



Legal reconstruction of PTPN II's former HGU land registration by commonfolk based on justice value

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Abstract

This research is motivated by the formulation of the problem, of what are the weaknesses faced in the effort to register land owned by the community in the PTPN-II's HGU which expired in the 1999/2000's term and How is the legal reconstruction should be. This study will present information using a doctrinal approach in the form of a Legislation Approach, a Conceptual Approach, a Historical Approach, and a non-doctrinal approach, namely social law research, both approaches are applied to primary data from interviews, secondary data in the form of legal literature and tertiary materials. such as indexes and legal dictionaries to obtain specific answers to this research hypothesis.

Based on the research conducted, it can be concluded that the land registration process carried out so far for the former PTPN II's HGU land still causes problems as it is not yet complete and actually causes many conflicts due to weaknesses in its normative aspects, namely indecisive regulations on both historical, sociological, and political aspects. So it is necessary to reconstruct it at the normative, institutional, and conceptual levels related to the registration of the former PTPN II's HGU land.

Keywords: legal reconstruction, PTPN II, HGU land, justice value

Introduction

Nusantara Plantation Limited Company (PTPN) 2 is a state-owned enterprise (BUMN) in the plantation sector in North Sumatra. PTPN II in its company management has a number of assets in the form of land, plants, and other movable objects. Where related to land, PTPN II is attached with *Hak Guna Usaha* (Land-Use Right/HGU) as its land rights.

HGU is regulated in Articles 28 to 34 of the Basic Agrarian Law (UUPA). HGU can be granted by the government to individuals and legal entities on land used for plantations. HGU is further regulated in Government Regulation Number 40 of 1996 concerning Building Use Rights, Business Use Rights, and Private Use Rights (PP 40/1996) in Articles 2 to 18 jo. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration (PP 18/2021) in Articles 19 to 33. HGU is granted by the government if the land is land that has state land status. As in the provisions of Article 28 Paragraph (1) BAL jo. Article 4 PP40/1996 jo. Article 21 of PP 18/2021 states, HGU is granted on land that is directly managed by the state or land with management rights. In addition, HGU can also be granted to companies in the plantation sector to land that already had rights before the UUPA was ratified, such as leases and erfpacht (Land Lease before the enactment of the UUPA) rights, which then had to be converted into HGU by September 24, 1980.

In this regard, Article II of the UUPA states that lands with the status of concession rights and erfpacht must be converted into HGU. Thus, as the basis for the initial rights of the PTPN II HGU is the Decree of the Minister of Agrarian Affairs Number 24/HGU/1965 dated June 10, 1965, in which the Tobacco VAT of Deli East Sumatra was granted a HGU with an area of 59,000 hectares which was

originally an area of 250,000 hectares and the remaining 191,000 hectares. is land reform land to be given to parties who according to the government are entitled to the land. This land is referred to as the land of treats (grondaanbod). It can be seen that the area has shrunk from the initial area of 250,000 Ha to an area of 59,000 Ha. (Pelzer, 1991) ⁽³⁾ This is due to the occupation and cultivators of the people so some areas that are very suitable for growing tobacco are also sacrificed to meet the demands of the cultivators.

In 1997, the process of measuring the PTPN II area was carried out in the context of the process of extending the HGU which ended in 2000. Then the B Plus Committee Team was formed. Committee B Plus was formed by the Provincial Government in the North Sumatra area to resolve land disputes over the PTPN II area based on the Decree of the Governor of North Sumatra Number 593.4/065.K/Year 2000 dated 11 February 2000 (KEPGUB SUMUT 593.4/065.K/2000), recommends shrinking the area of PTPN II's Cultivation Rights (HGU) covering an area of 5,873.06 Ha and has been confirmed by the Decree of the Head of the National Land Agency Number 42 HGU/BPN/2002 jo. Number 43/HGU/BPN/2002 jo. Number 44/HGU/BPN/2002 respectively dated November 29, 2002 jo. Number 10/HGU/BPN/2004 dated February 6, 2004 confirms that the land area of 5,873.06 Ha is State land whose control, use, and designation arrangements are submitted to the Governor of North Sumatra to be processed in accordance with the provisions of the applicable laws and regulations after obtaining a permit. disposal of assets from the competent Minister. As it is known that PTPN II is a BUMN with a limited liability company where the business capital is divided into shares, 51% of the shares are state shares for a profit (Oloan, 2006) ⁽⁵⁾.

HGU is also regulated in the provisions of Chapter IV part one Paragraph 1 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration (PP 18/2021). Article 19 states that Indonesian citizens and legal entities established under Indonesian law domiciled in Indonesia are subject to HGU. Article 20 Paragraph (1) states that the HGU holder who no longer meets the requirements as referred to in Article 19 within a period of 1 (one) year must relinquish or transfer the HGU to another party who meets the requirements. Article 20 Paragraph (2) states that if within the period as referred to in Paragraph (1) Article 20, the right is not relinquished or transferred, the right is nullified by law. According to PP 18/2021 in Article 21 it is stated that HGU land includes State Land and Management Rights Land.

The Government Regulation (PP) Number 18/2021 also mentions the period of HGU which is Article 22 Paragraph (1) HGU is granted for a maximum period of 35 (thirty-five) years, extended for a maximum period of 25 (twenty-five) years and renewed for a maximum period of 35 (thirty-five) years. Article 22 Paragraph (2) After the period of granting, extension, and renewal as referred to in paragraph (1) ends, HGU Land will return to being land controlled directly by the State or land with Management Rights. Article 22 Paragraph (3) Land which is directly controlled by the State as referred to in Paragraph (2), re-arrangement of use, utilization, and ownership becomes the authority of the Minister and may be given priority to former rights holders by taking into account:

1. The land is still cultivated and utilized properly in accordance with the circumstances, nature, and purpose of granting rights;
2. The conditions for granting rights are fulfilled properly by the right holder;
3. The right holder still fulfills the requirements as the right holder;
4. The land is still in accordance with the spatial plan;
5. Is not used for profit/or planned for the public interest;
6. Natural resources and the environment; and
7. Condition of the land and the surrounding community.

Looking at the time period regulated by PP 18/2021, it can be seen that the use of this HGU as a Land Right in Indonesia has been given a long time by the Government to the holder of the right so that the implementation of renewal and application for re-extension of the HGU should be carried out well before the expiry date (Widodo, 2018). HGU expires. This can minimize the bad possibilities that will happen in the future. However, we certainly cannot divert this from efforts to resolve land problems in the past which did not end in a complete way. Along the way, lawsuits emerged through the litigation process in the Civil Court and State Administrative Court against PTPN-II's land. The HGU land assets belonging to PTPN-II are state assets. As a State-owned Enterprise (BUMN), PTPN-II manages state assets in the form of state assets which are separated from the State Budget (APBN) as state capital participation in Persero and/or public companies and other companies. Regarding the SBUMN asset policy, PTPN-II is part of the Ministry of SOEs. So that the management process, including the disposal of assets, is regulated in the regulation of the Ministry of SOEs. One of these regulations is that permission is needed from the Minister of SOEs if there is a release of assets belonging to SOEs to the rightful

party later. This also applies to PTPN-II for its HGU land assets.

Based on the above background, the authors are interested in conducting research titled "Legal Reconstruction of Ptpn Ii's Former Hgu Land Registration by Commonfolk Based on Justice Value" where the authors raise 2 (two) main issues as follows:

1. What are the obstacles faced in the effort to register land owned by the community in which previously owned by the PTPN II as HGU Land that has expired since 1999/2000?
2. How is the legal reconstruction of the law to register land owned by the community in which previously owned by the PTPN II as HGU Land that has expired since 1999/2000?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [8].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [1]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Obstacles Faced in The Effort to Register Land Owned by the Community in Which Previously Owned by the PTPN II as HGU Land That Has Expired Since 1999/2000

Historically, The HGU registration process has been started in 1958 when the Dutch assets were nationalized. The registration of this right then gave birth to the HGU in 1965.

At this time, the Government focused on efforts to take over Dutch assets, structuring and managing these assets for the benefit of the nation and state. The spirit of nationalism and populism is accommodated by the demands of the people who cultivate the ex-Dutch gardens. Based on the Decree of the Minister of Agrarian Affairs Number 24/HGU/1965 dated June 10, 1965 regarding the granting of HGU to PPN Tobacco Deli, East Sumatra for a land area of 59,000 hectares of the initial land area of 250,000 hectares, the remaining land area of 181,000 hectares was confirmed to be the object of land reform and will be given by the government to entitled. In order to control the increasingly complicated occupation of plantation land in various areas, and to prevent the emergence of new cultivation problems, Emergency Law Number 8 of 1954 concerning the Settlement of the Problem of Use of Plantation Land by the People (State Gazette 1954 Number 65) was issued (UU Drt 8/1954).

After the issuance of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 (PermenATR 5/1999), another more complicated problem came one after another, which came to PTPN II, namely the emergence of demands by several Malay traditional organizations bearing the name of the customary law community claiming that the entire territory The former plantation land area of 250,000 Ha which stretches between the Snake River in Deli Serdang Regency to Sei Wampu in Langkat Regency is their ulayat land (Customary Land) and asks the Government to return it to the customary law community (Malay) (Oloan, 2002) ^[6].

One of the causes of conflicts over plantation lands is the incomplete compensation process for community land that has been worked on for generations and taken for granted by the plantations, besides that the plantation area in the field is actually larger than the area listed on the HGU certificate issued. has been issued, coupled with the fact that the plantation land is not managed properly so that according to the assessment it is classified as Class IV and V. Prior to the expiry of the PTPN II HGU in 2000, in 1997 PTPN II had started to apply for the HGU extension process. This process then gave birth to the Decree of the Head of the National Land Agency Number 42 HGU/BPN/2002 jo. Number 43/HGU/BPN/2002 jo. Number 44/HGU/BPN/2002 respectively dated November 29, 2002 and Number 10/HGU/BPN/2004 dated February 6, 2004 which confirms that the land area of 5,873.06 Ha is directly controlled by the State where the control, use, and the allocation is submitted to the Governor of North Sumatra to be processed in accordance with the provisions of the applicable laws and regulations after obtaining a permit for the disposal of assets from the competent Minister. This process occurred at the time of the political transition from the new order era of President Soeharto's government to the reform order. The area shrinkage process was carried out for the second time for the PTPN II HGU. Until 2004, the remaining area of HGU PTPN II was 38,923.62 Ha. By looking at this facts, it can be seen that the political direction that occurred also became an obstacle in the registration process for the extension of the PTPN II HGU land (Widodo, 2019). These obstacles have resulted in the shrinking of the PTPN II HGU area and it is possible that the area will decrease over the years.

PTPN II HGU in 2000 before it expired, for example, in 1997 PTPN II had started to apply for the process of

extending the HGU. This process then gave birth to the Decree of the Head of the National Land Agency Number 42 HGU/BPN/2002 jo. Number 43/HGU/BPN/2002 jo. Number 44/HGU/BPN/2002 respectively dated November 29, 2002 and Number 10/HGU/BPN/2004 dated February 6, 2004 which confirms that the HGU land covering an area of 5,873.06 Ha is directly controlled by the State where the control arrangements, its use, and designation shall be submitted to the Governor of North Sumatra for processing in accordance with the provisions of the prevailing laws and regulations after obtaining a permit for the disposal of assets from the competent Minister. However, because it coincided with the new order, the area experienced a second shrinkage of the PTPN II HGU. Until 2004, the remaining land area of PTPN II HGU was 38,923.62 Ha.

The shrinkage of this area shows that the political interests of each government have a considerable impact on decisions related to the HGU. Political directions will result in different political decisions. Depending on what the government's focus at that time led to. This often delays the granting of HGU permits to PTPN II. Political factors that occur also become obstacles in the registration of PTPN II HGU land. These obstacles led to the shrinking of the HGU area. The Government's decision is expected to be able to cover other interests outside of political factors by supporting the Government to carry out the implementation of Good and responsible Government Services.

In addition to these problems, there are also obstacles related to the time period in the regulation for the extension of the HGU as stated in PP 18/2021 where the period of 2 years after the expiration of the HGU cannot be applied, because the procedure for extending the HGU takes a relatively long time because the application must be submitted to the Minister, so that in the process of extending PTPN-II's HGU, it is also constrained by the existence of regulations that have not met the time standard that should have been (Mursil, 2014) ^[4].

The enforcement of Article 26 of PP 18/2021 does not reflect the value of justice based on the Theory of Legal Justice. Because the positive law that regulates the procedure for extending the HGU is given a time limit that is not in accordance with the reality of what happened. The extension of the HGU takes a relatively long time because in the case of PTPN-II the approval of the application for the extension of the HGU must reach the Minister, 2 years, of course, is deemed too impossible for this. It is fair if the portion has been adjusted, according to reality, then the provisions in this article are also one of the obstacles to the implementation of the extension of PTPN-II's HGU oil.

The Legal System Theory proposed by Lawrence M. Friedman is one of the theories that assert that the legal system distinguishes between rules and regulations, structures, or institutions and processes that exist within the system. In a system, there are 3 elements that are determined, namely the legal structure (legal structure), legal substance (legal substance), and legal culture (legal culture). If in the sub-chapter structural constraints, City/Regency Government agencies are structural elements in this legal system theory, then the existence of political interests is an element of legal culture, namely human attitudes towards legal norms and the legal system. This community attitude includes beliefs, ideas, values, and expectations of the community towards the law and the legal system. Legal culture is a social force that determines

deviations in the implementation of law in society. Where in this case the political ruler is the strength of the hopes and beliefs of the community which is manifested in a government model that produces policies according to its time.

Regulatory constraints governing the extension of HGU are part of the legal substance of this theory. Legal substance is the rules, norms, and patterns of human behavior in the legal system. Where the products produced by people who are in a legal system can be in the form of decisions that have been issued or new rules that will be compiled later. The legal substance is not only in written law (law in the book) but also includes the law that lives in society (the living law). The rules or norms referred to in this theory if they are related to regulatory issues related to the registration of the PTPN II HGU extension are legal substances.

This legal substance is the dynamo to drive all the basic guidelines and guidelines for the implementation of the HGU. Legal substances related to HGU should be made to complement each other's strengths and weaknesses. So that the contents of these rules do not conflict with one another, because in this theory, the legal system can work well if the legal substance is made and designed properly and continuously, there is a conflict between the legal norms governing HGU registration and the process of implementing HGU registration in the real world that will make the purpose of implementing the HGU registration desired by the UUPA to be ineffective in carrying out. So again, it all depends on how the Government's efforts to synergize the three elements in this legal system theory so that a registration system for the extension of HGU land can be carried out effectively and efficiently.

2. Legal Reconstruction of the Law to Register Land Owned by the Community in Which Previously Owned by the PTPN II as HGU Land That Has Expired Since 1999/2000

The process of renewing the PTPN II HGU follows the procedures of the applicable laws and regulations and PTPN II seeks to comply with the rules set by the Government. The procedure for applying for an extension of the PTPN II HGU started in 1997 by submitting an application in accordance with the provisions of Article 38 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 7 of 2017, namely the stages and provisions regarding the granting of Cultivation Rights that apply with things changed that should be changed (*mutatis mutandis*) to the renewal of HGU. Requirements and renewal procedures that have been described in the Law must be met by PTPN II. The application for renewal of the HGU is no longer subject to land inspection by the constituency officer but is examined by the Land Examination Committee B (Committee B) in accordance with the application for the extension of the HGU.

The application process for the extension of the HGU by PTPN II creates uncertainty about the legal status of the former HGU land, the control of the land is directly controlled by the state before being handed over to the next right holder or not controlled by the state and has been registered as state assets as assets of the party who will pocket the HGU permit. Next, Due to the unclear status of the land which is currently undergoing the application process for the extension of the HGU, various types of

claims and demands for the control of the ex-HGU land have emerged (Sofia, 2022) ^[7].

Against the problems being faced by PTPN II and the Government related to the PTPN II HGU, in order to be classified and find a way out, the author uses the effectiveness theory put forward by Lawrence M. Friedman explicitly discusses law enforcement where the meaning of law enforcement lies in harmonizing activities. the relationship of values that is described in solid rules and embodies attitudes and actions as the final value elaboration to create, maintain and maintain peaceful social life has 3 basic criteria, namely the legal structure or institution that enforces certain legal rules, the legal substance in the form of rules, norms or patterns of behavior produced by humans themselves in a legal system, Then there is a legal culture or human attitude (society) which includes public trust in the law. Through analysis of this theory, it was found that the obstacle in extending the HGU at PTPN II was caused by the existence of two different legal regulations, namely Government Regulation Number 40 of 1996 and Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 as well as regulations regarding The latest Land Cultivation Right Regulation of the Minister of State for Agrarian and Spatial Planning / Head of the National Land Agency Number 7 of 2017, there is uncertainty in the legal status of the land. The Cultivation Right has not been extended due to legal rules that are difficult for PTPN II's Cultivation Right. In addition, agencies that have the authority also show weak coordination to process the extension of PTPN II's rights.

Aristotle's theory of justice in Hamed (2014) ^[2] provides 2 main elements to determine equality in upholding legal justice, namely distributive justice and corrective justice. Distributive justice emphasizes the uniformity of wealth in society, corrective justice is the legal correction of violations committed by the community. This theory is related to PTPN II, the registration of the application for the extension of the Cultivation Right owned by the company was hampered due to the will of the surrounding community which was given convenience by PTPN II to use the plantation land as a place to live before the company used the land which in the end claimed that the land is the property of those who have been occupied for decades, if you look at the history of land acquisition by the community, it will certainly be found that there is a violation of the rule of law that initially wanted to provide the same benefits on the land to the community around PTPN II. This is of course two separate blades that pierced PTPN II's body in the end, because the next theory of justice, namely John Rawls' theory of justice, focuses on situations of inequality in which the rule of law must most benefit the weakest community groups. If viewed from the financial capacity, of course, the surrounding community who claim plantation land as their right will get the main priority to be defended by law in this theory, this is certainly not appropriate if it is associated with the actual problem.

The next theory is about good corporate governance which focuses on the transparency of public authority, as explained in Article 5 Paragraph (3) of Law no. 19 of 2003 concerning State-owned Enterprise (SOE)s, namely transparency, independence, accountability, fairness, and purpose, and objectives, so to be able to implement them in order to find solutions to the problems studied, it is necessary to have the authority and power of the State or government so that the

transfer of rights to land in the former PTPN II area can be carried out with certainty. law. With regard to the management of the transfer of land rights over the former PTPN II/Persero HGU area, which has not received an extension of its HGU and has not been released from state assets to the people who occupy/operate on it, this is another form of mirroring the management of public services based on Law No. 28 of 1999 concerning the Implementation of a State that is Clean from Corruption, Collusion, and Nepotism. Article 3 of Law no. 28 of 1999 concerning State Administration that is free from Corruption, Collusion, and Nepotism emphasizes the principles of state administration including legal certainty, orderly state administration, public interest, transparency, proportionality, professionalism, and accountability.

The theory of legal certainty, legal certainty meant here is the provision of certainty over the control of the land of the former PTPN II HGU area whose license has not been extended and has not been released from state assets. Thus, the legal certainty that will be tested is related to the balance between the authority to act by the government and/or PTPN II companies on the one hand, with the attitude of accepting or rejecting the cultivators/community on the other hand towards existing policies, in ensuring the continuity of existence and accountability to the public and/or stakeholders. And the last is the progressive legal theory, the big agenda of progressive legal ideas is to place humans as the main centrality of all legal discussions with wisdom that invites attention to human behavior factors. This is where the expected reconstruction in this research can go hand in hand with the existing legal rules and will be enforced in the future as a manifestation of the expansion of the meaning of human behavior that has been shown related to the rules that have been enacted so that in the future, these rules can be more perfect in providing certainty. and legal justice because it always makes the future of humans and their lives that are developing continuously as the main focus in establishing a rule. In addition, the author's proposal regarding the establishment of a land insurance institution that has the authority to guarantee the preservation of land rights owned by parties whose names are registered in the land register book and have been written on the land certificate, so that in the future the land and land rights are not easily taken over or recognized as belonging to someone else.

Based on this, the reconstruction of the registration of land owned by the community in the PTPN II HGU which expired in 1999/2000 has been carried out in several ways. The Indonesian people adhere to a negative publication system in which there is also an element of positive publication because in PP no. 24 of 1997 Article 19 Paragraph 2 letter c that registration produces letters of proof of rights that function as a strong means of proof. Likewise, it is stated in Article 23 Paragraph 2, Article 32 Paragraph 2, and Article 38 Paragraph 2. In this system, the certificate of proof of rights acts as a strong means of proof. The information contained therein has legal force and must be accepted as true information as long as there is no other evidence that proves otherwise. This is what allows many of the right holders to lose the land rights that they have legally owned because the party lacks evidence to prove that the land is their right. So that the publication system which is expected to provide comprehensive security for community land rights becomes less effective in its implementation. To

overcome this, it is necessary to form an acquisition agency in the land sector tasked with acquiring abandoned or disputed lands as well as an institution that enforces the system. Special courts are only in the land or agrarian sector, so the judicial process that guarantees legal certainty for every landholder is ideal to enforce as stated in the Land Bill above. In addition, the formation of an institution related to the guarantee of land rights owned by someone whose name is legally registered is one alternative that can be included to become one of the important institutions in terms of land law enforcement in Indonesia, reflecting on the PTPN II dispute that has not been resolved currently.

This reconstruction also needs to be carried out on the contents and provisions of Article 26 Paragraph (1) and Paragraph (2) regarding the period of HGU extension considering that the HGU extension process at the Ministry is also very long.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. Obstacles encountered in the effort to register land owned by the community in the PTPN II HGU which expired in 1999/2000 are the existence of two different legal regulations, namely Government Regulation Number 40 of 1996 and Regulation of the State Minister of Agrarian Affairs/Head of The National Land Agency Number 9 of 1999. Then the institutional factor that hinders the extension of the Right to Cultivate at PTPN II is the weak coordination of the National Land Agency in recording the location of the land as well as the detailed details of the land area. in the field, and the weak coordination between the relevant agencies is not going well.
2. The Legal Reconstruction of the Law to Register Land Owned by the Community In Which Previously Owned By The PTPN II As HGU Land That Has Expired Since 1999/2000 is to form an acquisition agency in the land sector tasked with acquiring abandoned or disputed lands as well as an institution that enforces the system. Special courts are only in the land or agrarian sector, so the judicial process that guarantees legal certainty for every land-right holder is ideal to enforce as stated in the Land Bill above. In addition, the establishment of an institution related to the guarantee of land rights owned by someone whose name is legally registered is one alternative that can be included to become one of the important institutions in terms of land law enforcement in Indonesia, reflecting on the PTPN II dispute that has not been resolved at this time. This reconstruction also needs to be carried out on the contents and provisions of Article 26 Paragraph (1) and Paragraph (2) regarding the period of HGU extension considering that the HGU extension process at the Ministry is also very long.

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