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DOI: https://doi.org/10.31933/unesrev.v5i4
Accepted: 01/07/2023, Fixed: 16/07/2023, Published: 17/07/2023

ANALYSIS OF IMPLEMENTATION OF COURT DECISIONS ON CUSTOMARY LAND DISPUTES IN INDONESIA

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ABSTRACT

Customary land is one of the sources of agrarian conflicts that often occur in Indonesia. The government has attempted to resolve land disputes by involving the judiciary. However, the implementation of court decisions often does not meet the expectations of indigenous peoples, so the conflict continues. This study aims to analyze the implementation of court decisions on customary land claims in Indonesia. The method used is normative legal research with a case approach. This study uses secondary data from court decisions and related documents. The results of the research show that the implementation of court decisions on customary land disputes in Indonesia still faces various obstacles. Some of these obstacles include the ignorance of indigenous peoples about court decisions, the slow execution of decisions, and the lack of support from the government in enforcing court decisions. This study recommends the need for efforts to increase awareness of indigenous peoples regarding court decisions, accelerate the execution of decisions, and increase support from the government in enforcing court decisions. In addition, there is a need to formulate clear and firm regulations regarding the implementation of court decisions on customary land disputes in Indonesia.

Keywords: Customary Land Disputes, Court Decisions, Execution Of Decisions, Indigenous Peoples, Agrarian Conflicts.

INTRODUCTION

Land for the people of Indonesia is a very important thing in their lives. The journey of Indonesian people's lives depends on the existence of the land they cultivate both in the form of agriculture, plantations and animal husbandry as well as establishing a place to live for themselves and their descendants. From the results of cultivating the land, Indonesian people can

live and indirectly consider land as a primary need. This has been felt and occurred in the reality of Indonesian people's lives before independence to post-independence (Soeroso, 2006)

In regulating the position of this land before independence, the Indonesian people applied the customary law of each existing area, in addition to that there was also a civil law from the Netherlands which became the guideline for the Dutch government which at that time occupied Indonesian territories. After the independence period, on September 24, 1960 Law Number 5 of 1960 concerning Basic Agrarian Regulations was passed by President Sukarno, so that with the issuance of this Law there was no longer any difference between customary law and Dutch civil law relating to the issue of land. Links to Land Registration and Conversion Provisions in UUPA. (Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, 21 C.E.)

Provisions as a rule of law (*rule of law*) have strong and clear reasons for the interests of the citizens themselves. According to Gustav Radbruch, a German legal philosopher teaches the concept of three ideas of legal elements which some experts identify as the goals of law, namely justice, benefit and legal certainty. As a rule of law, recognition of the right to ownership has been regulated in various laws and regulations, these rules are binding on every citizen and even the government itself in order to create guarantees of legal certainty regarding a person's rights, this is in line with the legal theory developed by Roscoe Pound namely law is a tool social engineering (*Law as a tool of social engineering*) (Salim, 2017).

The state's obligation to regulate cross-legal relations between individuals and other individuals or with legal entities and other legal entities so that legal certainty for each party with nothing that harms other parties because there is a rule of law in front of them. Arrangement of land rights is an obligation of the state to regulate it in order to realize legal certainty and safeguard the rights of each party. In addition to legal certainty, the rule of law in this country also provides legal protection for the recognition of the rights of its citizens (Febrianti, 2013).

Land registration is a mandate from Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Regulations clearly stated in Article 19 paragraph (1) of the UUPA that in order to guarantee legal certainty by the Government land registration is held throughout the territory of the Republic of Indonesia according to the provisions of provisions stipulated by Government Regulations. Subsequently, the government issued Government Regulation Number 10 of 1960 concerning Land Registration which was later revised by Government Regulation Number 24 of 1997 as the mandate of the UUPA (Abdulkadir, 2020)

According to Government Regulation Number 24 of 1997, the definition of land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation and maintenance of physical and juridical data, in the form of maps and lists, concerning areas land and apartment units, including the issuance of certificates of proof of title for land parcels for which there are rights and ownership rights to apartment units and certain rights that burden them. Article 9 paragraph (1) and (2) of this Government Regulation clearly states, namely paragraph (1) that the object of land registration includes: a. Plots of land owned with ownership rights, usufructuary

rights, building use rights and usufructuary rights, b. Land management rights, c. Waqf land, d. Ownership rights to apartment units, e. Mortgage rights, f. State land. Paragraph (2) that in state land as the object of land registration as referred to in paragraph (1) letter f, the registration is carried out by recording land parcels which are state land in the land register (Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah, 1997).

The main purpose of land registration is to guarantee legal certainty for land rights. And this paragraph is addressed to the government as the person in charge in terms of arranging land registration. Whereas Article 23, Article 32 and Article 28 of the UUPA are addressed to right holders, so that there are rights, so that there are rights and obligations between the government and land rights holders. Article 23 paragraph (1) of the UUPA states that property rights, as well as any transfer, deletion and encumbrance with other rights must be registered according to the provisions referred to in Article 19. Meanwhile, paragraph (2) states that registration included in paragraph 2 is a strong means of proof regarding the abolition of ownership rights and the validity of the transfer and encumbrance of said rights. Article 32 paragraph (1) of the UUPA states that the usufructuary right, including the conditions for granting it, as well as any transfer and abolition of said right, must be registered according to the provisions referred to in Article 19. Paragraph (2) states that registration is included in paragraph 1 is a strong means of proof regarding the transfer and abolition of usufructuary rights, except in cases where these rights are abolished because the term expires. Article 38 paragraph (1) of the UUPA states that the building use rights, including the conditions for granting them, as well as any transfer and elimination of said rights, must be registered according to the provisions referred to in Article 19 paragraph (2) stating that registration is included in paragraph 1 is a strong means of proof regarding the transition and the abolition of usufructuary rights, except in cases where these rights are abolished because the term expires (Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, 21 C.E.).

The definition of conversion is the arrangement of land rights that existed before the enactment of the UUPA to enter the internal system of the UUPA. The rules regarding the provisions regarding the conversion of land rights have been regulated in the provisions of the conversion of UUPA Article II paragraph (1), namely: land rights that give authority as or are similar to the rights referred to in Article 20 paragraph 1, as referred to by the name as below, existing at the time this law comes into effect, namely rights *agricultural property*, property, foundation, andarbeni rights to druwe, rights to village druwe, pesini, grant sultan,*landirjenbezitrecht*, *perpetual leasehold*, business rights on former private land and other rights by any name, as further confirmed by the Minister of Agraria, since the commencement of this law become the property rights in Article 20 paragraph (1), unless the owner does not fulfill conditions as mentioned in Article 21. Then continued in paragraph 2 which reads that the rights mentioned in paragraph 1 belong to foreign nationals who, in addition to their Indonesian citizenship, have foreign citizenship and a legal entity that is not designated by the government as in Article 21 paragraph (2) be the right to use a business or the right to use a building in

accordance with the allocation of the land, as will be further confirmed by the Minister of Agraria.

Furthermore, Article IV regarding the Conversion Provisions in the UUPA states that land rights that give authority are as or similar to the rights referred to in Article 41 paragraph (1) as referred to by the name below, which exist at the time this law comes into effect. become the usufructuary rights referred to in Article 41 paragraph (1) which confers the same authority and obligations as those owned by the rights holder at the time this law comes into effect, as long as they do not conflict with the spirit and provisions of this law. Article VII paragraph (1) explains in detail that the permanent rights of gogolan, punch, or sanggan which existed at the time this Law came into force became the property rights referred to in Article 20 paragraph (1). Paragraph (2) states that non-permanent gogolan, pekulen or sanggan rights become the usufructuary rights referred to in Article 41 paragraph (1), which confer authority and obligations as those owned by the rights holders when this law comes into effect. Paragraph (3) states that if there is doubt whether a right of gogolan, pekulen or objection is permanent or not, then it is the Minister of Agrarian Affairs who decides.

Regarding the rights of gogolan, pekulen or sanggan, it is regulated in Article 20 of the Regulation of the Minister of Agrarian Affairs Number 2 of 1960 which reads: 1. Converting the rights of gogolan, pekulen or sanggan which are permanent into property rights as referred to in Article VII paragraph (1) provisions - provisions for the conversion of the Basic Agrarian Law are carried out with a confirmation letter from the Head of Agrarian Inspection concerned. 2. The right of gogolan, sanggan or pekulen is permanent if the gogolans continue to own the same gogolan land and if the gogol dies it falls to a certain inheritance. 3. The Head of Agrarian Inspection determines the decision letter referred to in paragraph (1) of this article by taking into account the consideration of the nature or the inconsistency of said Gogolan rights in reality. 4. If there is a difference of opinion between the Head of Agrarian Inspection and the Regent/Head of the Region regarding the matter of whether according to the right of gogolan is permanent or not permanent, likewise if the village concerned has a difference of opinion with the two officials, then the matter shall be raised beforehand to the Minister of Agrarian Affairs to obtain decision (Peraturan Menteri Agraria Nomor 2 Tahun 1960 Tentang Pelaksanaan Ketentuan Undang-Undang Pokok Agraria., 1960).

Article 3 Regulation of the Minister of Agriculture and Agrarian Affairs Number 2 of 1962 concerning Affirmation of the Conversion and Registration of Former Indonesian Rights on Land which states that this article regulates rights that are not described in a land title document, then the person concerned is submitted: (Peraturan Menteri Agraria Nomor 2 Tahun 1960 Tentang Pelaksanaan Ketentuan Undang-Undang Pokok Agraria., 1960).

1. Proof of rights, namely proof of Indonesian verponding income tax certificate or proof of a letter granting rights by the competent authority (if there is a letter of measurement).
2. A certificate from the Head of the Village which is confirmed by the assistant wedana (sub-district) who: a) Authorizes the letter or letter of proof of the right. b) Explain whether the land is residential land or agricultural land. c) Explain who has the right, if there is a

derivative of the sale and purchase of the land. d) Proof of valid citizenship from those who have the right.

From the provisions of Article 3, specifically for lands that are subject to customary law but are not registered in the terms of conversion as land that can be converted to a land right according to the provisions of the BAL, but are recognized as customary rights, then it is pursued by means of " Affirmation of Rights" submitted to the Head of the local Land Registration Office followed by preliminary evidence such as tax receipts, sales and purchase agreements made prior to the entry into force of the UUPA and letters confirming a person's rights and also explaining that the land is for housing or for agriculture and a statement of the nationality of the person concerned.

Furthermore, Article 7 paragraph (1) of this Ministerial Regulation explains that regarding rights that do not exist or no longer have evidence, as referred to in Articles 2 and 3, then at the request of the interested party, recognition of rights is granted, based on the results of the Examination Committee's examination. Land A is stated in the Decree of the Minister of State for Agrarian Affairs No. sk. 113/Ka/1961 (TLN Number 2334). The recognition of this right was given after the results of the Committee's examination were announced for 2 consecutive months in the office of the village head, assistant district chief and the regional agrarian head and no one raised any objections, either regarding the rights, who owns them or the location, area and boundaries. land boundary. Paragraph (2) states that the Recognition of the rights referred to in paragraph (1) of this Article is given by the Head of Agrarian Inspection concerned. If according to the Decree of the Minister of State for Agrarian Affairs No. sk. 112/Ka/1961 in conjunction with SK 4/Ka/62 (TLN Numbers 2333 and 2433) which has the authority to grant the right that is recognized is a lower agency, then that agency gives the recognition. Paragraph (3) reads that bearing in mind the provisions in Article 6, in the decision letter recognizing said right the conversion of the right becomes a property right, a building use right, a business use right or a usufructuary right, which, at the request of the interested party, will be registered by Head of the Land Registration Office concerned. In areas where Government Regulation Number 10 of 1961 has started to be implemented, recognition of that right will only take effect if the right has been registered at the Land Registration Office. At the request of those entitled to be given certificates or temporary certificates, at a fee according to the provisions in Government Regulation Number 10 of 1961 (Peraturan Pemerintah Nomor 10 Tahun 1961 Tentang Pendaftaran Tanah, 1961).

Clearly in Article 24 paragraph (1) PP Number 24 of 1997 reads as follows for the purposes of registration of rights, land rights originating from the conversion of old rights are proven by means of evidence regarding the existence of said rights in the form of written evidence, statements witnesses and/or statements concerned whose degree of truth is deemed by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, to be sufficient to register rights, rights holders and the rights of other parties burdening them. Paragraph (2) in the event that the means of proof as referred to in paragraph (1) are not complete or no longer available, the bookkeeping of rights can be carried

out based on the fact that the physical possession of the land parcel concerned has been for 20 (twenty) years or more consecutively by applicants for registration and their predecessors, provided that: a. Such control is carried out in good faith and openly by the person concerned as the owner of the land, and is supported by the testimony of a trusted person. b. the ownership, both before and during the announcement as referred to in Article 26, is not disputed by the customary law community or the village/kelurahan concerned or other parties (Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah, 1997).

RESEAARCH METHOD

The approach method used is the normative juridical approach. The normative juridical approach is an approach that is carried out or used as a reference in highlighting the problems of applicable legal aspects. The normative juridical approach is used to provide a qualitative description of court decisions over customary land disputes in Indonesia.(Sugiyono, 2019).

The juridical approach is defined as an approach to legal rules related to legal actions regarding court decisions on customary land disputes in Indonesia. (Lexy J. Moleong, 2018)The normative approach is intended as an attempt to approach the problem under study with a real or appropriate legal nature with reality in society (Salim, 2016) In carrying out this normative juridical approach the method used is a qualitative method. This method is used because of several considerations, namely: first, adjusting this method is easier when dealing with multiple realities; these two methods directly present the nature of the relationship between the researcher and the respondent; these three methods are more sensitive and more able to adapt to the many sharpening of joint influence on the value patterns encountered (Jonathan Sarwono, 2016).

RESULT AND DISCUSSION

The process of resolving disputes in court is commonly referred to as litigation, in which all parties to a dispute face each other to defend their rights before the court. The end result of a dispute resolution through litigation is a decision that states*win-lose solution*. According to Suyud Margono, litigation is a lawsuit over a conflict that is ritualized to replace the actual conflict, where the parties give a decision maker two conflicting choices. Litigation is a process in which a court makes a decision that binds the disputing parties in a legal process that exists at one level. The litigation process is carried out at each level of justice, both first level court, appellate level up to cassation leve (Abdulkadir, 2020) .

Dispute resolution through litigation is divided in several courts. The provisions of Article 10 of Law Number 4 of 2004 concerning Judicial Powers state that the administration of judicial powers is carried out by the Supreme Court and judicial bodies under it as well as by a Constitutional Court. The judiciary under the Supreme Court includes: a) General Courts (Law No. 8 of 2004 concerning General Courts). b) Religious Courts (Law No. 7 of 1989 concerning Religious Courts). c) Military Judicial Agency (Law No. 31 of 1997 concerning Military Courts). d) State Administrative Court (Law Number 9 of 2004 concerning State Administrative

Court)thus, the settlement of civil cases through litigation is expected to be the best solution for the community to obtain legal certainty (Khalid, 2014).

In the Banyuwangi District Court Decision Number 171/Pdt.G/2018/PN Byw Jo. Surabaya High Court Decision Number 252/Pdt/2019/PT SBY Jo. The decision of the Supreme Court of the Republic of Indonesia Number 3023 K/PDT 2020 contained differences in decisions from the first level which were the same as the appeal decision and was canceled by the Supreme Court in cassation that the Panel of Judges considered that there were differences in legal considerations and assessed different legal facts between the First High Court and the Appeals with the Panel Judge on cassation.

The Panel of Judges of first instance considered that based on the evidence submitted by the two parties as mentioned above in relation to one another which turned out to be appropriate, the Panel of Judges was of the opinion that it had been proven that Petok Number: 1437, Persil No. 39 a, Class D.I Area 7,900 M^2 in the name of Nyai Sarah who is located in Klatak Village, Giri District, Banyuwangi Regency, which was later issued a Certificate of Ownership No. 244/Village Klatak, Petok D No. 1437, Parsil 39a/D.I, Situation Drawing Number 2157/1977, September 1, 1977, Area 6,850 M^2 in the name of the first right holder Nyai Sarah and the last right holder in the name of Suwardi bin Sairun on September 3 1977 is part of the entire Petok/C No. 37 Parcel 39.a, Class D.I, Area 25,640 M^2 on behalf of H. Asmah located in Klatak Village, Kalipuro District, Banyuwangi Regency. The judge considered that the Defendant's land was part of the plaintiff's land originating from Petok C Number 37, while the Defendants considered their land to originate from Petok Number 1437 which was different from the origin of the plaintiff's land.

The Panel of Judges assessed the facts which stated that Petok Number: 1437, Persil No. 39 a, Class D.I Area 7,900 M^2 in the name of Nyai Sarah who is located in Klatak Village, Giri District, Banyuwangi Regency, which was later issued a Certificate of Ownership No. 244/Village Klatak, Petok D No. 1437, Parsil 39a/D.I, Situation Drawing Number 2157/1977, September 1, 1977, Area 6,850 M^2 in the name of the first right holder Nyai Sarah and the last right holder in the name of Suwardi bin Sairun on September 3 1977 is part of the entire Petok/C No. 37 Parcel 39.a, Class D.I, Area 25,640 M^2 in the name of H. Asmah which has been continuously controlled by the Plaintiffs as the legal heirs of H. Asmah and the land parcels have never been partially or wholly transferred either by H. Asmah himself or by the heirs of H. Asmah to other parties. Then the Deed of Sale and Purchase Number 45 dated 9 November 1970 between KGS Moh Hasan and Naju Hunnah as the seller and Sairun as the buyer must be declared invalid because the seller did not have the land rights, so that the actions committed by KGS Moh Hasan and Naju Hunnah were against law.

Based on the minutes of the local inspection on Friday January 18 2019, it can be seen that although there are differences regarding the size and boundaries of the object of dispute, especially those submitted by the Plaintiffs, Defendant I acting for himself as well as the attorney for Defendant II, Defendant III and Defendant IV which according to the Panel of Judges is a reasonable thing as a possibility that could arise considering the quite long time span since the

issuance of Certificate of Ownership No. 244/Village Klatak, Petok D No. 1437, Parsil 39a D.I, Situation Drawing Number 2157/1977, September 1, 1977, Area 6,850 M^2, in the name of the first right holder Nyai Sarah and the last right holder in the name of Suwardi bin Sairun on September 3, 1977 until the filing of the aquo lawsuit by the Plaintiffs but the parties mentioned above including Defendant V at the time of the local examination each expressly indicating the location and confirming that the object of dispute is in this case.

The Panel of Judges considered that the differences that occurred at the time of the local inspection regarding the object of the disputed land regarding size and boundaries were natural because of the long time span. Supposedly when there is this difference the Panel of Judges must really be sure whether this land is the same object with different plots or different plots with different locations. Before the issuance of the Basic Agrarian Law in 1960, the status of this land could be considered equivalent to a certificate of land ownership. However, after the issuance of the Basic Agrarian Law, Petok D was no longer proof of legal ownership. Petok D is a certificate of land ownership from the village head and local sub-district head. Before the BAL took effect on December 24, 1960 Petok D was evidence of land ownership. Therefore Petok D has the same value as a land certificate. In this case the Letter of Petok or Petok D is used as one of the pieces of evidence stating the relationship between the land and the person who controls it as well as other evidence that can support the ownership of the right to the land.

At the cassation level, the Panel of Judges had different legal considerations. The Panel of Judges of the Supreme Court assessed the decision*The judge was made* The Surabaya High Court corrected the decision*The judge was made* The Banyuwangi District Court by granting the plaintiffs' lawsuit cannot be justified, because based on the facts in the aquo case, the exceptions of the Defendants regarding the wrong object lawsuit (*error in object)* and the Plaintiffs' lawsuit is blurred can be justified and granted. The legal considerations of the Supreme Court considered that the plaintiffs in their lawsuit argued that they owned a land area of 25,460 M.^{2} (twenty five thousand four hundred and sixty square meters) while those controlled by the Plaintiffs (Defendant I to Defendant IV and Defendant VI) are 6,820 M^2 (six thousand eight hundred and twenty square meters) Besides explicitly the Plaintiffs did not state which object of dispute in the aquo case, the Plaintiffs in their claim position also did not explicitly state the boundaries of the land area of 6,820 M^2 controlled by the Defendants (Defendant I to Defendant IV and Defendant VI).

The Plaintiffs argued that the object of the dispute came from Petok No. 37 parcel no. 39 a, Class DI Area 25,640 M^2, while the object of dispute which is controlled by the Defendants (Defendant I to Defendant IV and Defendant VI) based on the Certificate of Ownership Number 244 comes from Petok Number 1437, this fact has justified the petitum of the lawsuit of the Plaintiffs number 9 (nine) that the land Certificate of Ownership Number 244 covering an area of 6,820 M^2 (six thousand eight hundred and twenty square meters) which is owned by the Defendants (Defendant I to Defendant IV and Defendant VI) is not in Petok No. 37 parcel no. 39 a, Class DI Area 25,640 M^2

Petitum No. 9 states the object of the land parcel according to the Certificate of Ownership No. 244/Kelurahan Klatak, situation drawing dated 1-9-1977 No. 2157/977, Area 6,820 M^2 finally on behalf of Suwardi (parents of Defendant I to Defendant IV) not in Petok No. 37 parcel no. 39.a, Class D.I Area 25,640 M^2 under the name H. Asmah located in Klatak Village, Kalipuro District, Banyuwangi Regency. Whereas the Panel of Judges of the Supreme Court considered Petok D of the Plaintiff to be different from Petok D of the Defendant and the location of the land was also different and not part of Petok D of the Plaintiff. Therefore, it is true that the object of land dispute that has been issued a title certificate by the Defendant is not part of Petok D of the Plaintiff because in addition to the document as evidence. That, in the local examination which stated that the Plaintiff had continuous control but could not show the boundaries of the land object in dispute and the Plaintiff's funds controlled by the boundaries of the land with a position that was also unclear and the Plaintiff did not know the location of the object of the dispute.

Whereas the Plaintiff and the Defendant should, if they really own the object of land in dispute on the basis of Petok D and postulate that they have continuous control, then the parties to the dispute understand the location of the land and the area and boundaries of the land they control. However, during the local inspection, the parties were unable to show the location of the land or its location and boundaries, especially the plaintiff's side. Whereas Petok D is a copy of Book C which was duplicated or copied and given to the sub-district office as an archive. Based on a copy of Book C, a bookkeeping for taxes was made, the community referred to it as Petok D which is a quote from Book C which records the taxpayer, area and class of registered land. Book C is data from Book B, which used to be called the Krawangan Book, which contains a description of land ownership in a kelurahan with a certain scale, which used to be 1:2500 and 1:5000. Book B is derived from Book A which is the measurement result of the Dutch colonial era. This book is called Buku A which contains a classification of land called Klasiran, which is the measurement of parcels belonging to the sub-district unit and then compiled in one plot of land to become one classification data in the Kelurahan unit called Buku A.

CONCLUSION

That land certificates of former customary ownership rights in the form of Girik, Petok D, Letter C, Letters of Ijo, Detail,*Traveller* or*Property Verponding***,** customary rights,*Farmhouse*, Gogolan, *Use*, *Long lease*, *loan* and the like are considered by the community as proof of ownership of land rights, which in fact the letter is proof of payment or settlement of land (yield) tax and is not proof of ownership of land rights, while Land and Building Tax is a continuation of tax collection in letters which is always updated when there is also a transfer by the owner who sells or transfers the land to another person, so that the data in the letter is updated by the village, in this case the local sub-district or sub-district.By Therefore, these letters are not proof of land ownership rights, so to guarantee legal certainty of land rights, it is necessary to carry out land registration/registration of land rights related to the basis of ownership of land rights, with these documents accompanied by conditions regulated by legislation to obtain proof of

ownership of land rights in the form of certificates and obtain the benefits contained therein.Because the majority of Indonesian people are guided by the land documents of former customary ownership rights that are still considered proof of ownership of land rights, so in the process of land registration carried out by the government the proof of the certificate is still guided as one of the conditions in the land registration process.

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