

## VALIDITY OF POLITICAL PROMISES LEGALIZED BY A NOTARY

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### Abstract

This research aims to examine the validity of Political Promises legalized by Notaries. This research is normative legal research. In this normative research, several approaches were carried out, consisting of the Statute and Conceptual *Approaches*. *Material* processing Law is carried out deductively, concluding a general problem into a concrete problem. The results of the research show that the Author sees that the legalization of political promises made by a notary is not valid as an agreement because it does not consist of the parties, so it is said to be a unilateral declaration; the legalization of political promises made by a notary does not conflict with statutory regulations and provides a guarantee of certainty. Law rather than only being known and carried out by both parties.

**Keywords:** Political Promises; Legalization; Notary Public.

### INTRODUCTION

Notaries have certain powers granted by Law. Regarding the authority of a notary, UUJN is regulated in Article 15. The authority of a Notary, according to this article, is the authority to make authentic deeds regarding all deeds, agreements, and provisions that are required by statutory regulations and that are desired by interested parties to be stated in the Deed. Authentic, guaranteeing the certainty of the date the Deed was made, storing the Deed, providing Grosse, copies, and quotations of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by Law. A notary, as a position of trust, must keep confidential his deeds and the information/statements of the parties obtained in making the Deed unless the Law orders him to reveal the secret and provide the information/statements to the party who requests it.<sup>1</sup> Based on the authority above, the Notary can make a deed as long as the parties wish or according to legal regulations which must be made in the form of an authentic deed. Making the Deed must be based on legal regulations relating to the procedures for making Notarial deeds. Apart from that, paragraph (2) of Article 15 states that the Notary also has the authority to:

1. Validate the signature and determine the certainty of the date of the letter under the Hand by registering it in a special book;
2. Book documents privately by registering them in a special book;
3. Make copies of original letters under your Hand in the form of copies containing descriptions as written and depicted in the letter concerned ;
4. Validate the suitability of the photocopy with the original letter;
5. Providing legal counseling regarding the making of deeds;
6. Make deeds related to land or
7. Make a deed of auction minutes.

Apart from authority, notaries also have obligations, as stated in Article 16 UUJN. In Article 16 paragraph (1) letter, a UUJN states that the most important obligation of a notary, apart from the sequence, is also the interpretation so that the dignity of the office is well maintained, namely: In carrying out his office, the Notary is obliged to "act trustfully, honestly, thoroughly, independently, impartially, and safeguard the interests of the parties involved in legal actions."

In practice, there are two types of deeds: authentic and underhanded. Article 1868 of the Civil Code stipulates that an authentic deed is made in a form determined by Law by or before a public official authorized to do so in the place where the Deed was made. Meanwhile, a private deed is a private deed which is a letter of agreement made without involving a public official so that it is made solely by the interested party and is used as evidence for the party who signed it. A private deed will only be recognized as true and become evidence if the parties who signed the Deed acknowledge and justify their actions in containing the Deed.<sup>2</sup>

Based on the UUJN, a notary is a public official with the authority to make authentic deeds and a public official who carries out government duties primarily in Civil Law. The legal basis for the authority of a Notary as a public official who has the authority to make authentic deeds can be seen from the UUJN provisions in Article 1 point 1. The authority of a Notary is regulated in Article 15 UUJN, namely that the Notary has the authority to make authentic deeds regarding all acts, agreements, and stipulations that are required by statutory regulations and/or what is desired by the interested person to be stated in an authentic deed, guarantee certainty of the date of making the Deed, store the Deed, provide grossesse, copy and quotation of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by Law.<sup>3</sup>

A deed is a legal product made by a Notary. Based on the provisions of Article 1868 of the Civil Code, an authentic deed is a writing made in a form determined by Law or before a public official authorized to do so in the place where the Deed was made.<sup>4</sup>

Notary is a position of trust; this means that a Notary who carries out his official duties can be trusted and in carrying out his official duties, the Notary should keep confidential everything regarding the Deed he makes and all information he obtains to make the Deed by his oath or promise of office, except for the Law. -The Law stipulates otherwise, as stated in Article 16 paragraph (1) letter e UUJN, that provides services by the provisions of this Law unless there is a reason to refuse it. It is also emphasized that keeping everything related to the Deed and other documents confidential is to protect the interests of all parties related to the Deed.<sup>5</sup>

To make a private deed have more legal force, this Deed will be legalized or registered with a notary's office, as stated in Article 15 paragraph (2) UUJN that the Notary has the authority to certify the signature and determine the certainty of the date the private Deed will be registered in the book. Special.

Registration of private deeds can be done in two ways, namely *legalization*<sup>6</sup> and *waarmerking*. Legalization is where the document/letter made under the Hand is signed in the presence of a notary after the document/letter is read or explained by the Notary concerned and *Waarmerking* is where the document/letter in question is registered in a special book made by the Notary

which is usually done if the document/letter has been signed first by the parties before being submitted to the Notary concerned.<sup>7</sup>

In practice, in a contestation for both Regional Head Elections and Village Head Elections, the candidates record their political promises to a Notary, for example those who won the most votes in the regional head election (pilkada) of Takalar Regency, South Sulawesi, Syamsari Kitta and Ahmad Dg Se're admitted that they had including 22 superior work programs in the notarial Deed. This is proof of commitment to their voters.<sup>8</sup>Based on the results of the Author's pre-research, what becomes the legal form when a political promise is registered at a notary is legalization.

The same thing is also done in the election of village heads, for example in the election of the Head of Rejoyoso Village, Malang Regency, the Vision and Mission of the Head of Rejoyoso Village is made in the form of a Deed of Statement written at the Notary & PPAT of Malang Regency,<sup>9</sup>

Apart from the context of regional head elections and village head elections, legalization of notaries is also used in the election of political party leaders, for example at the IV Regional Conference of the South Sulawesi Provincial Democratic Party for the 2021-2026 period, namely at that time 16 Democratic Party DPCs endorsed letters of support to notaries, Andi Sengeng Pulaweng Salahuddin, SH, MK.n, Tuesday December 21 2021.<sup>10</sup>

Notaries in carrying out their duties and authority based on UUJN, Notaries work based on agreements and/or requests from users of their services. A notary only works after there is a request from a certain party to make a legal document or ratify a legal document. The work of a Notary is to legitimize a legal act employing his signature and seal, the document explaining the legal act is acknowledged.

The phenomenon of legalizing political promises is a special way for regional head candidates to convince constituents, but what needs further study is whether the intended political promise is an agreement in the context of civil Law because 'political promises' are only made during the campaign, voters also do not bind themselves to do so. An achievement of this 'political promise'

## RESEARCH METHODS

The research method that the Author uses in this research is normative juridical, namely research that examines written legal norms by referring to related legal provisions.<sup>11</sup>Normative juridical is legal research carried out by examining secondary data. Normative research, or doctrinal research, explores the applicable provisions regarding one specific matter.<sup>12</sup>In this research, the Author uses several approaches to analyze existing problems to answer the problems comprehensively, including *the Statute Approach* and the *Conceptual Approach*.

## RESULTS AND DISCUSSION

According to R. Subekti, an agreement is when one or more people promise to carry out an agreement or promise each other to do certain things.<sup>13</sup> The term agreement is more often equated with a contract. This is because in its meaning, an agreement or contract is considered to both give rise to a legal relationship in the form of an obligation, where the parties agree on one or more things and are obliged to carry out and obey what has been agreed. This means that the engagement arising from the agreement or contract gives rise to rights and obligations that both parties must obey.

Meanwhile, referring to Article 1313 of the Civil Code, an agreement is an act by 1 (one) or more parties which binds itself to 1 (one) or more parties. The definition of agreement in the Civil Code and experts are substantially different. However, some experts consider that this article is incomplete and has weaknesses, one of which is that the article only concerns one side, seen from the phrase "one or more people bind themselves to one or more people". The word "bind" is a verb that only comes from one party, so it appears that only one party is binding itself, while the other party is not. In fact, what is meant by an agreement is that at least there must be an agreement between the two parties agreeing.

An agreement or contract can be legally binding for both parties, so the agreement or contract is required to fulfill the legal requirements for an agreement regulated in the Civil Code. Article 1320 of the Civil Code states that the conditions for the validity of an agreement/contract are as follows:

- 1) They agreed to bind themselves
- 2) The ability to make an agreement
- 3) There is a certain thing
- 4) There is a legitimate cause

Conditions 1 and 2 are called subjective conditions. If the subjective requirements are unmet, the agreement/contract can be canceled. Meanwhile, conditions 3 and 4 are called objective conditions. If the objective conditions are not met, then the agreement/contract is null and void by Law.

An agreement void by Law is an agreement that was void from the start and is unlikely to give rise to legal consequences for both parties. Agreements that are contrary to Law, morality and public order are null and void. The agreement can be cancelled, meaning that one party has the right to request that the agreement be cancelled.<sup>14</sup>

Meanwhile, political promises are closely related to the Democratic Party, namely the General Election. Samijo considers that elections are a process of evaluating and re-establishing a social contract between citizens and candidates for public office.<sup>15</sup> On February 14 2024, Indonesia will again hold a democratic party, namely the election of the President and Vice President and Legislative Members for the 2024-2029 period in all regions of the Republic of Indonesia. At one stage of the election later, political promises will be scattered everywhere.

Election participants will convey this political promise during the campaign period. Based on Article 1 number 35 of Law Number 7 of 2017 concerning General Elections, a campaign is the activity of election participants or other parties appointed by election participants to convince voters by offering a vision, mission, program and/or self-image of election participants. Article 267 of the Election Law states that the election campaign is part of the community's political education which is carried out responsibly, where it is carried out simultaneously between the presidential and vice presidential election campaigns and the election campaigns for members of the DPR, DPD and DPRD. During this campaign, a form of agreement between candidates for public office and the local community is formed with various kinds of campaign promises, commonly known as political promises.

Nasiwan called this political promise a political contract. A political contract is a form of agreement that candidates usually make for public office with the people who are their constituents. A political contract is an attempt by society to legitimize candidates for public office so that when the official is elected they are expected to act by the agreed promises.<sup>16</sup>

The Author believes, this political contract is the effect of people's distrust of their candidates for public office. Because the programs, visions and missions conveyed by candidates for public office are rarely realized when they occupy public office. Quite a few public officials abuse their position. Political promises are only used as a tool to boost votes, that's all.

Finally, some candidates for public office use new instruments to strengthen their political promises, namely using the authority of a notary to legalize a contract or agreement between a candidate for public office and the community as their constituents. The legalization referred to here is a document/letter (a political promise outlined in a political contract) made privately, signed in the presence of a notary. This authority is based on Article 15 paragraph (2) letter a which stipulates that a notary has the authority to certify the signature and determine the certainty of the date of the handwritten letter by registering it in a special book.

The legalization of political promises by a notary which became a political contract sparked a discourse as to whether political contracts could be categorized as agreements as regulated in civil Law (the Civil Code) or not. To assess whether a political contract can be considered an agreement or not, it can be identified based on the conditions for the validity of an agreement as stated in Article 1320 of the Civil Code.

It has been mentioned above that there are 4 (four) conditions for the validity of an agreement, namely:

### **1) They agreed to bind themselves**

The first thing that needs to be studied is who the parties agreed to the political promise. It is said that this political promise is between election participants (candidates for public office) and the local community. This means that the parties who agree to the political promise are election participants and the local community. For example, a political promise made by a candidate for DPRD membership in a certain area. This candidate must have an electoral district (Dapil) which consists of all the people in that electoral district. This means that the agreement must be established between the prospective members of the DPRD and the entire

community in the electoral district, all of whom must sign. There cannot be representation because the principle of elections is direct. Even though representation is used, no benchmarks or indicators assess that some people have represented others who were not present.

Meanwhile, in the election campaign, not all people came. It is quite impossible for all the people in the electoral district to come to the Notary's office in the process of legalizing political promises. On the other Hand, if only some people come, then the agreement will only happen to some people. At the same time, the political promise will be realized for the entire community in the electoral district. This means that the agreement cannot occur because it cannot be guaranteed that everyone agrees with the political promise. Not all the people are present at the process of legalizing the political promise at the Notary. Not to mention the fact that other election participants also carry out political contracts in the same electoral district. This agreement could conflict with other political participants who want themselves to be elected by their people. This means that this agreement cannot be measured because it cannot be ensured that all people agree with the political promise; in other words, some people do not agree.

For example, those who won the most votes in the regional head election (pilkada) of Takalar Regency, South Sulawesi, Syamsari Kitta and Ahmad Dg Se're admitted that they had included 22 superior work programs in their notarial Deed. This is proof of commitment to their voters.<sup>17</sup> Furthermore, the vision and mission of the regional head candidate was implemented by a notary to attract sympathizers from the prospective voters in Takalar Regency, as well as to convince the residents of Takalar Regency that the Syamsari-Ahmad election was committed by proving its seriousness in 22 work programs which were part of the vision and mission using how to make it and sign it in front of a notary even though the general public does not understand about notarial products and the power of proof. Notary Yusran Sirath, SH. Implements the work program of the candidate for Regent and Deputy Regent of Takalar Regency, designed in the form of a political contract. Yusran Sirath said that in fact the implementation of the political promise of the candidate pair for regent and deputy regent candidate Syamsari Kitta and Ahmad Dg Se're which was signed in my presence, according to him, could be taken beyond the rules because according to him this was a promise to the residents of Takalar district. There was a caveat in the promise made. It was announced that if he could not fulfill his political promise, namely fulfilling the 22 work programs for three years, his leadership was ready to resign from his position as Regent and Deputy Regent of Takalar Regency.

Refers to the definition of legalization where documents/letters made privately are signed in the presence of a notary. This means that if the community signs, the agreement is in place. However, it must be signed by the entire community in the electoral district because political promises cannot be realized only by some of the people in the electoral district, but rather by the whole community. If there is no signature from the community, this is a unilateral agreement. There is no rejection from society, but society is not charged with candidates' achievements for public office, quite the opposite.



## 2) The ability to make an agreement

The skills referred to here are the ability to carry out legal actions. <sup>18</sup>Persons not authorized to carry out legal actions are: (i) minors; (ii) people placed under guardianship. <sup>19</sup>If contextualized with political promises, this element can be fulfilled, namely that election participants will enter into an agreement attended by people who meet the requirements as voters, proven by population information. However, it will return to the first condition, that it does not guarantee that all the people who are competent according to the Law will agree with the election participants, let alone come to the Notary's office to witness the legalization of the political promise. There are certainly some people who do not agree, even though they are competent.

## 3) There is a certain thing.

Article 1234 of the Civil Code states that an agreement is intended to give something, to do something or not to do something. Contexted with political promises, the "certain thing" referred to here is the promises made by election participants. Referring to the electoral stage, these political promises can only be conveyed at the campaign stage. Based on Article 274 paragraph (1) of the Election Law, campaign materials include:

- Vision, mission and program of candidate pairs for presidential and vice presidential election campaigns
- Vision, mission and political party programs for political parties participating in elections implemented by candidates for DPR members, Provincial DPRD members and Regency/City DPRD members
- The vision, mission and programs concerned are for individual campaigns carried out by prospective DPD members.

If elected later, the candidate for public office (election participant) will fulfill his achievements by providing something and/or doing something per the agreed political contract.

As the Author explained, this agreement will give rise to rights and obligations between the parties. These rights and obligations depend on what type of agreement the two parties are bound by. Abdul Kadir divides them into reciprocal agreements and unilateral agreements. A reciprocal agreement is an agreement that requires both parties to perform reciprocally, as is the case in sale and purchase, rental and exchange agreements. A unilateral agreement is an agreement that requires one party to perform and gives the other party the right to receive the achievement. An example is a grant (Article 1666 of the Civil Code). <sup>20</sup>This is in line with the opinion of R Subekti, who believes that an agreement is an event where someone makes a promise to another person or two people promise each other to do something. <sup>21</sup>The definition of Subekti means that there are reciprocal agreements and unilateral agreements.

If contextualized with a political contract, election participants and the community have rights and obligations regarding reciprocal agreements. Election participants' offers are political promises. Then, election participants must realize their political promises. Meanwhile, the people's right is to receive the realization of the political promises of election participants. So, what rights do election participants receive and what obligations must society fulfill towards

election participants? Let's say that the achievement given by the community is to vote or elect the election participants. This means that the public is obliged to choose the election participants, while election participants have the right to the votes of their people.

The problem then is, what if some people do not choose the election participants. This means those who do not vote have broken their promise (default). While the election is secret, it cannot be known who did not vote. This default will be difficult to attribute to whom because it cannot be identified who voted and who did not vote. Thus, "a certain thing" or society's achievements cannot be determined.

Meanwhile, in unilateral agreements, election participants are the ones who unilaterally bind themselves to the community through the points of their political promises. The public has no attachment to election participants. The community does not have achievements that must be given to election participants. On the other Hand, election participants are the ones who have ties to society through presenting political promises when conveying their vision, mission and programs during the campaign. Election participants have achievements that must be realized, namely their political promises.

This unilateral agreement is possible because it refers to Article 1313 of the Civil Code, which according to Abdul Kadir, the word "bind" is a verb whose connotation only comes from one party, so it appears as if only one party is binding themselves, while the other party is not binding himself.<sup>22</sup>

If the political contract is understood as a unilateral agreement, then this third condition becomes clear: "a certain thing" in question is the political promises of election participants.

#### **4) There is a legitimate cause**

A lawful cause means that an agreement must be based on a lawful cause or one permitted by Law. The criteria or measurements for a halal cause are: <sup>23</sup>a) The agreement made must not conflict with the Law; b) The agreement does not conflict with morality; c) The agreement must not conflict with public order.

Article 1337 of the Civil Code determines that a lawful cause or power is if it is not prohibited by Law, and does not conflict with public order and morality. An agreement that does not have an unlawful reason will result in the agreement being "null and void".

Suppose the political contract is a reciprocal agreement. In that case, the cause is not halal because it conflicts with one of the election principles in the Election Law, namely the principle of freedom, that every citizen with the right to vote is free to choose without pressure or coercion from anyone. Political contracts legalized by a notary force people to choose the election participants, not others. Indirectly, it also gives the impression that it violates the principle of secrecy in the Election Law, because it is no longer a secret who the public will vote for.

Apart from that, the points of the political promise must be identified, if the points of the political promise are not within the area of authority of the candidate for political office, then the cause is not halal. For example, a pair of candidates for regional head and deputy regional



head make political promises about something. Still, it turns out that based on the applicable laws and regulations, these promises do not fall under the regional government's authority, but rather the central government's authority. Then, the item of the promise is not halal because it is contrary to the laws and regulations that regulate it. This means that if the political promise of a candidate for public office is not within his or her authority based on applicable laws and regulations, the agreement will be illegal or contrary to the Law.

So it can be concluded that even though a political contract is understood as a unilateral agreement for this condition of halal causation, if the political promise is not within the candidate's authority for public office, then the causation is not halal. If all of his political promises are within his area of authority, then this unilateral agreement is halal. However, only election participants unilaterally bind themselves to society through their political promises. Meanwhile, the community is not required to do anything.

The 4 (four) conditions for the validity of the agreement above, which are used as benchmarks for assessing the validity of a relationship, can be said to be an agreement/engagement or not. Djuhaendah explained that for an agreement to be valid, it must meet the requirements for the validity of the agreement based on 1320 of the Civil Code. <sup>24</sup>So, based on the analysis of the conditions for the validity of the agreement above, the political contract between candidates for public office (election participants) and the public cannot be called an agreement, but rather a unilateral declaration, where the public is not bound by the achievements of the candidate for public office. The political promises are within the candidate's authority for public office.

Article 15 paragraph 1 of the Law on the Position of Notaries states that a Notary has the authority to do authentic Deeds regarding all deeds, agreements and stipulations that are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of doing the Deed, keep Deed, giving grosse, copy and quotation of the Deed, all of this as long as the Deed is made is not also assigned or excluded to another official or other person as determined by Law.

The Notary's authority is expanded in Article 15 paragraph (2), namely:

- a) Validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book;
- b) Record letters privately by registering them in a special book;
- c) Make a copy of the original letter under hand in the form of a copy containing the description as written and depicted in the letter concerned ;
- d) Validate the suitability of the photocopy with the original letter;
- e) Provide legal counseling regarding the making of deeds;
- f) Make deeds relating to land or
- g) Make a deed of auction minutes.

Then, Article 15 paragraph (3) states that apart from the authority as referred to in paragraph (1) and paragraph (2), Notaries have other authorities as regulated in statutory regulations.

The article above gave rise to two terms known to notaries: legalization and *warmarking*. Legalization is where the document/letter made privately is signed in the presence of a notary, after the document/letter has been read or explained by the Notary concerned, and *Waarmerking* is where the document/letter in question is registered in a special book made by the Notary which is usually done if the document/letter has been signed first by the parties before being submitted to the Notary concerned.

If put into context with the act of legalizing political promises made before a notary, then it is the Notary's authority to do this, as stated above in Article 15 paragraph 2 letter a. Apart from that, the Law on Notary Positions and other laws and regulations also do not prohibit this from being done. Legalizing political promises a notary makes does not conflict with any statutory regulations.

Times continue to change, as do people's communication patterns, whether it is daily communication or in the context of agreeing. In the current era, society no longer prioritizes agreements based on trust without a written relationship/bond. In contrast to written agreements, legal protection for unwritten (oral) agreements is very weak. Proving the existence of a written agreement is very concrete, namely by referring to what is written in the agreement. Meanwhile, unwritten (oral) agreements are very easy to deny and difficult to prove. For this reason, the public is increasingly realizing how important notaries are, especially in providing guarantees of legal certainty for those (parties) entering into agreements or engagements, as well as being the perfect means of evidence if a dispute arises.

Legal certainty is an important principle in an agreement. The Engagement Law Workshop held by the National Legal Development Agency, Ministry of Justice from 17 to December 19 1985 succeeded in formulating eight principles of national engagement law, one of which is the principle of legal certainty.<sup>25</sup> This principle of legal certainty is expressed in the binding force of agreements, namely as Law for those who make them. This is better known as *asa pacta sunt servanda*.

In the Civil Code, the principle of *pacta sunt servanda* is stated in Article 1338 paragraph (1) that "all agreements made by Law are valid as Law for those who make them. This consent cannot be withdrawn other than by agreement of both parties, or for reasons determined by Law. Agreements must be implemented in good faith."

Furthermore, Salim HS explained that the principle of legal certainty in agreements is also called the principle of *pacta sunt servanda*.<sup>26</sup> Munir Fuady also explained that the principle of *pacta sunt servanda* is often also called the principle of legal certainty.<sup>27</sup> This principle relates to the consequences of the agreement. The principle of *pacta sunt servanda* is a principle that explains that a judge or third party must respect the substance of the contract made by the parties, as befits a law. They may not intervene in the substance of the contract made by the parties.

The involvement of authorized officials in making or signing an agreement further strengthens the guarantee of legal certainty. This relates to the types of deeds, namely authentic deeds (notarial deeds) and private deeds. Salim HS explained that a private deed is a deed that is simply made and signed by the parties. Meanwhile, an authentic deed is made by or before a notary. The Deed made by the Notary is an official deed.<sup>28</sup>

The position of a political promise that a notary legalizes provides a stronger guarantee of legal certainty than just being known and carried out by both parties. Because the position of a notary as an official who has the authority to register, legalize, record and various other authorities over deeds of agreements is the authority granted by Law. So that the power of proof of the existence of an agreement (Deed) is stronger and recognized. However, the context of political promises legalized by a notary only binds candidates for political office. As the Author has explained above, the binding agreement between prospective public officials and the community is one-sided. The burden of achievement is placed on candidates for public office, not the community. Nevertheless, the guarantee of certainty is inherent in both, that candidates for public office must fulfill their achievements (political promises that have been legalized), while the public is the party who receives the achievements. As per the principle of *pacta sunt servanda*, political promises which a notary legalizes, candidates for public office must keep their promises by the Law.

## CONCLUSION

The validity of a political promise that a notary legalizes is not valid as an agreement because it does not consist of the parties, so it is said to be a unilateral declaration, the legalization of a political promise made by a notary does not conflict with statutory regulations and provides stronger legal certainty than just knowing and doing it. By both parties. Because the position of a notary is an authorized official given by Law. However, the context of political promises legalized by a notary is only binding on candidates for political office, the burden of achievement is placed on candidates for public office, not on the community. Nevertheless, the guarantee of certainty is inherent in both, that candidates for public office must fulfill their achievements (political promises that have been legalized), while the public is the party who receives the achievements.

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