

Anomalous Recognition of Sirri Marriage through the Status of 'Unrecorded Marriage' in Permendagri No. 108/2019

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Abstract

The Ministry of Domestic Affairs Regulation No. 108 of 2019, which recognizes the status of "unregistered marriage" in population documents, has sparked serious debate about legal consistency and the validity of public policy in Indonesia. This study aims to analyze the conflict between this regulation and Law No. 1 of 1974 on Marriage and Law No. 23 of 2006 on Population Administration, as well as to evaluate the social and legal impact of giving administrative recognition to relationships that are not legally valid. This research uses a qualitative normative approach through literature study and legal document analysis, applying deductive reasoning and theories of legal hierarchy and social legitimacy. The findings show that Permendagri No. 108/2019 creates legal ambiguity and weakens legal certainty and public trust by allowing administrative status without proper legal basis. This study expands the discourse on family law dualism by critically examining administrative legitimacy without substantive legality, and promotes the synchronization of regulations based on legal and social principles. The main contribution of this study is to highlight the urgent need to synchronize regulations and reform marriage registration policy using an integrative approach that combines legal norms, social values, and access to justice. In conclusion, marriage registration policy must be redesigned to balance legal formalities with social legitimacy, ensuring better legal protection for families and stronger public trust in the law.

Keywords: *unregistered marriage, legal disharmony, social legitimacy, administrative policy, marriage registration*

Abstrak

Permendagri No. 108 Tahun 2019 yang mengakui status "kawin belum tercatat" dalam administrasi kependudukan telah menimbulkan perdebatan serius terkait konsistensi norma hukum dan validitas kebijakan publik di Indonesia. Kajian ini bertujuan untuk menganalisis pertentangan norma antara peraturan tersebut dengan Undang-Undang No. 1 Tahun 1974 dan Undang-Undang No. 23 Tahun 2006, serta mengevaluasi dampak sosiologis dan hukum dari legalisasi administratif terhadap relasi yang belum sah secara yuridis. Penelitian ini menggunakan pendekatan kualitatif normatif dengan teknik studi pustaka dan analisis dokumen hukum melalui metode deduktif-logis serta pendekatan teori hierarki norma dan legitimasi sosial hukum. Hasil penelitian menunjukkan bahwa Permendagri No. 108/2019 menimbulkan ambiguitas hukum dan berpotensi melemahkan kepastian serta legitimasi sistem hukum nasional karena memberikan pengakuan administratif tanpa dasar legalitas substantif. Studi ini memperluas kajian dualisme hukum keluarga dengan mengkritisi legitimasi administratif tanpa legalitas substantif, serta mendorong sinkronisasi regulasi berbasis prinsip hukum dan sosial. Kontribusi utama kajian ini adalah memperlihatkan kebutuhan mendesak akan sinkronisasi regulasi dan reformulasi kebijakan pencatatan perkawinan berbasis pendekatan integratif antara norma hukum, etika sosial, dan akses keadilan. Kesimpulannya, kebijakan pencatatan perkawinan perlu didesain ulang untuk menyeimbangkan legalitas formal dengan legitimasi sosial demi memperkuat perlindungan hukum keluarga dan kepercayaan publik terhadap hukum.

Kata kunci : kawin belum tercatat, disharmonisasi hukum, legitimasi sosial, kebijakan administrasi, pencatatan perkawinan.

INTRODUCTION

Marriage registration in the Indonesian legal system is an essential element in ensuring the orderly administration of population and the validity of civil relations between husband, wife and children. The provisions regarding registration are explicitly stated in Law Number 1 Year 1974 concerning Marriage and strengthened by various derivative regulations that emphasize that marriages must be recorded in order to have legal force.(Hambali & Supriyanto, 2022) However, in social practice, there are still many couples who enter into sirri marriages, that is, marriages that are legal according to religious law but are not registered at the Office of Religious Affairs or the Population and Civil Registration Office.(Andrizal & Akhbarizan, 2022) This phenomenon is not just a cultural practice, but has developed into a complex legal issue, especially when the state responded to it by issuing Permendagri No. 108 of 2019 which opens legal space to include the status of "unregistered marriage" in population documents. This normative response shows the dynamics between the reality of social and legal formalism, and led to debates around whether the policy was a form of accommodation to community practices or a form of omission of violations of positive law.

The existence of the status of "unregistered marriage" as an administrative entity has received considerable acceptance from the community. Based on data from the Directorate General of Dukcapil in 2023, there were more than 1.5 million couples who used this status in their legal identity documents. This large number shows that the policy is not only applied sporadically, but has become a significant part of the administrative system. However, this policy has also generated a variety of responses, both from academics, legal practitioners, and the general public. On the one hand, this policy is considered a form of state adaptation to social realities that are difficult to contain; but on the other hand, not a few consider it a form of compromise that weakens the principle of legality and the integrity of the family law system in Indonesia.(Arifin, 2024) This polarization of views indicates the tension between pragmatic needs in public services and compliance with ideal legal norms.(Wahdini & Norcahyono, 2022)

Academic studies on this policy have so far been dominated by a sociological or empirical approach, which relies on field data without dissecting the normative and philosophical position of the policy in the national legal system. (Setiawan, 2024; Wahdini & Norcahyono, 2022) In fact, a theoretical approach is very important to find out whether the policy is in line with legal principles such as certainty, justice and benefits. Studies using the framework of legal validity and legitimacy are still rare, so this article is here to fill that void. A comprehensive theoretical analysis is expected to explain the roots of normative issues hidden behind seemingly simple administrative policies. This article seeks to fill the gap in normative and philosophical analysis within the study

of administrative recognition of unregistered (nikah siri) marriages, which has thus far been predominantly approached from a sociological perspective.

Therefore, this article aims to review and analyze the policy of recognizing the status of "unregistered marriage" as stipulated in Permendagri No. 108/2019 using the theoretical approach of legal legitimacy and legal validity. Academically, this study is expected to contribute to strengthening the theoretical analysis framework on family law issues in Indonesia. While practically, the findings in this article are expected to be taken into consideration in reformulating marriage registration policies so as not to create legal ambiguity, and be able to bridge between formal legal values and social values that develop in society.

To examine this issue more deeply and thoroughly, this paper uses two main theoretical frameworks: Legal Legitimacy Theory and Legal Validity Theory. Legal legitimacy theory, which is rooted in a sociological approach, examines how a policy gains acceptance from society, as well as whether the norm is considered to have a moral basis that is worth adhering to. Meanwhile, the theory of legal validity is based on a normative-positivistic approach, particularly on the thoughts of Hans Kelsen and Nico Luhmann, which emphasize that a legal norm can only be considered valid if it is issued by a legitimate authority and does not contradict higher legal norms in the hierarchical structure of law.(Kelsen, 1970) By combining these two approaches, this article seeks to assess the extent to which the "unregistered marriage" recognition policy has a basis of social legitimacy as well as formal validity in the Indonesian legal system.

Although Permendagri No. 108/2019 formally has a legal basis as part of a technical regulation under the ministry, fundamental questions remain regarding the extent to which the policy is accepted by various actors in the legal system. Several studies have shown that officials in the field, both from the Population and Civil Registration Office and from the Religious Affairs Office, are often in a dilemmatic position. They have to choose between implementing administrative regulations that facilitate public services, or adhering to formal legal principles that require registration as a condition of a valid marriage according to Law No. 1/1974.(Lestari, 2023) This dilemma shows that the acceptance of the policy is uneven and indicates problems in its social legitimacy aspects.

From the point of view of legal validity, this policy presents a serious problem. Legal validity demands that any norms issued by state institutions must not contradict higher norms. In this case, Permendagri No. 108/2019 seems to provide space for the recognition of a form of marriage that is normatively not recognized by Law Number 1

Year 1974. This means that there has been what is called a norm conflict, which is a conflict between norms in one legal system that has the potential to damage the unity

and consistency of national law.(Syarif et al., 2023) This unsynchronization shows that even though it is administratively valid, the policy is prone to not meeting the normative validity requirements.

METHODS

This research uses qualitative research with a normative-theoretical approach. This approach focuses on analyzing the prevailing positive legal norms by using legal theory as a tool to examine the validity and legitimacy of a regulation. In this context, the normative approach aims to examine the structure, hierarchy and harmony between Permendagri No. 108/2019 and Law No. 1/1974 on Marriage and Law No. 23/2006 on Population Administration. While the theoretical approach is used to examine the policy through the perspective of Legal Legitimacy Theory and Legal Validity Theory, which play a role in explaining whether the status of "unregistered marriage" can be considered legal in the legal system and accepted by society normatively.

The source of data in this research is secondary data obtained through literature studies, namely primary legal materials such as laws and regulations, jurisprudence, as well as secondary legal materials in the form of scientific journal articles, legal theory books, and relevant previous research results. Data collection techniques were carried out through systematic literature searches, both from national legal databases and indexed international journals. All data were analyzed using the deductive-logical method, which draws conclusions from the general principles of legal theory to the concrete case of "unregistered marriage" status in population administration. The validity of the research was strengthened through critical and comparative literature review between norms and vertical synchronization between legal regulations, as suggested by normative law experts.(Marzuki, 2013)

DISCUSSION

Legality and Legitimacy of "Unrecorded Marriage" Status in the Indonesian Legal System

Marriage in the Indonesian legal system is not only a religious bond between two people, but also a legal institution that is normatively regulated by the state. Law No. 1 of 1974 emphasizes that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family based on the Almighty God.(Undang-Undang Republik Indonesia 1 Tahun 1974, 1974) The validity of marriage depends on the fulfillment of two main conditions: it is valid according to the laws of each religion and is registered according to the provisions of the applicable laws and regulations. This dualism often leads to legal problems, especially when There is a mismatch between religious practice and administrative recognition by the state.

Marriage registration in this context is not just an administrative formality, but a legal requirement to recognize and protect the legal rights arising from a marriage. When

a marriage is not officially registered, the legal consequences not only affect the legal status of the couple, but also the position of children born from the relationship. They are vulnerable to losing civil rights such as inheritance, maintenance, and legal standing in family law cases. Furthermore, the absence of registration opens the door to hidden polygamy practices and forms of exploitation of women that are difficult to control legally. (Syarif et al., 2023)

Meanwhile, the population administration system is regulated in Law No. 23/2006 which requires the recording of every important event, including birth, death, and marriage. Especially for Muslim citizens, marriage registration is carried out through the Office of Religious Affairs (KUA) as an official state institution that has the authority. In its implementation, this administrative policy sometimes accommodates legal events that do not meet the substantive requirements, as seen in the recognition of the status of "unregistered marriage" in Permendagri No. 108/2019. Doctrinally, this condition creates ambiguity between the function of recording as documentation of legal events and the recognition of legal status itself. (Herman, 2024) The contradiction between the provisions of Permendagri No. 108/2019 and other laws and regulations is summarized in the following table

No.	Regulations and Articles	Contents of Terms	Implication/Contradiction
1	Article 2 paragraph (2) of the Law No. 1 of 1974 concerning Marriage	"Every marriage shall be recorded in accordance with the applicable laws and regulations."	Requiring registration as a condition for marriage to be legally recognized.
2	Article 34 paragraph (1) of the Law No. 23 Year 2006 jo. Law No. 24 of 2013 on Civil Registration	"Marriage registration for residents who are Muslims is carried out by the implementing agency in accordance with the provisions of laws and regulations."	Registration for Muslims is only valid if done by the KUA, not Disdukcapil.
3	Article 14 paragraph (2) Permendagri No. 108 Year 2019	"In the event that the marital status has not been recorded, the status included in the population document is <i>unregistered marriage</i> ."	Giving administrative recognition to marriages that have not been legally recorded, thus contradicting the Marriage Law and the Civil Registration Law.

This table shows that Permendagri No. 108/2019 opens legal-formal space for *unregistered marital* status, even though juridically formal status is not recognized by higher laws. This creates norm disharmony and legal uncertainty in the practice of population administration. (Nofia Sari et al., 2023)

In positive law, it is important to make a clear distinction between recording as a form of registration of facts and recognition of status as a form of legalization. Recording should act as an administrative instrument that documents legal facts that have been substantively valid. However, in the case of "unregistered marriage", registration appears to be transformed into a form of administrative legalization of a status that is not yet valid according to national marriage law. This suggests a mismatch between administrative procedures and substantive legal norms, and in turn creates a crisis of validity in the legal system.(Lestari, 2023)

To examine the issue of normative validity, the framework of legal theory developed by Hans Kelsen is used. In *Pure Theory of Law*, Kelsen states that every legal system is arranged hierarchically, where lower norms derive their validity from the norms of the law.(Kelsen, 1967) In the Indonesian context, the constitution and Law No. 1 of 1974 can be seen as representations of the basic norms in family law. Permendagri as a derivative legal product must comply with this framework, and must not contradict the higher norms.

Kelsen distinguishes between formal validity and substantive validity. Formally, Permendagri No. 108/2019 is valid because it is issued by the competent authority. However, substantively, this policy causes problems because it administratively recognizes marital relationships that are not yet valid according to higher legal norms. This creates a normative gap that has the potential to reduce the integrity of the legal system as a whole due to the existence of subordinate norms that deviate from the main norm.

In addition to formal validity, the enforceability of a legal norm is also determined by its social acceptance. In this case, Legal Legitimacy Theory becomes important to understand why policies such as "unregistered marriage" can be accepted in practice, even though they are legally controversial. According to Luhmann (1985), legal legitimacy depends on the ability of a norm to be internalized in the social system through communication mechanisms.(Luhmann & Albrow, 2015) When formal norms are unable to reach the reality of society, then people tend to look for alternative paths that are more accessible, such as conducting sirri marriages. Therefore, administrative recognition of the status of "unregistered marriage" can be seen as the state's response to strong social legitimacy pressures.

Max Weber's (1947) view is also relevant in this context, especially when comparing the legal-rational authority held by the state, and the traditional or charismatic authority often exercised by religious leaders in the practice of sirri marriage. In many cases, people defer to traditional authorities who are considered legitimate according to their religious beliefs, rather than the complicated and costly state procedures.(Weber et al., 1979) When the state tries to accommodate this reality through administrative policies, it finds itself in a dilemma between maintaining the principle of legality or responding to the demands of social legitimacy.

In the context of family law and public administration, social legitimacy plays a crucial role in the effectiveness of legal implementation. A legal norm that is not accepted by society or is considered contrary to the values that live in society will be difficult to enforce effectively. Policies such as "unregistered marriage" can be understood as a form of compromise between social reality and the formal legal system, even though it risks weakening the authority and prioritization of state law in the long

run.(Daniela et al., 2024)

Criticism of the Legality and Normative Consistency of Permendagri No. 108/2019 in the National Marriage Law System

In the Indonesian legal system, the validity of a norm is not only measured by its formation procedure, but also by its conformity with higher legal norms in the hierarchy of laws and regulations. Article 7 paragraph (1) of Law No. 12/2011 on the Establishment of Legislation expressly stipulates that the order of regulations starts from the Constitution, Laws, to implementing regulations such as Ministerial Regulations. Therefore, every legal norm derived from higher laws and regulations must comply with and must not deviate from these provisions.

In that context, Permendagri No. 108/2019, which regulates the inclusion of the status of "unregistered marriage" in population documents, has sparked serious debate. This is because this regulation provides administrative space for recognizing the status of marriages that have not gone through official registration procedures at the Office of Religious Affairs or the Population Office, as required by Law No. 1 of 1974 concerning Marriage and Law No. 23 of 2006 concerning Population Administration. This creates a potential clash between administrative norms and substantive legal norms in the Indonesian legal system.(Rohmatullah, 2023)

From other aspects, the author summarizes at least 6 aspects that are affected by this legal inconsistency.

Aspects	Negative Impact	Brief Explanation
Law	Weaken legal certainty	The status "unregistered marriage" creates legal ambiguity between legitimate and illegitimate relationships.
State Administration	Excessive discretion of administrative agencies	Dukcapil determines marriage status without reference to legal validation from religious institutions/KUAs.
Women & Child Protection	Increased risk of injustice for women and children	Spouses and children of unregistered marriages are vulnerable to losing legal rights such as inheritance and maintenance.
Social Ethics and Religion	Reduced authority of religious and social norms	The state indirectly recognizes relationships outside of legal mechanisms according to religion and society.

Policy Abuse	Loopholes for hidden polygamy and evasion of legal obligations	Individuals may abuse administrative status to avoid the requirements of legal marriage.
Public Trust	Declining confidence in the consistency of the legal system	Policy inconsistency creates the perception of inconsistent and easily intervened laws.

The main problem with this policy lies in the incompatibility of the substance of the Permendagri with the principle of legality of positive law. Article 2 paragraph (2) of the Marriage Law explicitly requires that registration is an essential part of the validity of a marriage according to state law. However, Permendagri No. 108/2019 provides administrative legitimacy to conditions that are juridically invalid. This creates a dualism of norms-between population administration law and substantive law. marriage-which results in legal uncertainty and erodes the principle of the unity of the national legal system.(Kgs.Nurdin Yasin, 2023)

Furthermore, in Hans Kelsen's theory of legal validity, it is emphasized that the validity of a norm must be legitimately derived from a higher norm through a logical and systematic process in the "Stufenbau des Rechts" structure. If the lower norm contradicts the basic norm (grundnorm), then the norm loses its validity.¹⁶In this case, Permendagri No. 108/2019 contradicts the higher norms in Law No. 1 Year 1974 and Law No. 23 Year 2006, so it can be substantively considered invalid according to the Kelsenian principle of norm consistency.(Fuady, 2013)

Formally, it is true that the Permendagri was issued by an authorized institution, namely the Ministry of Home Affairs, which is the technical executor in the realm of population administration. However, legal validity is not solely determined by who issued it, but also by the conformity of the content of the norm with higher norms. If the content of the Permendagri deviates from the orders or restrictions of the law on which it is based, then the norm can be challenged for validity.

A deductive-logical approach to this case shows that the basic norms of national marriage law require registration as an element of legality. Therefore, granting the administrative status of "unregistered marriage" in state documents without the legal process of registration is a clear deviation from the principles of formal and material legality. This kind of recognition is also prone to create further problems, such as unclear legal status of children, inheritance distribution, and legal protection for wives and husbands in future civil disputes.

Thus, the existence of Permendagri No. 108/2019 not only contains normative defects, but also weakens the national legal system in ensuring certainty, justice and legal unity, especially in crucial matters such as marriage registration. Re-harmonization between the implementing regulations and the law is needed so that no inconsistencies that confuse officials and communities in administrative practice and legal protection.

Synchronization and Alternative Policy Formulation

In the dynamics of modern legal governance, one of the main challenges that often arises is how the state addresses the clash between positive legal norms and social realities that develop in society. One concrete manifestation of this dilemma can be seen in the administrative policy related to the recognition of the status of "unregistered marriage" regulated in Permendagri No. 108/2019. This policy, although administratively intended to accommodate sociological facts that are often found in communities with limited access to state services, in turn raises juridical, social and ethical polemics that are not simple. Structurally, this policy appears to collide with two higher national legal instruments, namely Law No. 1/1974 on Marriage and Law No. 23/2006 on Population Administration. The inconsistency between these regulations has created a gray area in the legal system, which creates ambiguity between the formal legality of state documents and the normative validity of the marital relationship according to the applicable law.(Maulana, 2023)

Normatively, Indonesian law requires marriage registration as a condition of valid state recognition of marriage bonds, as affirmed in Article 2 paragraph (2) of the Marriage Law. However, in practice, the state opens administrative channels that allow couples who do not register their marriages to still obtain limited legal recognition through population documents, by listing the status of "unregistered marriage." This reality creates a double dilemma: on the one hand, the government wants to solve the social problem of not recording many marriages, especially in remote areas or marginalized communities that have economic and geographical barriers; but on the other hand, the state indirectly provides legitimacy to legal relationships that are not yet normatively valid. The implication of this policy is the emergence of a new legal construct that creates tension in the national legal structure-a document that is administratively valid but not supported by a strong substantive legal basis.(Mahasina et al., 2023)

This phenomenon further reflects the urgency to carry out a vertical synchronization strategy between regulations in the Indonesian legal system. Based on the principle of hierarchy of laws and regulations, every technical regulation such as Permendagri must be subject to and obey the norms contained in the law. When administrative regulations create new norms that substantially change the meaning or intent of the law, this is a form of legislative deviation that disrupts legal certainty. In this context, Permendagri No. 108/2019 is considered to have created a normative space that should be the authority of legislators, not administrative authorities. As a result, legal certainty is disrupted, legal legitimacy is weakened, and public trust in the legal system can decline significantly because the law appears contradictory and fragmented in its implementation.(Setiawan, 2024)

Furthermore, the sociological implications of this policy are significant. In the perspective of Niklas Luhmann's social systems theory and Max Weber's sociology of law, a legal norm will not function effectively if it is not supported by strong social legitimacy. Legality alone - that is, the formal enforceability of a regulation - is not enough to ensure public acceptance of the law. When a legal policy relies solely on administrative procedures without paying attention to substantive legal values and normative expectations of society, it easily loses moral and social authority. In this case, administrative recognition of the status of "unregistered marriage" opens up

opportunities for deviant practices such as hidden polygamy, marriages without the consent of guardians, or informal relationships that avoid legal responsibility, which ultimately have the potential to harm women and children in the legal protection system. (Daniela et al., 2024)

The impact of this unsynchronized policy is not only normative, but also erodes the boundaries between legality and legal legitimacy. Law as a system should work as a whole and be integrated, not only in formal legal form, but also as an institution that guarantees substantive justice and comprehensive protection for citizens. When the state provides space for administrative recognition without preconditions Substantive law, the state indirectly fosters legal disobedience, while relativizing the meaning of marriage registration as a legal requirement.

As a solution, it is necessary to reformulate marriage registration policies that integrate formal legal dimensions, moral-religious values, and social sensitivity. This reformulation should not only close the space for administrative recognition of unregistered marriages, but also strengthen the ecosystem of marriage registration services: from simplifying procedures, eliminating or reducing fees, to expanding the reach of legal services to remote areas through cooperation between Disdukcapil, KUA, and village officials. The new regulation should also be designed to unify the registration mechanism in one inclusive interfaith system and ensure equal legal protection for every citizen, without discrimination of social status or religious background.

Moreover, legal education is a crucial component in harmonization efforts. The penghulu, religious leaders, and civil registration officials can function as agents of legal literacy, building public understanding that marriage registration is not just an administrative formality, but a legal mechanism that guarantees the protection of rights and obligations in household relations. Marriage registration must be understood as a legal right inherent in every individual, and the state has an obligation to facilitate the fulfillment of this right fairly and equitably.

With these steps, policy synchronization and reformulation will bring the Indonesian legal system towards integration that is not only formally legal, but also socially legitimated. Law will return to its function as a tool of social engineering, which not only organizes the structure of social relations, but also harmonizes legal norms with the dynamics of society in a more responsive and equitable manner.

CONCLUSION

The results of this study reveal that the policy of administrative recognition of the status of "unregistered marriage" through Permendagri No. 108/2019 creates significant legal ambiguity, not only reducing legal certainty in the Indonesian legislative system, but also opening space for legitimization of social relations practices that are not legally or religiously valid. This finding expands our understanding of the dynamics of inconsistency between formal law and social reality, and strengthens legal sociology theory that emphasizes the importance of social legitimacy in the effectiveness of legal norms. Socially and culturally, this policy shows how the state, in a technocratic effort to respond to the administrative needs of citizens, risks weakening the integrity of the law.

In an academic context, this finding contributes to the study of legal dualism and social engineering through legal instruments, by emphasizing the need for legal policies that are not only textually legal but also normatively legitimate. In an academic context, these findings contribute to the study of legal dualism and social engineering through legal instruments, by emphasizing the need for legal policies that are not only textually legal, but also normatively legitimate. However, this research has limitations in the scope of the study area and the non-quantitative approach that does not measure broad public perceptions. Therefore, further studies are recommended to explore the responses of people from various social and religious backgrounds more broadly, as well as assessing the effectiveness of alternative marriage registration policies based on an integrative approach....

Based on the results of this study, it is recommended that the government, especially the Ministry of Home Affairs and the Ministry of Religious Affairs, harmonize regulations by reviewing Permendagri No. 108/2019 so that it does not conflict with higher legal norms and strengthen the integrity of marriage registration. Legal practitioners and headmen in the field also need to be given continuous training to understand the social and legal impacts of administrative recognition of unregistered marriages, as well as to increase their educative role to the community. For academics, this research opens space for further study development with a triangulation of methods approach or interdisciplinary studies that combine aspects of law, sociology and legal anthropology. Future research needs to expand the scope of the area and consider direct community participation in exploring local perceptions and practices towards marriage registration, in order to enrich understanding of the dynamics of the relationship between legal norms and social reality more comprehensively.

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