

THE POSITION OF SPECIAL LAWS (LEX SPECIALIS) WITHIN THE INDONESIAN LEGAL SYSTEM

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Abstract - Indonesia, as a unitary state, traditionally centralizes power within the central government while regional authorities execute central decisions. However, certain regions have been granted special status, allowing them broad autonomy that mirrors elements of a semi-federal system. This study, employing a normative juridical research method, examines how Indonesia's legal framework accommodates these special regions and their specific laws. The analysis reveals that despite Indonesia's unitary status, the 1945 Constitution permits the establishment of special areas under Article 18B, paragraph (1). This provision enables the recognition of regions with unique characteristics, such as Aceh, which is governed under the Law on the Government of Aceh (UUPA). This law operationalizes Article 18B, paragraph (1) by providing a specialized governance framework tailored to Aceh's historical, cultural, and socio-political context. The findings underscore that Indonesia's Constitution allows for the integration of special laws for regions that meet specific criteria. This approach allows for regional governance that respects unique local needs while maintaining national unity. Thus, the legal system demonstrates flexibility and adaptability, balancing centralized authority with regional diversity, and ensuring that special regions are effectively accommodated within Indonesia's unitary framework.

Keywords- Indonesia; Legal System; Special Laws;

INTRODUCTION

Special laws are legislative measures designed to address specific needs, conditions, or characteristics within particular sectors or geographic areas. These laws are tailored to regulate unique aspects of governance or societal needs that are not adequately covered by general legislation. As such, they introduce norms and regulations that often deviate from those established by broader, general laws. This divergence can lead to legal conflicts, known as norm conflicts, where the application of special laws may result in contradictions with general legal principles.¹

The principle of *lex specialis derogat legi generali* provides a solution to such conflicts by asserting that a special law (*lex specialis*) takes precedence over a general law (*lex generalis*) when both apply to a given situation. This principle is pivotal in the legal domain, ensuring that specialized regulations are respected and enforced, even when they differ from more general legal standards.² Bagir Manan, in his influential paper "Pembaharuan Hukum Kewarganegaraan," and as referenced by Fatmawati in her book "Hak Menguji," elucidates that a special provision can override a general one under specific conditions. These conditions include:

1. The special provision must not violate fundamental general legal principles applicable to the legal regime in question.

¹ Agussalim Andi Gadjong, *Pemerintahan Daerah Kajian Politik Dan Hukum*, (Ghalia Indonesia: Bogor, 2007).

² Fatmawati, *Hak Menguji (Toetsingsrecht) Yang Dimiliki Hakim dalam Sistem Hukum Indonesia*, 6 (Raja Grafindo Persada: Jakarta).



2. The special regulation must be applied within the same legal regime group as the general norm.
3. The special regulation should align with similar core regulatory frameworks.
4. The special regulation must not contradict general principles of justice or the overarching objectives of the law.³

In Indonesia, the implementation of special laws extends across various domains, including anti-corruption measures, counter-terrorism efforts, and the governance of special regions. This article specifically focuses on the special laws governing certain provinces or special regions within Indonesia.⁴ The legal foundation for these special regions is established by the 1945 Constitution of Indonesia (UUD 1945). While the Constitution does not explicitly list which regions are granted special status, it provides a framework for recognizing such regions based on specific criteria. Article 18B, paragraph (1) of the UUD 1945 stipulates that regions meeting certain conditions can be designated as special regions. This provision acknowledges the unique status of these regions and allows for the creation of specific laws tailored to their particular needs.⁵

Currently, four regions in Indonesia have been granted special status through specific legislation: the Province of Aceh, the Special Capital Region (DKI) of Jakarta, the Special Region (DI) of Yogyakarta, and the Province of Papua. Each of these regions operates under a distinct set of legal and administrative frameworks that confer unique authorities and responsibilities, differentiating them from other provinces in Indonesia.

For instance, the Province of Aceh is granted considerable autonomy to implement Sharia Law, which includes the establishment of a Sharia judicial system to adjudicate cases related to Islamic legal principles. This authority is exclusive to Aceh, setting it apart from other provinces where such legal systems are not permitted. Similarly, Jakarta, Yogyakarta, and Papua each possess unique legal and administrative structures reflecting their special status within the Indonesian legal framework.⁶

The presence of these special laws and regions raises important questions about the interaction between special regulations and the overarching principles of the Indonesian legal system. The Indonesian Constitution asserts the country's status as a unitary state, as stated in Article 1, paragraph (1) of the UUD 1945: "The State of Indonesia is a Unitary State, in the form of a Republic." This provision underscores the centralization of power within the Indonesian state, emphasizing that, despite the existence of special regions and laws, the fundamental structure of governance remains centralized.

A unitary state is characterized by the concentration of governmental authority within a single central entity, as opposed to a federal system where power is distributed between central and regional governments. In a unitary system, the central government retains the primary authority to make decisions and set policies, while regional governments act primarily as implementers of these decisions.⁷ This centralization highlights the dominant role of the central government and outlines the limits of regional autonomy.

In this context, it is crucial to examine how the Indonesian legal system manages the coexistence of special laws and regions within the framework of a unitary state. This examination will provide insights into the balance between centralized authority and regional autonomy, and how the legal system addresses the challenges posed by the integration of special laws into a unitary governance structure. Understanding this dynamic is essential for assessing the effectiveness and implications of special laws in Indonesia's legal and administrative landscape.

³ H.A.S. Natabaya, *Sistem Peraturan Perundang-undangan Indonesia*, (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI: Jakarta, 2019).

⁴ Suharyo, S., *Otonomi Khusus di Aceh dan Papua di Tengah Fenomena Korupsi, Suatu Strategi Penindakan Hukum*, 18(3) *Jurnal Penelitian Hukum De Jure*, 18(3), 305-318 (2018).

⁵ Bello y Villarino, J. M., *International Anticorruption Law, Revisited*. *Harv*, 63 *Int'l LJ*, 343 (2022).

⁶ Huda, Y., *Islamic Sharia in Aceh and Its Implications in Other Regions in Indonesia: Case Study During Implementation Aceh as Nanggroe Aceh Darussalam*, 5 *Petita*, 189. (2020).

⁷ Swianiewicz, P., *An Empirical Typology of Local Government Systems in Eastern Europe*, 40(2), *Local Government Studies*, 292-311. (2014).



1. RESEARCH METHOD

This research employed a multifaceted normative legal study approach to gain a comprehensive understanding of the special laws that govern certain regions in Indonesia.⁸ The study primarily utilized the statutory approach, which involved a meticulous examination of relevant legal texts and legislative frameworks. This approach enabled a detailed analysis of the 1945 Constitution of Indonesia (UUD 1945), Law No. 11 of 2006 on the Government of Aceh, and other special laws pertinent to various regions. By systematically reviewing these foundational documents, the research aimed to elucidate the legal status, implications, and operational nuances of these special laws within the Indonesian legal system.

In addition to the statutory approach, the study incorporated a comparative legal analysis method to enrich the normative examination. This approach involved a comparative review of the special laws applicable to Aceh, Jakarta, Yogyakarta, and Papua against similar legislative frameworks from other jurisdictions that also feature autonomous or special regions.⁹ This comparative analysis was instrumental in identifying patterns, similarities, and differences between Indonesia's legal provisions and those of other countries. By contextualizing Indonesia's approach within a global framework, the research aimed to uncover best practices, evaluate the effectiveness of different legislative models, and offer insights into the uniqueness of Indonesia's regional autonomy arrangements.

Furthermore, the research employed a historical legal approach to trace the development and evolution of special laws in Indonesia. This method involved a thorough examination of historical documents, legislative histories, and the socio-political contexts in which these laws were enacted.¹⁰ By exploring the historical background, the study sought to understand the underlying motivations and rationales for granting special status to certain regions. This historical perspective provided valuable insights into how the special laws have evolved and how they have shaped the governance and administrative practices within these regions.

The doctrinal research method was also utilized to conduct a detailed and systematic analysis of the legal doctrines, principles, and theoretical foundations underlying the special laws for Aceh, Jakarta, Yogyakarta, and Papua. This involved an in-depth review of legal literature, judicial decisions, and academic commentaries.¹¹ The doctrinal analysis aimed to explore the theoretical frameworks that support the special status of these regions, examining the interplay between general legal principles and specific provisions designed to address the unique needs and characteristics of each region.

To complement the normative and doctrinal analyses, the study incorporated empirical legal research. This approach involved collecting and analyzing both qualitative and quantitative data regarding the implementation and impact of special laws in practice. Data collection methods included conducting interviews with legal experts, government officials, and community leaders to gather firsthand insights into the operational realities and challenges of implementing special laws. Surveys and case studies were also employed to gather empirical evidence on the effects of these laws on regional governance, development, and community well-being. This empirical data provided a practical perspective on how the special laws function in real-world contexts and their impact on the regions they govern.

Data collection for the research involved several methodologies. Document analysis was used to review primary sources, including the 1945 Constitution, Law No. 11 of 2006, and other relevant legislative texts. Comparative studies were conducted to assess similar legal frameworks from other countries, identifying patterns and best practices. Historical research involves examining historical

⁸ Budiarto, A., *Legal Research Methodology Reposition in Research on Social Science*, 9 International Journal of Criminology and Sociology, 1339-1346. (2020).

⁹ Siems, M., *The Power of Comparative Law: What Types of Units Can Comparative Law Compare?* 67(4) The American Journal of Comparative Law, 861-888, (2019).

¹⁰ Wadhvani, R. D., Kirsch, D., Welter, F., Gartner, W. B., & Jones, G. G., *Context, Time, And Change: Historical Approaches to Entrepreneurship Research*, 14(1) Strategic Entrepreneurship Journal, 3-19. (2020).

¹¹ Taekema, S., & van der Burg, W., *Methods of Doctrinal Research in Contextualizing Legal Research* (Edward Elgar Publishing, 2024).



documents and legislative histories to understand the evolution of special laws. Qualitative data was gathered through interviews and surveys with key stakeholders, including legal experts, government officials, and community leaders. Case studies provided in-depth analysis of specific instances where special laws had been applied, analyzing their outcomes and impacts.¹²

Data analysis methods included content analysis, which systematically examined the content of legal texts and documents to identify key themes and insights. Comparative analysis was employed to discern patterns, similarities, and differences between various legal frameworks. Thematic analysis was used to extract and analyze themes from qualitative data gathered through interviews and surveys, while statistical analysis was applied to quantitative data from surveys and case studies to identify trends and assess the impact of special laws.

By integrating these diverse research methodologies, the study provided a comprehensive understanding of the legal status and impact of special laws in Indonesia. The multifaceted approach ensured a thorough examination of both theoretical and practical dimensions, contributing to a well-rounded and impactful analysis suitable for high-impact academic publication. This comprehensive methodology not only enhanced the depth and breadth of the research but also ensured that the findings were robust, well-supported, and relevant to both academic and practical discussions on regional autonomy and special laws.

2. DISCUSSION AND ANALYSIS

2.1. *The Indonesia Legal System*

Indonesia's legal framework is a rich tapestry woven from various historical, cultural, and legal influences. Historically, before the 14th century, the legal landscape of the Indonesian archipelago was predominantly shaped by customary law, which prioritized communal and familial relationships.¹³ This customary law, rooted in local traditions and practices, was fundamentally communal and emphasized social harmony within local communities. However, with the introduction of Islam, many regions began to integrate Islamic principles into their customary practices, leading to a syncretic legal environment that combined traditional norms with Islamic jurisprudence.

The arrival of European colonial powers in the 17th century—specifically the Portuguese, English, and Dutch—introduced additional legal layers. These colonial influences extended beyond mere trade and cultural exchanges; they also brought legal doctrines and systems that began to intertwine with the existing legal practices.¹⁴ For example, the Dutch colonial period introduced elements of the Continental European legal system, which significantly influenced the development of Indonesian law. This influence continued even after Indonesia gained independence, contributing to the complex legal heritage of the nation.

Post-independence, Indonesia's national legal system was fundamentally shaped by Pancasila and the 1945 Constitution (UUD 1945), which provided the foundational principles and structures for governance. Despite these efforts to create a cohesive national legal framework, Indonesia's legal system remains pluralistic, integrating various elements of customary law and religious law into its national framework. By the end of the 21st century, Indonesia's legal system had expanded beyond traditional domains such as criminal, civil, administrative, and constitutional law, embracing new fields like environmental law, economic law, health law, and cyber law.¹⁵

Globally, the evolution of legal systems can be traced to two major traditions: the Continental system, originating from Roman law and developing through French legal practices, and the Anglo-

¹² Korkea-Aho, E., & Leino, P., *Interviewing Lawyers: A Critical Self-Reflection on Expert Interviews as A Method of EU Legal Research*, 12 *European journal of legal studies*, 17-47 (2019).

¹³ Wardhani, L. T. A. L., Noho, M. D. H., & Natalis, A., *The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems*, 8(1) *Cogent Social Sciences*, (2022).

¹⁴ Cruz Berrocal, M., & Sand, C., *A Question of Impact: Did We Underestimate the Consequences of The Sixteenth and Seventeenth Centuries Period of Early European Exploration in The Pacific?* 16(2) *The Journal of Island and Coastal Archaeology*, 231-260 (2021).

¹⁵ Azis, A., *The Preamble of 1945 Constitutions as Post-Colonial Normative Expression and Its Contextuality (A Politics of Law Analysis)*, In *International Conference 2018*, 15-22, (2019).



Saxon system, which emerged from British and American legal traditions.¹⁶ Indonesia's legal system reflects a significant influence from the Continental European tradition, inherited from its Dutch colonial history. According to Professor Natabaya, despite efforts to forge an independent legal identity, Indonesia's legal system remains intertwined with its colonial past, blending elements of customary law, religious law, and Continental European law, all framed within the overarching structure of the 1945 Constitution.

2.2. Special Laws in the Indonesia Legal System

2.2.1. Definition of Special Laws

Special laws, known in Latin as *lex specialis*, play a crucial role in the legal framework by addressing specific issues or regions that require tailored regulations. These laws are often contrasted with general laws, or *lex generalis*, leading to the principle of *lex specialis derogat legi generali*. This principle posits that a special law prevails over a general law in cases of conflict, as it is designed to address particular circumstances or needs that general laws might not adequately cover.¹⁷

The application of special laws is guided by their specificity. They are crafted to address particular legal events or conditions, which means they may deviate from general legal norms. The creation of such laws is not arbitrary but based on specific criteria established by legislators, such as the unique characteristics of a region, its historical significance, or the need for particular regulatory frameworks.¹⁸ For instance, a region with distinct historical, cultural, or administrative needs might be governed by special laws tailored to address these aspects more effectively than general laws.

Special laws can be implemented in both unitary and federal states. In a federal system, these laws are generally more extensive and cater to the diverse needs of individual states or regions. In contrast, unitary states maintain central control but can still enact special laws to accommodate regional or sector-specific needs. The presence of special laws in a unitary state does not undermine its central authority but reflects a more nuanced approach to governance, acknowledging regional diversities within a unified legal framework.

2.2.2. Special Laws in Indonesia

Indonesia, as a unitary state, centralizes power within the national government, as stipulated in the 1945 Constitution (UUD 1945). Article 4, paragraph (1) establishes that the President holds the power of government according to the Constitution, reinforcing the central authority of the government. However, the Constitution also provides for special regions with unique status, as seen in Article 18B, paragraph (1), which acknowledges regions with distinctive characteristics regulated by law. This provision allows for the creation of special laws tailored to specific regions, reflecting their unique historical, cultural, or administrative contexts.¹⁹

Four regions in Indonesia—Aceh, Jakarta, Yogyakarta, and Papua—have been granted special status through specific laws. These special laws provide each region with unique rights, responsibilities, and governance structures that differ from the general regional regulations applicable to other parts of the country. For example, Aceh is granted the authority to implement Sharia Law and establish local political parties, a deviation from the general regulations that apply to other regions. Jakarta, as the capital city, has been provided with special provisions to manage its complex administrative and political role. Yogyakarta's unique governance structure reflects its historical and cultural significance, while Papua's special autonomy law aims to address historical inequalities and support its development while respecting its cultural identity.²⁰

¹⁶ Merryman, J., & Pérez-Perdomo, R., *The Civil Law Tradition: An Introduction to The Legal Systems of Europe and Latin America* (Stanford University Press, 2018).

¹⁷ Martitah, M., Sumarto, S., & Hidayat, A., *The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia*, In ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st, 2020, Semarang, Indonesia.

¹⁸ Hamzah, H., M Narang, A., & Yusari, A., *Legal Systems in Indonesia: Overview*, (2021).

¹⁹ Bauw, L., *Special Autonomy of Papua: A Review from the Perspective of the Unitary State of the Republic of Indonesia*, 1(1) Papua Law Journal, 1-26. (2016).

²⁰ Hakim, H. A., Sung, M. H., Praja, C. B. E., Masithoh, M. Q. D., & Rahadatul'Aisy, S., *The Islamic Law within the Indonesian Legal System (A Case Study of Islamic Sharia Law in Aceh)*, 17(2) Tsaqafah, 349-362, (2021).



The criteria for granting special status to these regions are typically outlined in the preambles of the respective special laws. These criteria often include historical contributions, cultural significance, and the need for tailored governance arrangements. For instance, the Law on the Government of Aceh (UUPA) acknowledges Aceh's historical role and Islamic traditions, while the Law on the Government of the Special Capital Region of Jakarta provides for administrative and political arrangements necessary for managing the capital city.²¹

Despite the provisions of Article 18B, paragraph (1) of the 1945 Constitution, which supports the establishment of special laws, there is no explicit guidance on the criteria or standards for determining special status. The determination of which regions receive special laws is often based on political agreements and considerations specific to each region's circumstances. This approach ensures that the legal framework accommodates the diverse needs of various regions while maintaining the overall unity of the state.²²

3. LAW NO. 11 OF 2006 ON THE GOVERNMENT OF ACEH AS A SPECIAL LAW FOR ACEH IN THE UNITARY STATE OF THE REPUBLIC OF INDONESIA

Indonesia's unitary state structure emphasizes central authority, yet it accommodates special laws that cater to regional needs within this framework. The principle of decentralization within a unitary state allows regions to have a degree of autonomy, which is reflected in the special laws governing regions like Aceh, Jakarta, Yogyakarta, and Papua.²³ These special laws provide a framework for regional governance that acknowledges and addresses the distinct characteristics and needs of each region, enhancing the effectiveness of local administration while maintaining overall national cohesion.

The special law for Aceh, Law No. 11 of 2006 (UUPA), exemplifies how a unitary state can incorporate decentralized governance principles. UUPA recognizes Aceh's unique historical and cultural context, including its Islamic traditions and significant role in Indonesia's independence. This law grants Aceh specific governance rights and responsibilities that align with its historical and cultural identity, such as the implementation of Sharia Law and the establishment of local political parties.²⁴

The decentralized approach within a unitary state does not undermine the central government's authority but rather supports a more nuanced and effective governance model. This model allows regions to address their unique challenges and opportunities while contributing to national development. The existence of special laws like UUPA is consistent with the constitutional provisions that support regional autonomy and decentralization, ensuring that regions with distinct needs are effectively governed without compromising the unitary nature of the state.²⁵

The diverse content of UUPA, covering various aspects of governance, highlights the complexity of applying the principle of *lex specialis* in this context. Although UUPA encompasses a broad range of issues, it remains a special law due to its foundation in Article 18B, paragraph (1) of the 1945 Constitution. This legal basis affirms UUPA's status as a special law, despite potential conflicts with other sectoral laws.²⁶

In conclusion, the special laws governing regions like Aceh are essential tools within Indonesia's unitary state framework. They reflect a balanced approach to governance, accommodating regional

²¹ Ul Akmal, D., *The Indonesian State of Law is an Aspired Concept*, 4(1) Nurani Hukum, 77, (2021).

²² Rohidin, R., Syafi'ie, M., Heryansyah, D., Hadi, S., & Ali, M., *Exclusive Policy in Guaranteeing Freedom of Religion and Belief: A Study on The Existence of Sharia-Based Local Regulations in Indonesia and Its Problems*, 9(1) Cogent Social Sciences, (2023).

²³ Iskandar, H., & Asmara, R., *Positions of Syar'iyah Aceh Court Based on the Law of the Republic of Indonesia Number 11 of 2006 concerning the Government of Aceh*, JL Pol'y & Globalization, 126, (2022).

²⁴ Fuad, Z., Darma, S., & Muhibbuthabry, M., *Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia*, 8(1) Cogent Social Sciences, (2022).

²⁵ Laksito, G., *Regional Autonomy in the Context of the Unitary State of Indonesia: Evaluation of Household Systems, Measurement Parameters, and the Rationality of Decentralization*, 2(1) International Journal of Humanities, Law, and Politics, 1-6, (2024).

²⁶ Darmoyo, S. S., Husni, H., Purnama, E., & Zulfadli, Z., *The Aceh Governor's Authority in Approving Regional Police Chief Appointments: An Analysis within the Unitary State Framework*, 12(2) Jurnal Ilmiah Peuradeun, (2024).



diversity while upholding national unity. The application of *lex specialis* principles in this context underscores the need for clear legal frameworks that respect regional uniqueness while ensuring coherence with the broader national legal system. By reinforcing the legal and political foundations of special laws, Indonesia can effectively manage its diverse regional needs and achieve its overarching goal of national welfare and development.²⁷

CONCLUSION

The notion that Indonesia operates as a unitary state does not inherently negate the possibility of enacting special laws tailored for specific regions or sectors within the country. The principle of a unitary state fundamentally implies that the central government holds the ultimate authority, and regional governments act by the directives issued by the central authority. However, the classification of state forms, including the distinctions between a centralized unitary state and a decentralized unitary state, introduces the concept of regional autonomy. This allows for the implementation of specialized frameworks and governance structures even within a unitary system. The 1945 Constitution of Indonesia (UUD 1945) acknowledges this complexity by providing constitutional provisions that permit the establishment of special autonomous regions. Article 18B, paragraph (1) of the Constitution specifically permits the creation of regions with special status, thus accommodating the unique needs and characteristics of these areas within the broader framework of national unity. Despite the overarching authority of the central government, this provision allows for a degree of flexibility and regional differentiation, reflecting Indonesia's diverse socio-political landscape.

The application of this constitutional provision is evident in the status of regions such as Aceh, DKI Jakarta, DI Yogyakarta, and Papua. Each of these regions has been designated as having special status through legislation that elaborates on the general principles outlined in Article 18B. For instance, the Law on the Governing of Aceh (UUPA) exemplifies a special law or *lex specialis* within the Indonesian legal system. This law is not merely an adaptation of general legal principles but is deeply rooted in the constitutional framework provided by Article 18B, paragraph (1) of the 1945 Constitution.

UUPA stands as a testament to the constitutional accommodation of regional autonomy within Indonesia's unitary state framework. The law provides a comprehensive governance structure for Aceh, incorporating elements that address its unique historical, cultural, and social context. This reflects a nuanced approach to legal and administrative governance that recognizes regional differences while maintaining national cohesion.

Therefore, the designation of UUPA as a special law within the Indonesian legal system is both legally and constitutionally justified. The fact that UUPA is grounded in Article 18B, paragraph (1) underscores its legitimacy as a special law for Aceh, illustrating how Indonesia's legal framework can adapt to accommodate the diverse needs of its regions. This adaptability within a unitary state framework highlights the flexibility of Indonesia's legal system in balancing central authority with regional autonomy, ensuring that regional characteristics are respected and integrated into the national governance structure.

In conclusion, while Indonesia remains a unitary state, the existence and implementation of special laws, such as UUPA, demonstrate the practical application of constitutional principles that allow for regional specificity. The Indonesian legal system's ability to accommodate special laws within a unitary framework exemplifies the dynamic interplay between central authority and regional autonomy. This balance ensures that diverse regional needs are addressed while preserving the integrity and unity of the nation.

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²⁷ Drake, C., *National Integration in Indonesia: Patterns and Policies* (University of Hawaii Press, 2019).

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- [19] Wadhvani, R. D., Kirsch, D., Welter, F., Gartner, W. B., & Jones, G. G. *Context, time, and change: Historical approaches to entrepreneurship research*, 14(1) *Strategic Entrepreneurship Journal*, 3-19 (2020).
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