRUMENT FOR RESOLVING AGRARIAN CONFLICTS IN INDONESIA

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### Abstract

Agrarian disputes in Indonesia persist as a multifaceted and persistent challenge, entangling stakeholders including communities, authorities, and businesses. Existing mechanisms for resolving such conflicts remain disjointed, dispersed across forums like general courts and state administrative tribunals, frequently yielding juridical ambiguity and suboptimal outcomes. This inquiry evaluates the necessity and optimal juridical architecture for instituting an ad hoc agrarian tribunal as a pathway to holistic conflict adjudication. Employing normative legal methodology with statutory and conceptual emphases, it draws upon pertinent legislation, monographs, and scholarly publications. Findings affirm the imperative for an ad hoc agrarian court to rectify systemic fragmentation in dispute resolution, delivering equitable verdicts via specialized ad hoc judges expert in agrarian matters. Optimally, this tribunal should function as a specialized entity subordinate to the Supreme Court, wielding unified jurisdiction over agrarian contentions and bolstered by alternative resolution tools like mediation. Accordingly, such a court promises to enhance juridical predictability, uphold communal entitlements, and advance agrarian reform toward equitable social outcomes in land affairs.

**Keywords :** Agrarian, Ad Hoc Justice, Legal Politics

### A. INTRODUCTION

Agrarian disputes rank among the most intricate juridical and societal dilemmas within Indonesia's legal framework. These disputes extend beyond mere contests over land entitlements among persons or organizations, encompassing dynamics of authority among the state, enterprises, and indigenous groups. Here, land emerges as a pivotal asset imbued with profound economic, communal, and governmental significance. Research indicates that the proliferation of resource extraction, vast plantations, and infrastructural projects has amplified agrarian strife across Indonesia's territories. This underscores that such conflicts transcend private law matters, intertwining with governmental strategies for agrarian resource stewardship.<sup>1</sup>

From a statutory vantage, Indonesia's agrarian juridical edifice derives from Law Number 5 of 1960 on Fundamental Agrarian Provisions (UUPA), designed to consolidate national land legislation and facilitate agrarian restructuring. The UUPA asserts state dominion over land,

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<sup>1</sup> Sony Ahmad Nulhaqim, *Et.al.*, "Contemporary Social Problem: Agrarian Conflict," *Humanities & Social Sciences Reviews* (2020): 1189-1195.

water, and airspace to maximize communal welfare. Yet, practical enforcement encounters persistent institutional obstacles, notably conflicting sectoral statutes on forestry, mining, and plantations. This fosters a pluralistic agrarian legal landscape, engendering juridical unpredictability and inciting disputes between communities and state or corporate entities.<sup>2</sup>

Indonesia's agrarian strife traces deep historical origins to the colonial era. Colonial land regimes, exemplified by the Agrarische Wet of 1870, prioritized tenure systems serving imperial economic aims. Post-independence, authorities sought rectification via agrarian reform enshrined in the UUPA. Nevertheless, New Order politics redirected agrarian strategies toward resource extraction for growth, frequently sidelining indigenous and smallholder claims. Consequently, conflicts endured into the reform period, intensifying amid economic deregulation and heightened natural resource investments.<sup>3</sup>

Institutionally, Indonesia's agrarian conflict adjudication disperses authority across multiple judicial venues. Tenure disputes typically fall under District Court purview, whereas challenges to land governance decisions proceed via the State Administrative Court. Supplementary administrative avenues exist through the Ministry of Agrarian and Spatial Planning/National Land Agency. This dispersal of jurisdiction frequently sparks disputes over absolute competence, prolonging and undermining resolution efficacy. Scholarly inquiries reveal that prevailing systems fail to deliver juridical predictability or substantive equity for agrarian conflict participants.<sup>4</sup>

Amid these circumstances, proposals for a dedicated agrarian tribunal or ad hoc agrarian court have garnered notice in scholarly circles and policy arenas. Indonesia once operated the Land Reform Court, instituted under Law Number 21 of 1964 to address agrarian reform disputes. This body proved short-lived, dismantled amid New Order political shifts. Various scholars assert that specialized agrarian courts possess both historical precedence and statutory grounding within Indonesia's juridical tradition.<sup>5</sup>

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<sup>2</sup> Hana Maria Wiyanto, Yusriadi, Ana Silviana, "The Politics of Agrarian Law in the Idea of Forming a Special Agrarian Court," *JLPH : Journal of Law, Politic and Humanities* , Vol.5, No.1, (2024).

<sup>3</sup> Anton Lucas and Carol Warren, "The State, the People, and Their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia," *JSTOR : Indonesia* 76 (2003): 87–126.

<sup>4</sup> Riza Zulfikar, "Forms of Legal Settlement of Agrarian Conflict in Indonesia," *Russian Law Journal, Vol. XI, No.6,* (2023): 138-145.

<sup>5</sup> Nugraha Pranadita, "Urgency of Establishment of Agrarian Court in Indonesia," in *Conference: Proceedings of the 1st Seminar and Workshop on Research Design, for Education, Social Science, Arts, and Humanities, SEWORD FRESSH 2019, April 27 2019, Surakarta, Central Java, Indonesia*

As agrarian disputes proliferated during the reformasi epoch, diverse stakeholders revived calls for agrarian tribunals within the broader national reform program. Central contentions emphasize the distinctive attributes of these conflicts, necessitating adjudicators versed in agrarian jurisprudence alongside comprehension of rural socioeconomic dynamics. A hybrid judicial framework blending career jurists and ad hoc specialists promises elevated verdict standards and expedited resolution of lingering agrarian contentions.<sup>6</sup>

Prior scholarship has underscored the imperative for agrarian tribunals through lenses of reform efficacy and land dispute adjudication. Notably, Wiyanto and Silviana advocate reorienting Indonesia's agrarian legal policy toward specialized judicial bodies to bolster reform execution. Additional inquiries reveal prevailing resolution frameworks as piecemeal, failing to encompass the multifaceted nature of agrarian strife. Certain analyses, however, spotlight institutional and constitutional hurdles in erecting agrarian courts, especially concerning integration within the Supreme Court's hierarchy.<sup>7</sup>

Despite ongoing scholarly discourse on the juridical policy implications of instituting an ad hoc agrarian tribunal, several core inquiries linger unresolved. Primarily, no holistic evaluation exists of state political strategies addressing the integration of such bodies into the national judiciary. Second, extant literature prioritizes pragmatic imperatives yet overlooks thorough normative foundations and architectural blueprints for ad hoc agrarian adjudication. Third, consensus eludes whether agrarian courts warrant permanent specialized status or ad hoc embedding within current structures.

Against this backdrop, the present inquiry holds significance in normatively dissecting the legal policy dynamics of forming an ad hoc agrarian court as a tool for agrarian dispute settlement in Indonesia. It endeavors to scrutinize constitutional underpinnings, policy trajectories, and feasible institutional configurations for ad hoc agrarian tribunals within the Indonesian judiciary. In doing so, this work aspires to furnish conceptual advancements toward a resolution apparatus that proves more efficacious, equitable, and harmonious with national agrarian reform objectives.

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<sup>6</sup> I.F. Susilowati and M. Wardhana, "Special Court Model in Settlement of Tenure Conflicts and Agrarian Resources," in *Proceedings of the International Joined Conference on Social Science (ICSS 2021)*

<sup>7</sup> Yuherman, *Et.al.*, "Integration of Absolute Authority of District Courts and State Administrative Courts in Land Disputes through Connective Jurisdictions," *Administrative and Environmental Law Review*, Vol.6, No.1, (2025):45-60.

## **B. RESEARCH METHODS**

This investigation adopts a normative legal methodology, positioning law as prevailing norms, statutes, judicial rulings, and evolving doctrines within juridical scholarship. Such research interprets and dissects legal principles pertinent to the policy framework for establishing an ad hoc agrarian tribunal as a mechanism for agrarian conflict adjudication in Indonesia, via bibliographic examination of germane legal sources. Analytical perspectives encompass a statutory lens scrutinizing enactments like the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 on Fundamental Agrarian Principles, and Law Number 48 of 2009 on Judicial Authority; a conceptual framework probing notions of legal policy, specialized adjudication, and ad hoc tribunals through doctrinal viewpoints; and a historical perspective charting the evolution of agrarian governance and dispute forums in Indonesia. Legal resources comprise primary elements such as statutes, regulations, and precedents; secondary components including treatises, periodicals, and pertinent inquiries; plus tertiary aids like juridical glossaries and compendia. These materials, amassed through document review, undergo qualitative prescriptive scrutiny to formulate juridical rationales on policy orientations for ad hoc agrarian courts in Indonesia's judiciary.

## **C. RESULTS AND DISCUSSION**

### **1. Agrarian Management Mandate for People's Prosperity**

#### **a. Legal Basis of Agrarian Management in Indonesia**

Indonesia's constitutional directive for agrarian stewardship to foster communal welfare originates in Article 33(3) of the 1945 Constitution, affirming that "the earth, water, and natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people." This tenet underscores state competence in regulating, administering, and allocating agrarian assets to benefit society broadly, beyond select factions.

The notion of "controlled by the state" denotes not outright state proprietorship, but rather a state right of regulation (HMN), empowering governmental oversight of land and resource designation, employment, and exploitation for public benefit.<sup>8</sup>

This doctrine found elaboration in Law Number 5 of 1960, the Basic Agrarian Law (UUPA), establishing the cornerstone of national agrarian jurisprudence. The UUPA

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<sup>8</sup> Urip Santoso, *Hukum Agraria: Kajian Komprehensif* (Jakarta: Prenanda Media, 2017) : 45.

directs agrarian configurations toward social equity, dismantling inequitable tenure legacies from colonial rule.<sup>9</sup> Accordingly, constitutional imperatives for agrarian administration ensure that land strategies, resource oversight, and allocation yield maximal advantages for Indonesia's populace.

## **b. Agrarian Reform as Impelementation as a Mandate for People's Prosperity**

Agrarian restructuring constitutes a primary vehicle for fulfilling constitutional agrarian stewardship imperatives aimed at communal welfare. Beyond mere land reallocation, it encompasses transformations in socioeconomic and political frameworks governing agrarian resource administration.<sup>10</sup>

In general, agrarian reform consists of two main components:

### 1) Asset Reform

Asset reform aims to redistribute land ownership or control to people who do not own or lack land, especially smallholders and indigenous peoples.<sup>11</sup> This redistribution aims to create a fairer land ownership structure and increase community access to agrarian resources.

### 2) Access Reform

Access reform is an effort to improve the ability of the community to utilize their land through support for access to capital, technology, markets, and infrastructure.<sup>12</sup> Without access reform, land redistribution alone is not enough to improve community welfare because land recipients still face various limitations in managing these resources productively.

## **2. Emptiness and Fragmentation of Agrarian Dispute Resolution Mechanisms**

Agrarian contentions encompass clashes over the regulation, possession, employment, and exploitation of land alongside associated natural assets. Such strife may arise among persons, collectives, enterprises, or between communities and the state. Within Indonesia, these disputes frequently stem from entrenched landholding histories, disparities in agrarian

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<sup>9</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria* (Jakarta: Universitas Trisakti, 2019) : 62.

<sup>10</sup> Muhammad Ilham Arisaputra, "Access Reform dalam Kerangka Reforma Agraria untuk Mewujudkan Keadilan Sosial," *Jurnal Perspektif* 21, no. 2 (2016): 102.

<sup>11</sup> Muhammad Ilham Arisaputra, *Reforma Agraria di Indonesia* (Jakarta: Sinar Grafika, 2021) : 118

<sup>12</sup> Muhammad Ilham Arisaputra, "Access Reform dalam Kerangka Reforma Agraria untuk Mewujudkan Keadilan Sosial," *Op.Cit.*

configurations, and expansive development initiatives entailing substantial land deployment.<sup>13</sup>

Agrarian strife exhibits multifaceted traits, intertwining not merely civil or administrative juridical elements but also socioeconomic, governmental, and cultural dimensions. Thus, resolution demands an integrated apparatus and robust interinstitutional collaboration. In reality, however, Indonesia's agrarian adjudication processes encounter normative voids and structural disunity, yielding protracted, erratic, and inequitable outcomes for litigants.

The UUPA anchors the national agrarian juridical order. Yet, it omits a holistic framework for agrarian contention settlement. Prioritizing land tenure stipulations, state regulatory authority, and foundational agrarian tenets, the UUPA addresses dispute mechanisms only cursorily via extant judicial channels. Lacking tailored provisions, agrarian disputes revert to generic forums like civil tribunals, state administrative courts, or penal venues, ill-suited to comprehensively tackle their intricacies. Consequently, numerous conflicts endure chronically absent bespoke resolution instruments.

Sundry state initiatives have sought to institute contention settlement pathways, notably via the National Land Agency (BPN), tasked with mediation and facilitation in land disagreements. BPN's mandate, nonetheless, confines to administrative realms, devoid of judicial enforceability akin to verdicts. Hence, myriad mediations lack binding efficacy, permitting conflicts to resurface or linger unresolved.

### **3. Reform of the Agrarian Conflict Resolution System Through Ad Hoc Courts**

#### **a. The Relevance of Ad Hoc Courts in Agrarian Conflicts**

Agrarian conflicts have very complex characteristics because they involve various aspects such as land law, state administrative law, customary law, and development policy. Therefore, it is not enough to resolve agrarian conflicts only by relying on a formal legal approach alone. The use of ad hoc judges in agrarian justice allows for the involvement of experts in the fields of land, spatial planning, the environment, and customary law in the judicial process. Thus, the resulting verdict is expected to be more comprehensive and reflect substantive justice.<sup>14</sup>

#### **b. The Urgency of the Establishment of Ad Hoc Agrarian Courts**

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<sup>13</sup> Boedi Harsono, *Indonesian Agrarian Law: The History of the Formation of the Basic Agrarian Law* (Jakarta: Trisakti University, 2008), *Op.Cit* : 56.

<sup>14</sup> A. Bilaldzy dan R. S. Ariani, "Tinjauan Kritis Urgensi Pembentukan Pengadilan Agraria: Upaya Menangani Inefektivitas Penyelesaian Konflik Agraria pada Peradilan Tata Usaha Negara dan Peradilan Umum," *Jurnal Hukum Lex Generalis*, Vol.3, No. 9 (2022): 688-711.

Indonesia's agrarian strife constitutes a entrenched structural challenge of enduring duration and elevated intricacy, engaging diverse participants including indigenous groups, cultivators, enterprises, and governmental bodies. Beyond land proprietorship, it implicates expansive economic, communal, and governmental facets. Practically, agrarian dispute adjudication encounters hurdles as prevailing judicial pathways lack specialization for multifaceted agrarian dilemmas. Land contentions may traverse forums like district courts, administrative tribunals, and penal courts, fostering jurisdictional dispersal and extended timelines. This scenario underscores the imperative for a dedicated adjudicative body endowed with expertise to address agrarian conflicts holistically.<sup>15</sup>

One of the main reasons for the need for the establishment of an agrarian court with an ad hoc mechanism is to overcome the fragmentation of dispute resolution forums that have been happening. Agrarian disputes often have to go through a variety of different judicial channels, so the resolution process becomes long and inefficient.<sup>16</sup> Agrarian courts equipped with ad hoc judges can be a single forum that has the authority to handle various aspects of agrarian conflicts in an integrated manner.

The imperative for an ad hoc agrarian tribunal further stems from the requirement for adjudicators possessing specialized proficiency in land and agrarian domains. General court jurists typically hold broad juridical expertise yet often lack profound insight into land-specific technicalities, including registration protocols, customary tenure clashes, land-use planning, and interconnections between property rights and commercial permits. Hence, ad hoc judge integration proves apt, enabling participation of agrarian specialists, scholars, and practitioners in adjudication. A bench comprising professional judges alongside ad hoc appointees should yield rulings that embody substantive equity, accommodating diverse technical and societal facets of agrarian disputes.<sup>17</sup>

Career judges generally have competence in the field of law in general, but do not always have in-depth knowledge of the technical aspects of land.

Through the ad hoc judge mechanism, the agrarian court can present experts who understand technical aspects such as:

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<sup>15</sup> Boedi Harsono, *Op.Cit*: 47.

<sup>16</sup> M. Naufal Al-Hadi Kusuma, Afdhal Fadhila, dan Nur Aini, "Reforma Agraria dalam Upaya Optimalisasi Penyelesaian Sengketa melalui Pembentukan Pengadilan Khusus," *Jurnal Studia Legalia* Vol.3, No. 2, (2022): 86-100.

<sup>17</sup> A. Bilaldzy and R. S. Ariani, *Op.Cit*.

- 1) Land Registration System
- 2) Spatial Planning
- 3) Customary Land Tenure
- 4) Conflict between land rights and business licenses

Thus, the case examination process can be carried out more comprehensively and produce more accurate decisions.<sup>18</sup>

Agrarian reform is a strategic program of the government that aims to create a fairer distribution of land tenure. However, the success of agrarian reform depends heavily on the state's ability to effectively resolve agrarian conflicts. The existence of agrarian courts with ad hoc judges can be an important instrument in resolving conflicts that arise in the process of implementing agrarian reform.

Furthermore, the establishment of an ad hoc agrarian court is also part of efforts to reform the national agrarian legal system. Several academic studies consider that the current agrarian dispute resolution system has not been able to provide adequate legal protection for communities, especially small community groups and indigenous peoples. With the existence of a special agrarian court and supported by ad hoc judges who have competence in the agrarian field, it is hoped that the judicial process can be more responsive to social realities and be able to produce more fair decisions. Therefore, the establishment of an ad hoc agrarian court is seen as an important step to strengthen the agrarian conflict resolution system while realizing the principle of social justice in the management of agrarian resources in Indonesia.<sup>19</sup>

#### 4. Ideal Legal Construction

##### a. Institutional Structure

In an ideal legal construction, an agrarian ad hoc court should have an institutional structure that allows for integration between career judges and ad hoc judges. Career judges continue to play the role of representatives of judicial institutions that ensure the formal application of the law, while ad hoc judges come from academics, land practitioners, or agrarian experts who have special competencies in the field of agrarian affairs. This composition model aims to combine a juridical perspective with technical

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<sup>18</sup> Rindu Audrey Salma Rizqila dan Taupiqqurahman, "Optimalisasi Reforma Agraria melalui Pembentukan Pengadilan Khusus Pertanahan," *Jurnal USM Law Review* Vol.7, No. 1 (2024): 124

<sup>19</sup> Muhammad Tan Abdul Rahman Haris, *Et.al.*, "Urgensi Pembentukan Peradilan Khusus Pertanahan terhadap Sengketa Pertanahan di Indonesia," *Morality: Jurnal Ilmu Hukum* Vol.10, No. 1 (2024): 91-106.

knowledge on agrarian issues that often involve social, economic, and environmental aspects. With the existence of ad hoc judges, the case examination process can be carried out more comprehensively so that court decisions are not only legalistic but also consider the social realities behind agrarian conflicts.<sup>20</sup>

Moreover, ad hoc judge selection procedures demand transparency and professionalism to preserve judicial autonomy. This process might engage the Supreme Court, Judicial Commission, and agrarian-specialized academic bodies. Consequently, the agrarian tribunal would transcend mere conflict settlement, serving as a bastion of juridical predictability and enhanced communal safeguards in agrarian resource governance.<sup>21</sup>

## **b. Competence and Authority of the Ad Hoc Agrarian Judiciary**

An optimal juridical architecture for ad hoc agrarian adjudication must delineate explicit institutional jurisdiction and powers. This tribunal ought to encompass diverse agrarian contentions hitherto dispersed across forums, including tenure disputes, communal-corporate clashes, community-state frictions, and land policy challenges. Possessing such unified scope, the court could operate as a cohesive settlement venue, mitigating longstanding judicial disaggregation.<sup>22</sup>

In addition to adjudicative authority, agrarian courts can also be equipped with alternative dispute resolution mechanisms such as mediation or conciliation that are carried out before the case is examined in litigation. This approach is important because many agrarian conflicts have social and community dimensions so that their resolution requires dialogue between the parties. Thus, the ideal construction of agrarian justice law is not only oriented towards the resolution of disputes through court decisions, but also encourages peaceful and sustainable resolution of conflicts.<sup>23</sup>

## **c. Integration with Agrarian Reform Policy**

The optimal juridical framework for ad hoc agrarian tribunals should align seamlessly with state agrarian reform initiatives aimed at equitable land tenure allocation. Such conflicts frequently emerge during reform execution, particularly amid contending assertions by communities, firms, and authorities. Absent a specialized adjudicative body

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<sup>20</sup> Iwan Koeswahyono, Diah Pawestri., “Rasionalisasi Pengadilan Agraria di Indonesia sebagai Solusi Penyelesaian Sengketa Agraria Berkeadilan,” *Arena Hukum* Vol.15, No. 1 (2022): 1-19.

<sup>21</sup> A. Bilaldzy and R. S. Ariani, *Op.Cit.*

<sup>22</sup> Miss Audrey Salma Rizqila and Taupiqqurahman. *Op.Cit.*

<sup>23</sup> Muhammad Tan Abdul Rahman Haris, *Et.al., Op.Cit.*

for swift, impartial resolution, reform efforts risk stagnation. Thus, the agrarian court emerges as a crucial tool bolstering reform advancement and upholding social justice tenets.<sup>24</sup>

Moreover, ad hoc agrarian tribunals would enhance juridical safeguards for vulnerable collectives in agrarian strife, notably smallholders and indigenous communities. Bolstered by specialized adjudication and expert jurists, resolution proceedings could better reflect societal contexts, yielding equitable outcomes. Hence, instituting such courts forms a vital component of national agrarian juridical overhaul, pursuing equitable and enduring resource stewardship.<sup>25</sup>

## D. CONCLUSION

Instituting an ad hoc agrarian tribunal addresses a pressing exigency within Indonesia's juridical order to tackle the unresolved intricacies of agrarian strife beyond current mechanisms' capacities. Its paradigmatic juridical edifice should anchor in Article 33 of the 1945 Constitution and UUPA's social justice ethos, positioned as a specialized Supreme Court affiliate wielding broad jurisdiction over agrarian contentions. Incorporating ad hoc jurists expert in agrarian domains ensures adjudication encompasses not solely procedural law but socioeconomic and land-technical dimensions. Through defined organizational contours, cohesive powers, and robust statutory backing, these tribunals promise to fortify juridical reliability, shield communal entitlements—particularly for at-risk cohorts like cultivators and indigenous groups—and propel agrarian reform toward equitable, viable resource governance.

## E. ADVICE

Authorities and legislators must promptly devise an integrated statutory regime for ad hoc agrarian tribunals within the overhaul of Indonesia's agrarian jurisprudence. This framework should precisely delineate the tribunal's placement beneath the Supreme Court, its exclusive jurisdiction over agrarian disputes, and protocols for selecting ad hoc adjudicators proficient in agrarian jurisprudence, land matters, and customary norms. Concurrently, reconciling sectoral statutes on resource governance is essential to eliminate overlapping powers prone to fresh discord. Through these measures, the ad hoc agrarian court should operate efficaciously as a

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<sup>24</sup> Maria S. W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya* (Jakarta: Kompas, 2008) : 89.

<sup>25</sup> Moh. Shohibuddin and Ahmad D. Bahri, *Op.Cit* : 74.

conflict resolution entity, delivering juridical predictability, substantive equity for society, and sustained advancement of agrarian reform.

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