

From paper to screen: towards legal certainty with the digitization of public deeds in Peru

Do papel para a tela: rumo à segurança jurídica com a digitalização de escrituras públicas no Peru

Del papel a la pantalla: Hacia la seguridad jurídica con la digitalización de las escrituras públicas en Perú

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Digitizing electronic public deeds in Peruvian notaries enhances legal security, streamlines processes, reduces costs, and ensures document authenticity, benefiting both notaries and citizens.

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This study uniquely examines the digitization of public deeds in Peruvian notaries, highlighting technology's role in improving efficiency and authenticity in legal document handling.

ABSTRACT

The research aims to analyze the impact of digitizing electronic public deeds on legal security within Peruvian notaries. It explores how digital technology enhances the authenticity of legal documents, protecting citizens' interests. Utilizing a qualitative approach with a phenomenological design, the study gathers insights from six participants, including clients and lawyers, through interviews. This method allows a comprehensive understanding of their perceptions and experiences. Findings indicate that digitization significantly contributes to legal certainty by streamlining notarial processes, cutting costs, and bolstering document authenticity. The study proposes the establishment of an inspection commission to oversee legal security in notarial procedures and encourage digital system adoption in notaries' offices. This digitization is socially beneficial, offering citizens quicker and more secure access to legal documents. The research is original in its examination of electronic public deeds' digitization in a specific Peruvian context, emphasizing the technology's potential to enhance efficiency and document authenticity in the notarial sector.

Keywords: Digitalization, legal certainty, digital signature, cost reduction, speed of processing.

RESUMO

Objetivo: O objetivo da pesquisa é analisar como a digitalização das escrituras públicas eletrônicas contribui para garantir a segurança jurídica nos cartórios notariais peruanos. **Referencial teórico:** O enquadramento teórico aborda a importância da digitalização das escrituras públicas eletrônicas na segurança jurídica, destacando como a utilização da tecnologia digital pode melhorar a autenticidade dos documentos legais e proteger os interesses dos cidadãos. **Estrutura/metodologia/abordagem:** A metodologia aplicada no estudo baseou-se numa abordagem qualitativa com desenho básico de estudo fenomenológico. Foram utilizadas entrevistas e guias de entrevista para coletar dados de 6 participantes, incluindo clientes e advogados. A abordagem qualitativa permitiu uma exploração aprofundada das percepções e experiências dos participantes. **Resultados:** Os resultados do estudo revelaram que a digitalização das escrituras públicas eletrônicas contribui para garantir a segurança jurídica ao agilizar procedimentos, reduzir custos e melhorar a autenticidade dos documentos legais.

Palavras-chave: Digitalização, segurança jurídica, assinatura digital, redução de custos, rapidez de processamento.

RESUMEN

Propósito: El objeto de la investigación es analizar cómo contribuye la digitalización de las escrituras públicas electrónicas a garantizar la seguridad jurídica en las notarías del Perú. **Marco teórico:** El marco teórico aborda la importancia de la digitalización de las escrituras públicas electrónicas en la seguridad jurídica, destacando cómo el uso de la tecnología digital puede mejorar la autenticidad de los documentos jurídicos y proteger los intereses de los ciudadanos. **Diseño / metodología / enfoque:** La metodología aplicada en el estudio se basó en un enfoque cualitativo con un diseño de estudio fenomenológico básico. Se utilizaron entrevistas y guías de entrevista para recopilar datos de 6 participantes, incluidos clientes y abogados. El enfoque cualitativo permitió explorar en profundidad las percepciones y experiencias de los participantes. **Resultados:** Los resultados del estudio revelaron que la digitalización de las escrituras públicas electrónicas contribuye a garantizar la seguridad jurídica al agilizar los procedimientos, reducir los costos y mejorar la autenticidad de los documentos legales.

Palabras clave: Digitalización; seguridad jurídica; Firma digital; reducción de costos; rapidez del trámite.

INTRODUCTION

The pandemic propelled the transition of commercial and business processes into the virtual sphere, leading notaries to create digital platforms to meet customer demands and ensure legal certainty in public deed procedures. In Mexico, traditional notarial documents do not fully meet the needs of the information society (Ixtlapale, 2015). Spain, with its Digital Efficiency Law, permits remote company registration and electronic notarial contracts (Vasquez, 2022). In Indonesia, the pandemic caused notaries to offer services via electronic technology and teleconferencing due to social restrictions (Ramadan et al., 2022). Likewise, countries such as Ecuador are still looking for a public management model in line with the contemporary challenges of the highly competitive technological era (Llamuca Esmeraldas & Muirragui Irrazabal, 2023).

The era of Industry 4.0 and Society 5.0 demands that notaries adapt, with Indonesia reforming its electronic system for public benefit (Agung and Cahya, 2022). Several spheres have moved, especially in the Latin American context, towards the digitalization of public services (Mego et al., 2023; Criado, 2021; Aguerre & Bonina, 2023) and in accordance with the principles of the new public management in the global south (Benitez, 2023).

Nationally in Peru, notaries use the Digital Intermediation system of the National Superintendence of Public Registries, generating electronic documents with digital signatures to prevent fraud (Pasión por el Derecho, 2021; El Peruano, 2020). This technology simplifies document management and processing, directly benefiting citizens. Legal certainty, essential for justice and the common good, is strengthened by robust notarial documents, contributing to social peace (De Vettori, 2021). During the pandemic, the urgent need to sell properties for health reasons highlighted the lack of a digital system in notary offices, obstructing economic transactions and leading to fatal consequences due to financial resource shortages. This situation underscored the inadequacy of space in notarial archives, revealing the necessity to digitize electronic notarial deeds to ensure legal security.

The study is based on Miguel Reale's theory of the three-dimensionality of law (Cano, 2011), acknowledging that every legal relationship integrates fact, value, and norm, reflecting the legal framework's evolution in response to social changes. This pre-existing knowledge facilitates the expansion of understanding in this research.

From a practical perspective, the digitization of notarial public deeds is justified to improve legal security, saving time and money for clients, and protecting individuals with delicate health from potential contagions. This promotes rapid and timely management without the need for lengthy stays in notary offices. Methodologically, a qualitative approach is employed, gathering data through interviews with lawyers and clients of notary offices in Peru. The main objective was to analyze how the digitalization of electronic public deeds guarantees legal security in Peruvian notaries' offices.

LITERATURE REVIEW

Begichev (2021) and Suyanto et al. (2021) highlight the importance of notarial digitalisation and the need for legal protection during the pandemic. Ntarelli et al. (2021) report on the increase in digital notarisation due to COVID-19. Fauza and Santika (2021) emphasise the necessity for Indonesia to adapt to digital notarisation, advocating for a comprehensive, secure, and collaborative system. Diaz (2020) underscores the Mexican legal foundation for the electronic public registry, whilst Lucini (2020) stresses the significance of public officials' involvement in document publicity. Carrera (2020) examines the challenges of notarisation in the ICT era, focusing on legal security and its regulation in Argentina.

The theoretical bases of this work incorporate Michael Reale's theory of the three-dimensionality of law, highlighted by Cano (2011), which argues that in every legal relationship three elements are identified: the fact, the value and the norm, each of them manifesting itself in a given space and time, which implies that the legal framework is transformed as society evolves. In addition, the research is based on existing knowledge of both variables under study, thus facilitating the expansion of knowledge throughout the development of the work. The General Theory of Notarial Law by Sebastián Justo Cosola (2017) has also been taken into account, who emphasizes that the clearer the notarial argumentation of law, the greater the preventive legal security derived from the daily functioning of the community.

The conceptual foundations of the category "electronic notarial public documents" were built from various contributions. Ngadino (2021) defined the electronic notarial protocol as a grouping of electronic documents, instruments and files that encapsulate acts and omissions authorized by the notary through this medium, including the books resulting from their printouts, their indexes and their opening and closing minutes (Heriyanti et al., 2020). As for the notarial act, Putri et al. (2021) describe it as a document attached to a notarial protocol, authorized by the notary, containing one or more legal acts.

Furthermore, the notarial deed is identified as an instrument whose main content is a legal act or business (Pérez,

2019), and it is recognized as a notarial document that includes the declaration of will of the interested party to modify his personal or patrimonial rights (Marchant, 2020). Likewise, Conrad (2020) highlights that the public deed is a notarial document, which must be verified and granted by an accredited notary in Peru (Lucas, 2019), and can be authenticated abroad by a consul acting as a Peruvian notary (Krisyanto et al., 2019).

The public deed has a crucial relevance since it facilitates that an act or contract, both formal and legal, is granted before a notary public, with the additional advantage of being recorded in public records (Servám, 2018). Each public document carries with it a legal imprint, which makes it possible to obtain replicas and validate the authenticity of an act, contract, agreement, power of attorney, foundation or registration (Falbo, 2017), in Peru there are various forms of public deeds, such as those related to the purchase and sale of real estate, where ownership is transferred to individuals, as well as those linked to the founding of a private entity and the purchase and sale of vehicles (Gómez et al. 2020).

The public deed in Peru is characterized by containing the expression of the will of the intervening parties and bearing the signature and seal of the notary, who is in charge of granting the document. In addition, it allows the granting of powers of attorney, wills and legacies, including the acknowledgment of children, and acts as testimony of the incorporation of a company with legal personality. In case of loss of the public deed, the holder may request copies at the notary's office where it was granted (Baldeón, 2020).

Regarding the provision of guarantees in a public deed within a company, the participation of all partners is essential, which includes the assumption of responsibilities in the granting of guarantees, regulated by legal regulations and enshrined in our Constitution. In this context, these are real rights that allow people to enjoy an asset and make transfers through digital mechanisms, using the public instrument in the face of technological advances and remote activities (Baldeón, 2020), the advantage of having a digital signature lies in its constant availability, the reduction of operating costs and other inputs, the guarantee of privacy and total security in transactions, the prevention of fraud such as forged or expired documents and the provision of legal certainty to the signed documents, giving legitimacy to electronic information (Varsi, 2022).

The digital registry system, as explained by Bances (2021), is defined as a mechanism, both public and private, aimed at guaranteeing legal stability, complying with the deadlines established in the corresponding regulations. Fundamentally, it involves the transfer of ownership to the Administration's database, where the notary assumes exclusive responsibility for carrying out the registration process. This system also functions as a service platform that allows the electronic submission of documents for registration, using the digital signature of a notary public. On the other hand, the term "impartial body" refers to a recognition that is earned over time, giving legal formality to the process in question by independently guaranteeing the rights of all parties involved. In this context, the notary stands out as a qualified and autonomous professional, since through his signature he confers authenticity to the act (Bances, 2021).

The conceptual foundations of legal certainty, as expressed by Rizqiansyah Bawono (2022), reflect the State's commitment to state or citizen action subject to the rule of law, as well as to protection, redress or restitution in the event of legal infringement. Moreover, the principle of legal certainty, which both imposes and guarantees that all persons must respect the legal system, is an integral principle that encompasses both democracy and the stratified set of rules that govern it (Puteri et al. 2022). On the other hand, Resekista and Tri (2022) argue that legal certainty comprises the sum of certainty, legitimacy, hierarchy and normativity, and implies the non-retroactivity of disadvantage, as well as the prohibition of arbitrariness. However, if these principles are exhausted, it is not necessary to formulate them explicitly.

The notary contributes to legal security in two ways: by creating a legal transaction (substantive legal security) and by drafting the document that contains it (formal legal security), through which the deed acquires its legal force (Lubis et al., 2022). Legal security protects two essential situations for people living in the community: it establishes a clear line of distinction, notoriety and level of personal action within the community and also sets limits on the actions of community leaders (Indrayati et al. 2022).

According to Cruz and Rodriguez (2021), the notary has two key functions: the directive function and the shaping function. The directive function, according to Cruz and Rodriguez (2021), involves the responsibility of informing and advising the parties on the payment of taxes and other applicable fees. In the exercise of this legitimating function, the notary legitimizes the parties in various ways, such as certifying that they have agreed to notarize the agreement, specifying its location and other relevant data. When the parties are legal entities, the notary must also ensure that the representation exercised by each party's attorney is adequate under the law.

The shaping function, according to Cruz and Rodriguez (2021), consists of giving legal form to the will of the parties, depending on the documents required by the notary, the notary's will according to the type of contract in question and the title of the contract in question (whether it is a typical or atypical contract). This is done in accordance with the work and approval required by the parties and the principle of free will. In addition, the notary must provide for future situations, such as arbitration or the ordinary courts. The authentication function occurs when the notary certifies signatures, which are valued

in accordance with the law or with an appraisal proof system established in the procedural code, in order to provide legality to legal transactions.

METHODS

In this scientific study, a basic research approach without immediate practical application was employed. This pure or theoretical research enriches the theoretical body in the scientific field. A phenomenological design was selected to explore and understand the diverse experiences of individuals, aiming to identify recurrent patterns and unveil the essence of these experiences.

The research structure begins with an analysis of the phenomenon, understanding the reality of the variables, and analyzing the influence of social groups promoting these phenomena. This analysis is crucial for the final results. Data was gathered from interviews with three specialist lawyers and three clients, who provided valuable insights.

The interview technique, using a guide with a mix of open-ended and closed-ended questions, was employed for data collection. This process involved initial categorization of variables, development and validation of the interviews by two experienced lawyers, and conducting interviews with lawyers and clients of notary offices in Peru. The findings, conclusions, and recommendations were derived from these interviews.

Data analysis in qualitative research lacks a standard process, but aims to ensure credibility by comparing results with conceptual frameworks. This approach clarifies the data's explanatory power and identifies underlying meanings. Triangulation was used to reinforce result validity, employing content analysis and discourse data analysis, focusing on conversation syntax, narrative, and lexicon.

Ethically, principles of epistemological adequacy, replicability, and conformability were adhered to. The methodology followed established academic guidelines, interviewees were provided with detailed explanations, and data were processed neutrally and comparatively, ensuring research integrity and validity.

RESULTS AND DISCUSSION

The analysis of the category "Digitization of electronic notarial documents to ensure legal security in Peruvian notaries' offices" is based on three crucial subcategories: legal security, speed of processing and cost reduction. These subcategories are of utmost importance to understand in depth the different aspects and benefits of digitizing notarial documents in the context of Bustamante's notary's office.

Regarding the subcategory of legal security, it is relevant to note that all the interviewees fully share the opinion that the implementation of the digitalization of electronic public deeds in the Bustamante notary's office represents a significant advance in the legal security offered to users. The incorporation of digital signatures as an essential part of this process provides an additional layer of protection to legal documents and gradually reduces the incidence of illicit acts that have historically affected public deeds in physical format. This increased security is essential for building customer confidence and ensuring the integrity of notarial deeds.

In relation to the subcategory of speed of procedures, it is evident that the digitalization of electronic notarial documents allows users to access the required documentation quickly and efficiently, which leads to a considerable acceleration of service times. The procedures are executed in a more agile manner, which not only improves the client's experience, but also simplifies the notarial process at Bustamante's notary's office.

As for the subcategory of cost reduction, it is essential to highlight that the digitization of electronic notarial documents offers advantages for both the notary's office and the users. Bustamante's notary's office can reduce its personnel costs by simplifying and streamlining processes, while clients experience a reduction in the costs associated with notarial procedures. In addition, the availability of digitized procedures facilitates timely access, which can increase the notary's revenue if users opt for this option.

Moreover, an emerging factor was identified as "E1: Trained and prepared". According to the opinions expressed by the interviewees, the implementation of the digitalization of electronic public deeds allows the Bustamante notary's office to differentiate itself by offering a higher quality service compared to other notary's offices in Peru. This perception further reinforces the idea that digitization constitutes a significant improvement in the service provided by the notary's office, which could attract a greater number of clients and consolidate its position in the market. The detailed analysis of the legal security subcategory is supported by the evaluation of a number of key indicators that play a fundamental role in the context of

notarial documents and their management. These indicators have been considered essential to understand how security in legal and notarial processes can be strengthened and to address potential challenges and threats.

The first indicator, digital signatures, emerges as a critical element in improving legal security. Interviewees expressed broad agreement that the inclusion of digital signatures on public deeds would play an essential role in ensuring the authenticity and integrity of legal documents. A digital signature would enable quick and accurate identification of all parties involved in a transaction, which in turn would facilitate early detection of possible attempts at impersonation or fraud. This measure is considered crucial to provide an additional layer of security and trust in the field of legal transactions.

The second indicator, related to the use of digital technology, is also identified as a significant contribution to legal certainty. Respondents highlighted that the adoption of digital technology in the management of public deeds could substantially improve the protection of these documents. This includes the secure storage of deeds in digital format, making them less susceptible to physical damage or accidental loss. In addition, digital technology would allow for more efficient management and controlled access to documents, thereby reducing the risk of tampering or loss.

The third indicator, relating to document protection, focuses on the digitization of documents. Respondents emphasize that the digitization of notarial documents could significantly increase their security. Digitization would allow the implementation of an administrative key protection system, which would ensure that only authorized persons have access to documents and that any unauthorized access attempts are effectively detected and prevented. This approach would be supported by a robust technological infrastructure and adequate security measures, including protection against potential hacker attacks.

The last indicator, related to the prevention of illegal acts, is of utmost importance in the search for greater legal certainty. The interviewees stressed that the digitization of public deeds could play a crucial role in reducing illegal and fraudulent acts. They argued that, at present, less secure practices persist in the manual or physical handling of public deeds, which can facilitate illegal activities. The introduction of electronic public deeds through a digital platform such as *Registros Públicos* (Public Records) would allow for greater control and oversight, as well as the ability to track and audit transactions more efficiently. This, in turn, would deter potential violators and help minimize such illegal activities. The detailed analysis of the subcategory focused on speed of procedures is supported by the evaluation of two key indicators that play a critical role in the optimization of legal and notarial processes. These indicators are considered essential to understand how the introduction of electronic notarial documents can improve the speed of procedures and effectively address existing challenges.

The indicator related to access to documentation, stands out as a crucial point of attention. Respondents shared the view that the adoption of electronic public deeds would speed up access to the necessary documentation. This is because it would simplify and streamline notarial processes, which would result in greater availability of documents in the context of user service. In addition, they stressed that the technological nature of this solution would allow notaries' offices to implement improvements in the procedures related to public deeds, which in turn would significantly improve the quality of the service offered to individuals.

Regarding the second indicator, related to the efficiency of processing times, respondents agreed that the digitization of public deeds would lead to a substantial improvement in the efficiency of processing times in the administrative process. However, they stressed that to achieve this goal, it is essential that the digital system has the ability to simplify procedures, reduce costs, shorten times and ultimately provide a more effective and efficient experience for both notaries and the clients involved. The successful implementation of these elements is considered essential to ensure a real acceleration in the procedures and processes related to electronic notarial deeds. The in-depth analysis of the subcategory related to cost reduction is based on the assessment of three key indicators that play a key role in the potential cost reduction in the context of public deeds and their management. These indicators are considered to be of vital importance in understanding how the implementation of electronic public deeds can lead to effective cost reduction and how to address the associated challenges.

The first indicator, focused on the reduction of personnel costs, received special attention. The interviewees agreed that the introduction of digitalization of notarial deeds could lead to a substantial decrease in personnel costs in notaries' offices. This is because, by streamlining and simplifying the processing and user service process, the same person in charge of processing public deeds could provide all the necessary information related to the digitalization of a public deed requested by a client, without the need to hire additional staff. This measure is considered essential to achieve a more efficient management of human resources in notary offices.

Regarding the indicator of accessibility of procedures by users, the interviewees emphasize that the reduction in costs would allow a greater number of users to have access to procedures related to public deeds carried out at notaries' offices. This is because people are looking for quality services and, at the same time, they are looking to reduce the costs of

the procedures they carry out. Therefore, lower costs could increase the affordability of these services, which would be beneficial for both notaries and clients.

Regarding the third indicator, related to notarial digitization, the interviewees agreed that the implementation of notarial digitization could lead to a reduction in costs in the processing of public deeds, which would benefit both notary offices and users. The main reason is that by digitizing a public deed and allowing faster access to users, costs are expected to be lower. In addition, by eliminating the need for physical material and simplifying processes, the costs associated with handling paper documents would be further reduced. In short, digitization is seen as an effective means of optimizing resources and reducing costs in the notarial field. Furthermore, Díaz (2020) highlights that the Mexican Constitution mandates the government to promote digital penetration, with laws recognizing electronic consent and attributing evidentiary value to electronic data, supporting digital signatures for legal certainty. This aligns with Michael Reale's three-dimensionality of law theory (Cano, 2011), emphasizing the need for legal frameworks to evolve with technology and business practices.

Araneda (2015) underscores the importance of notarial functions in ensuring legal certainty in electronic contracts through digital mechanisms, modernizing notarial practices and boosting confidence in electronic contracts. Coronel (2020) agrees, stating that electronic technology enhances legal security by integrating technology in legal documents. Ruiz (2020) emphasizes the role of technology in preventing crimes like real estate fraud, noting the significance of the National Interconnection System in notaries' offices. Moreover, Bances (2021) stresses the need for a stable legal framework with clear, simple, and predictable requirements, while Lucini (2020) emphasizes the role of public officials, including notaries, in maintaining legal information. Natarelli et al. (2021) and Fauza and Santika (2021) highlight the growing trend towards remote notarial practices, stressing the importance of digital technology for trust and security in digital environments, necessitating collaboration and appropriate regulation.

CONCLUSIONS

The conclusions drawn from the interviews reveal a strong unanimity among the participants regarding the imperative need for notaries in charge in Peru to adopt the digitization of public deeds in virtual format. This position is based on a number of clearly identified advantages and benefits.

Firstly, the importance of providing greater legal certainty in notarial processes is significantly highlighted. The implementation of tools such as digital signatures and technology in general makes it possible to identify more quickly and accurately the parties involved in a notarial process. This, in turn, helps prevent possible impersonation and guarantees the authenticity of legal documents, which is essential to protect the interests of citizens who trust notaries to safeguard their assets and ensure the legality of their agreements.

Secondly, the need to streamline notarial procedures is highlighted. Digitization of processes and elimination of reliance on physical records would significantly reduce the time required to complete formalities and procedures. This is particularly relevant in the current context, marked by the COVID-19 pandemic, which has highlighted the importance of avoiding face-to-face meetings wherever possible to protect the health of citizens. Digital technology offers an effective solution to maintain the speed of procedures without compromising the security of legal transactions.

To conclude, there is necessary highlight the economic benefit for both notaries and the citizens who require their services. Digitalization not only simplifies processes, but also reduces the need for additional staff in notaries' offices. In addition, the elimination of the use of paper and the adoption of digital procedures means savings in costs related to physical material. Ultimately, this has a positive impact on the economy of notaries' offices and on the economy of citizens seeking access to notarial services.

Taken together, these results reinforce the idea that the digitization of notarial documents is a necessary and highly beneficial measure. Not only does it provide greater legal certainty, but it also streamlines processes and reduces costs, which contributes to improving the quality of the notarial service and adapting it effectively to the changing needs of society. It is suggested to the deans of the Peruvian notary associations the creation of an inspection commission to verify compliance with the standards of legal certainty in the procedures related to public deeds. They are also urged to promote the adoption of a digital system for the preparation of public deeds and to consider the possibility of unifying the operations of all notary offices under their jurisdiction. This commitment to digitalization would allow the notary's offices to guarantee legal certainty in each of the files processed.

It is strongly recommended that the notaries responsible for notaries in Peru implement an electronic registry system of deeds to fully comply with the requirements and formalities demanded by the legal regulations. This would facilitate the identification of the parties involved and, at the same time, would make it possible to verify any attempt of impersonation.

Likewise, it is recommended that the notaries responsible for Peru's notary offices design a training plan on the use of digital platforms for the personnel in charge of registering public deeds. At the same time, it is suggested that they develop an orientation guide for clients, with the aim of streamlining procedures and reducing timeframes, which will result in more efficient and faster processing.

Finally, the notaries responsible for notaries in Peru are urged to present a proposal for a law that contemplates the implementation of a digital system interconnected with the relevant government institutions, such as the National Registry of Identification and Civil Status, the National Superintendence of Customs and Tax Administration, the National Superintendence of Public Registries, the National Police of Peru and local municipalities. This is due to the need for instant access and validation of information. With this initiative, it would facilitate the reduction of personnel costs in the notary offices, since the same person in charge of the management of public deeds could provide the required information regarding the digitalization of a public deed requested by a client.

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A. theoretical and conceptual foundations and problematization:	25%	25%	20%	5%	20%	5%
B. data research and statistical analysis:	25%	5%	20%	15%	20%	15%
C. elaboration of figures and tables:	25%	25%	5%	20%	20%	5%
D. drafting, reviewing and writing of the text:	20%	25%	25%	10%	10%	10%
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