



The Position of E-Commerce that Causes Default in the Perspective of Fiqh Muamalah

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ABSTRACT

With the ease of accessing the internet and the advancement of technology, the system of buying and selling has become easily accessible anytime and anywhere. The objective of this study is to uncover the e-commerce system in online buying and selling conducted by students of IAIN Bone, the emergence of various online shopping sites such as Lazada, Shopee, Tiktok Shop, Tokopedia, Bukalapak, and various other online shopping sites, resulting in violations known as breach of contract. Using empirical research and data collection based on survey results to students who use online shopping site applications during the year 2023. The results show that students who generally use online shopping sites through the e-commerce system experience breach of contract where the goods received do not match what was promised. The percentages are as follows: 34% on Shopee, 24% on Tiktok Shop, 18% on Lazada, 14% on Bukalapak, and 10% on Tokopedia.

A. Introduction

Examining the fiqh muamalah perspective on breach of contract in online buying and selling, which is conducted almost daily especially among IAIN Bone students. Online buying and selling, like *As-Salam* transactions, is permissible in Islam. After conducting a survey among students using online shopping sites, where the percentage of Shopee users is 35%, Lazada is 15%, TikTok Shop is 30%, Tokopedia is 12%, and Bukalapak is 8%, it is evident that they predominantly use online sites for shopping. However, it cannot be denied that not all purchases made online comply with the valid conditions of buying and selling in Islamic Law.

The study of online buying and selling associated with breach of contract has been ongoing. Firstly, Rizka Ferdiana Sari mentions that Breach of Contract in Online Buying and Selling from the Perspective of Islamic Criminal Law states that the application of law against individuals involved in breach of contract in online buying and selling transactions is through *jarimah ta'zîr*, which involves isolation, corporal punishment, and fines. This punishment is *ta'zîr* in nature, meaning it is determined by the state authority and does not have direct reference from the Quran and Sunnah.¹ Secondly, findings from Ainul Yaqin indicate that fraud in online transactions often occurs. This fraud can involve deception by sellers, mismatched purchased items, mismatched item prices, and consumer payment issues.² The viewpoint expressed by Kurniawan et al. suggests that breaches of contract occurring in online buying and selling already lean towards the criminal act of fraud because they do not fulfill the theory of agreement in Islamic law.³ However, there is a differing stance expressed by Ninda Sofiyah, stating that goods purchased through Cash On Delivery in online buying and selling systems are not yet considered breaches of contract because if the received goods do not meet the buyer's desires, they can be returned.⁴ This standpoint is shared by authors like Ismy Purwanti, who disagree that if the received goods are not as expected, it is categorized as a breach of contract, even if initially the purchase was

¹ Rizka Ferdiana Sari, 'Delik Wanprestasi Jual Beli Online Perspektif Hukum Pidana Islam', *Al-Jinayah: Jurnal Hukum Pidana Islam*, 3.2 (2017), 426–53.

² Ainul Yaqin, 'Akibat Hukum Wanprestasi Dalam Jual Beli Online Menurut Undang-Undang Informasi Dan Transaksi Elektronik', *Dinamika*, 25.6 (2019).

³ Oktriadi Kurniawan, Aria Zurnetti, and Suharizal Suharizal, 'Penyelesaian Sengketa Wanprestasi Dalam Perjanjian Jual Beli Online (E-Commerce) Yang Mengarah Pada Tindak Pidana Penipuan', *Jurnal Syntax Transformation*, 1.7 (2020), 353–58.

⁴ ninda Sofiyah, 'Tinjauan Jual Beli Sistem Cod (Cash On Delivery) Perspektif Hukum Islam Dan Hukum Positif (Studi Kasus Olshop Dankje2021 Di Desa Guwo Mlilir Kecamatan Dolopo Kabupaten Madiun)' (IAIN Ponorogo, 2023).

made through the *scoopy lucky ball* system, but if the received item does not match, it is considered prohibited because it contains elements of *gharar*.⁵

Based on previous research, it has been revealed that there are numerous challenges arising in the practice of e-commerce transactions that have the potential to harm consumers and give rise to various legal issues, including those falling within the realm of criminal fraud and instances categorized as breaches of contract, not only when goods received are not as expected but also when there is a violation of the agreement system in contracting or in the buying and selling system.

Therefore, the specific objective of this study is to explore the forms of breach of contract committed by sellers in the online buying and selling system among students at IAIN Bone, as well as the forms of compensation applied. Consequently, this study addresses the following questions: 1. How is the legal regulation of online buying and selling through e-commerce established? 2. What are the forms of breach of contract and compensation in the fiqh muamalah when a breach occurs?

The presence of e-commerce provides convenience to the public. The variety of products or services available in the market is extensive, and they are offered at more affordable prices. This phenomenon brings about impacts that can be both advantageous and detrimental, as it cannot be denied that various losses may also emerge.

B. Method

This research uses descriptive qualitative method with empirical approach and literature study. The author provides an overview of the phenomena that occur among students of IAIN Bone, and the view of fiqh muamalah and explains the phenomena that occur about the e-commerce system. Primary data in this study are the results of a survey which is a research method using a questionnaire as an instrument for data collection with a total of 100 students who use online applications in shopping, while secondary data in the form of classical and modern fiqh and related literature. This research seeks to provide empirical knowledge and contribute existing knowledge for further research that explains the transaction process according to sharia law as a form of community interaction in the application of positive legal provisions. The transaction process in the e-commerce system used by students regarding the impact of defaults by using online shopping sites through surveys to ensure policies and actual circumstances..

⁵ Ismy Purwanti, 'Tinjauan Hukum Islam dan Hukum Positif Terhadap Jual Beli Dengan Sistem Scoopy Lucky Ball Pada Aplikasi Live Streaming TikTok' (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta).

C. Finding and Discussion

1. Legal Regulations on Online Purchases through E-Commerce

In the contemporary period, where technology has provided various highly sophisticated tools, humans tend to opt for executing all actions with maximum effectiveness and efficiency that are easy, fast, and instant. The buying and selling transaction is an activity that has been a primary necessity in society since ancient times up to the present. In this modern era, individuals can easily conduct these transactions through the internet network. Although only a portion of people prefers this method, and some may not be familiar with it, a significant number of individuals, especially in the business world, recommend conducting transactions through the internet as it is considered more practical, efficient, and secure by some people.⁶

In recent times, there has been an increase in the number of trading sites and online portals in Indonesia that provide various products and services to members of the community. However, unfortunately, until now, there has been no regulation governing e-commerce in Indonesia, and there have been no efforts to discuss and draft related laws (researchgate.net). If Indonesia does not take steps to address this issue promptly, concerns about consumer safety will increase further, considering the growing use of electronic platforms by consumers to conduct buying and selling transactions with online stores.⁷

E-Commerce is a business practice that uses the internet as a tool for transactions. These transactions are conducted between companies and customers through the use of the internet and World Wide Web with the aim of selling products and services to customers. In Indonesia, the use of e-commerce has experienced significant growth. The utilization of the internet network as a means to conduct transaction processes in the business world is now considered crucial, as evidenced by the increasing number of entrepreneurs utilizing e-commerce in their company operations.

In the domain of e-commerce sales, the Central Bureau of Statistics of Indonesia has announced that nearly all business entities engage in online sales through instant messaging applications, with a percentage of 93.98%. Instant

⁶ Zuhrotul Mahfudhoh and Lukman Santoso, 'Analisis Hukum Ekonomi Syariah Terhadap Jual Beli Melalui Media Online Di Kalangan Mahasiswa', *SERAMBI: Jurnal Ekonomi Manajemen Dan Bisnis Islam*, 2.1 (2020), 29–40.

⁷ Nafa Amelsi Triantika, Elwidarifa Marwenny, and Muhammad Hasbi, 'Tinjauan Hukum Tentang Pelaksanaan Perjanjian Jual Beli Online Melalui E-Commerce Menuer Pasal 1320 Kuhperdata', *Ensiklopedia Social Review*, 2.2 (2020), 119–31.

messaging applications utilized include WhatsApp, Line, Telegram, and the like. Furthermore, 54.66% of e-commerce enterprises employ social media as a sales platform. These social media platforms encompass Facebook, Instagram, Twitter, and similar platforms. Additionally, only 21.64% of businesses have sales accounts on digital platforms or marketplaces. Marketplaces are online venues where sellers and buyers can transact through provided platforms. Moreover, 10.42% of businesses utilize email as a method of online sales. Lastly, only 2.38% of sellers use websites as sales platforms.

Tabel 1. Data Presentation from the Central Bureau of Statistics of Indonesia based on SimilarWeb Data for the Year 2023

Application	Percentage
Shopee	41.39%
Lazada	46.72%
Tiktok Shop	56.5%
Bukalapak	21.08%
Tokopedia	12.04%

From the data, it is evident that purchases through online applications or e-commerce systems continue to increase, as indicated by the significant representation of 41.39% utilizing the Shopee application in the buying and selling process, followed by other online purchasing applications which also show high usage among the populace. The data also suggests that users of these buying and selling applications employ various methods in their payment systems.

In transactions conducted through e-commerce, there exist three methods of payment that can be utilized: 1) The Online Processing Credit Card method is employed for retail products accessible to the global market without geographical constraints. Payment is made directly during the transaction. 2) The Money Transfer method is a more secure payment method, albeit incurring fees for transferring funds to another country through a money transfer service provider. 3) The Cash On Delivery method can only be executed if the consumer is within the same region as the store or service provider, wherein payment is made in cash upon the consumer directly receiving the goods.⁸

2. The Forms of Breach of Contract in the online buying and selling systems among IAIN Bone students

⁸ Shabur Miftah Maulana, 'Implementasi E-Commerce Sebagai Media Penjualan Online', *Jurnal Administrasi Bisnis*, 29.1 (2015).

Although conducted via e-commerce, agreements proceed as usual albeit lacking face-to-face interaction, making breaches of contract more susceptible. Identifying breach of contract can be challenging, especially when there is no clarity regarding the precise time for fulfilling agreed-upon obligations between both parties, unless there is a prior agreement in place.

The execution of a sales agreement can proceed smoothly when all terms and conditions of the sale are met by the parties involved, ensuring they fulfill their rights and obligations and achieve the appropriate level of performance without causing harm to any party. However, in some cases, online sales transactions do not always proceed smoothly, often due to the actions of one party failing to fulfill their obligations, thereby causing harm to the other party and resulting in a breach of contract. A breach of contract by the seller against the buyer signifies their failure to meet the contract terms, despite previous agreement to fulfill them.⁹

Determining when one party commits a breach of contract in agreements where performance is expected but not delivered is relatively straightforward, as it can be based on the moment one party takes actions that violate the terms of the agreement. If one party undertakes an action within a specified timeframe as stipulated in an agreement, it can be deemed as performance. However, if one party exceeds the prescribed deadline, it is considered a breach of contract. Forms of breach of contract include:

a. The goods delivered by the seller do not correspond to the agreement.

Initially showcased in the catalog, the buyer becomes interested based on the catalog's representation. However, upon receipt, the goods do not match the catalog; typically, the color is different, there are defects in the goods, and various other damages are present. Elya Mahmada asserts that the replacement of products should be carried out by the seller as it falls under the category of breach of contract.¹⁰

Muhammad Septian Dwi Putra states that unlawful actions, such as delivering products that do not match or correspond to the description provided by the seller's store, may result in legal sanctions against the seller. This is an

⁹ Dinda Sari, 'Akibat Hukum Wanprestasi Terhadap Jual Beli Online Bonggol Tanaman Hias Yang Tidak Sesuai Perspektif Wahbah Az-Zuhaili (Studi Kasus Online Shop Di Kota Medan)' (Universitas Islam Negeri Sumatera Utara, 2021).

¹⁰ Elya Mahmada and Indri Fogar Susilowati, 'Tanggung Jawab Penjual Terhadap Barang Yang Tidak Sesuai Dalam Perjanjian Jual Beli Secara Daring Di Lazada', *Novum: Jurnal Hukum*, 2025, 23–33.

effort to ensure that the rights and obligations of the buyer are respected and not violated.¹¹

Table 2: Presentation on the number of students who have experienced breaches of contract

Application	Number of Respondents	Percentage
Shopee	17 People	34 %
Tiktok Shop	12 People	24%
Lazada	9 People	18%
Buka Lapak	7 People	14%
Toko Pedia	5 People	10%
Jumlah	50 People	100 %

From the data above, it can be seen that tracking the number of IAIN Bone students in 2023 out of 100 people who use e-commerce applications, only most of them have received a form of default with the category of goods that arrived not in accordance with the initial catalog offered, which only amounts to 50 people. The percentages of breach of contract instances are as follows: : 34% on Shopee, 24% on Tiktok Shop, 18% on Lazada, 14% on Bukalapak, and 10% on Tokopedia.

b. The promised goods deviate from the specified delivery time.

The condition wherein the seller intentionally or unintentionally fails to fulfill the buyer's order may occur due to stock shortages of the ordered goods or due to errors in the manufacturing process, resulting in the deliberate postponement of delivery by the seller. In this context, the buyer acts as the user of the services or goods offered by the seller. Rinna Matuz Zahro also reveals that breach of contract in the delivery of goods in online purchases does not automatically occur if it has been agreed upon in the agreement by the parties that breach of contract exists since the agreed-upon date in the agreement has been exceeded.¹²

Nabila Fauziah also states that deviations in transaction procedures that do not align with the characteristics of the goods sold during the sales process, delayed delivery of goods to consumers as a result of intentional actions by

¹¹ D W I Putra Muhammad Septian, 'Perlindungan Hukum Terhadap Konsumen Atas Barang Tidak Sesuai Pesanan Melalui Marketplace' (Universitas Mataram, 2023).

¹² Rinna Fati Zahro And Muhammad Julijanto, 'Wanprestasi Penyerahan Barang Dalam Jual Beli Online "Casing Hp" Via Whatsapp Ditinjau Dari Prespektif Fiqh Muamalah Dan Pasal 1320 Kuh Perdata (Studi Kasus Di Ikasepgarskin&Softcase Olshop)' (Uin Raden Mas Said, 2023).

suppliers, the sluggishness of drop shippers in ordering goods, and unilateral cancellation by consumers towards drop shippers during the shipment phase.¹³

Endi Suhadi also states that incidents of breach of contract in sales transactions are highly prone to occur due to uncertainty regarding whether the seller uses authentic identities and contact information, whether the goods sold are genuine, the condition of the goods including whether they are in good or poor condition, whether the images of the goods displayed on the internet or social media correspond to the actual goods, and if not, the buyer may suffer material losses. Conversely, sellers also lack knowledge regarding whether buyers are genuinely committed to purchasing the item or merely jesting, as well as whether buyers are utilizing authentic or counterfeit identities and contact information.¹⁴

Furthermore, goods promised that violate regulations are also categorized as breach of contract due to contravening the initial agreement. In this scenario, the seller has demonstrated negligence by dispatching goods that are either non-compliant or defective, resulting in financial loss. Such negligence has left the buyer feeling aggrieved, leading to the cancellation of the transaction agreement which experienced delays. The buyer expresses disappointment and ultimately opts to cancel the order. The breach of contract experienced by this consumer is attributable to the presence of defective goods and the seller's delay in fulfilling obligations.

Table 3: The form of breach of contract committed by the seller pertains specifically to delays in delivering the goods

Aplikasi	Number of Respondents	Percentage
Shopee	20 Orang	40%
Tiktok Shop	16 Orang	32%
Lazada	10 Orang	20%
Bukalapak	3 Orang	6 %
Tokopedia	1 Orang	2%
Jumlah	50 Orang	100 %

¹³ Nabila Fauziah, 'Wanprestasi Dropshipper Pada Transaksi Jual Beli Online Menurut Konsep Jual Beli Musawamah (Suatu Penelitian Di Banda Aceh)' (Universitas Islam Negeri Ar-Raniry, 2023).

¹⁴ Endi Suhadi and Ahmad Arif Fadilah, 'Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen', *Jurnal Inovasi Penelitian*, 2.7 (2021), 1967–78.

From the table above, of the 100 students who were asked for information regarding defaults regarding goods that arrived not in accordance with the promised time, only about 50 people out of 100 people who were surveyed had experienced this, namely buying and selling through the Shopee application only around 40%, 32% on Tiktok Shop, 20% Lazada, 6% on Buka Lapak and 2% and Tokopedia, However, from this investigation, it is evident that only 50 students have encountered incidents where the received goods did not match the agreed upon timeframe.

The consequence of breach of contract in online transactions may be pursued when it falls into the category of goods not meeting the promised timeframe. In such cases, compensation may be sought from the seller. To facilitate the compensation claim process, the seller must pay compensation due to their negligence, refund the money, and reimburse any losses incurred. However, if losses occur due to the seller's actions, resorting to the path of *as-shulhu* (reconciliation) is permissible, as it is considered the most appropriate method for maintaining a good relationship in resolving breaches of contract.¹⁵

3. The Form of Compensation for Breach of Contract in Online Buying and Selling Systems

According to the procedures established in Islamic law, if one party disregards the agreed-upon contract, then the obligation of the seller is to provide compensation. Therefore, to prevent breaches of contract and ensure justice and legal certainty, sanctions in the form of financial compensation are necessary. The compensation that can be sought as a result of breach of contract is the replacement of clear material losses. This replacement includes incurred expenses, suffered losses, and potential profits that could have been obtained if the breach of contract had not occurred.¹⁶

In determining compensation or damages, the most important element is the loss experienced by the buyer, known as "*darar*." *Darar* can encompass physical, material, and emotional losses, such as damage to reputation. The calculation of damages must be proportionate to the level of harm experienced by the victim, although in some cases, the multiplication of damages can be applied according to the circumstances of the perpetrator. According to Dewi Wulan

¹⁵ Fauziah.

¹⁶ Dinda Sari, 'Akibat Hukum Wanprestasi Terhadap Jual Beli Online Bonggol Tanaman Hias Yang Tidak Sesuai Perspektif Wahbah Az-Zuhaili (Studi Kasus Online Shop Di Kota Medan)' (Universitas Islam Negeri Sumatera Utara, 2021).

Utami, payment of damages can take the form of product replacement or refunding the buyer's funds.¹⁷

The purpose of the obligation to provide compensation in Islam is to protect and safeguard property from damage and to provide protection to its owners from any threats that may endanger it.¹⁸

The Decision of the Sharia Board Fatwa Number 43/DSN-MUI/VIII/2004 pertains to the liability for compensation in the Islamic legal system, namely: 1) Compensation can only be demanded from a party who intentionally or negligently commits actions that violate the terms of the agreement and result in losses to the other party. 2) The losses that can serve as the basis for compensation claims as mentioned in clause are tangible losses that can be clearly quantified. 3) Tangible losses as referred to in clause are expenses genuinely incurred to recover rights that should have been paid. 4) The amount of compensation will correspond to the definite tangible losses incurred in the transaction. 5) Compensation (*dhaman*) can only be applied in transactions (contracts) involving debts (*dain*), such as *Salam*, *Istishna*, as well as *Murabahah* and *Ijarah*.¹⁹

Several specific provisions related to compensation (*dhaman*) are as follows: 1) Compensation received in transactions at Sharia financial institutions is considered a right (income) by the receiving party. 2) The amount of compensation must remain in accordance with the actual losses, and the method of payment depends on the agreement between the parties. 3) The amount of compensation should not be mentioned in the agreement. 4) The party breaching the promise is responsible for the costs of the case and other expenses arising from the resolution of the legal process.²⁰

In addition to providing compensation for something that has caused loss, the party that has committed a breach of contract also has the responsibility to provide compensation for the breach of promise, known as contractual liability (*daman al-aqd*). Breach can occur due to violating contractual terms,

¹⁷ Dewi Wulan Utami, 'Perlindungan Konsumen Terhadap Transaksi Jual Beli Online Sistem Dropshipping Perspektif Kompilasi Hukum Ekonomi Syariah (Studi Toko Mustika Hijab Ketangan Gembong Pati).' (IAIN KUDUS, 2022).

¹⁸ Ade Riyan Nasrulloh, 'Tinjauan Hukum Islam Terhadap Penyelesaian Wanprestasi Perjanjian Sewa Mobil Di Nugraha Trans Sleman', 2018.

¹⁹ Siti Hayati, 'Analisis Dhaman (Ganti Rugi) Bagi Nasabah Wanprestasi Dalam Perbankan Syariah (Study Pada Pembiayaan Murabahah)', *Syarikat: Jurnal Rumpun Ekonomi Syariah*, 3.2 (2020), 1–6.

²⁰ Marwan Lubis, 'Studi Komparasi Ganti Rugi Menurut Hukum Perdata Dengan Hukum Islam', *Pelita Bangsa Pelestari Pancasila*, 14.1 (2019).

referred to as *daman al-aqdi*, or it can also occur due to misconduct, referred to as *daman 'udwan*.²¹

In the case of the incident involving IAIN Bone students, it has been observed that very few e-commerce applications in online trading provide compensation to buyers who receive orders that do not match what was promised. According to statements from students, only approximately 12% of store owners are willing to provide compensation, albeit subject to certain conditions that must be fulfilled.

In determining compensation according to Islamic law, the most important aspect is the loss experienced by the buyer. This loss can be in the form of physical damage, property or goods, services, as well as moral and emotional damage such as defamation. The determination of the amount of compensation, both in terms of quality and quantity, must be proportionate to the loss suffered by the buyer. However, in certain cases, the multiplication of the compensation amount can be done according to the circumstances of the offender.

The concept of compensation in Islamic law pays more attention to the rights and obligations between the seller and the buyer. In Islam, compensation can be imposed on the seller if the buyer or the other party fails to fulfill responsibilities or breaks promises. The responsibility of the contract entails an individual's obligation to fulfill rights related to property, physical well-being, and feelings such as defamation.²²

4. The principle of Fiqh Muamalah Regarding Compensation

Ta'addi, which necessitates *dhaman*, is one that genuinely causes *dhahar* (harm). If it does not result in harm, then there is no compensation (*dhaman*), as there is no actual harm that requires compensation. This viewpoint reinforces the principle that harm is a prerequisite for indemnification. There must be a causal relationship between the infringement and the harm. In this regard, harm can only be directly attributed to the perpetrator of the infringement. If harm is attributed to factors other than the actions of the perpetrator, then there is no obligation to

²¹ Ilham Abdi Prawira, 'Kompensasi Ganti Rugi Bunga Dalam Perspektif Hukum Islam', *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 11.1 (2022), 21–44.

²² Muhajirin Muhajirin, 'Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)', *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 6.02 (2018), 105–124.

compensate for the loss, as one cannot be held responsible for the consequences of another's actions.²³

The fundamental principle of *dharar* must be universal in accordance with the general principle in the Hadith of the Prophet, namely "*laa dharara wa laa dhirara*" (do not cause harm to oneself or to others). The degree of harm is measured based on common customs. This principle aligns with the fundamental principle in the study of *ushul fiqh*, which states that if a definitive meaning in Sharia (Islamic law) is found, it must be applied, but if there is no definitive meaning, then it must refer to the definitive meaning based on common customs. Because Islamic law does not specify the meaning of harm explicitly, its measurement, both in quality and quantity, must refer to societal customs. Therefore, the harm that must be indemnified pertains to property, the benefits of property, life, and rights related to wealth if it aligns with the prevailing customs in society.

It is important to adjust the severity level and the amount of sanctions imposed based on the level of harm experienced by the affected parties. This principle aligns with the principle of *dhaman*, where the aim is to compensate for and mitigate the losses suffered by the victims, not just to impose punishment on the perpetrator. However, even so, this objective remains present in various sanctions imposed, albeit in a conventional manner.

D. Conclusion

In the performance of e-commerce transactions, numerous factors lead to losses, such as breaches of contract, which can diminish customer trust in e-commerce. Therefore, a well-defined dispute resolution process is necessary. Breaches of contract can take various forms, including non-conforming goods, defective items, delayed delivery, or even non-delivery of orders. Consequently, under the law, one is entitled to seek compensation from the party responsible for the breach.

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²³ Asmuni Mth, 'Teori Ganti Rugi (Dhaman) Perspektif Hukum Islam', *Millah: Jurnal Studi Agama*, 2007, 97-120.

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