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Juridical Analysis of Opening New Land by Burning Forests and Their Impact on the Environment

Analisis Yuridis Pembukaan Lahan Baru Dengan Membakar Hutan Serta Dampaknya Terhadap Lingkungan

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Abstract: Clearing new land by burning forests is something that is expressly prohibited by law. This is regulated in Article 69 paragraph (1) of Law no. 32 of 2009 concerning Environmental Protection and Management. However, this policy has exceptions for people who clear land with due observance of local wisdom in their respective areas with a maximum land area of 2 hectares/head of family for planting local varieties of plants and surrounded by firebreaks to prevent fire from spreading to the surrounding area.

Keywords: Juridical, environment, forest

Abstrak: Membuka lahan baru dengan cara membakar hutan merupakan hal yang secara tegas dilarang dalam Undang-Undang. Hal ini diatur dalam Pasal 69 ayat (1) Undang-Undang No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Namun, kebijakan ini terdapat pengecualian bagi masyarakat yang melakukan pembukaan lahan dengan memperhatikan kearifan local di daerah masing-masing dengan ketentuan luas lahan maksimal 2 hektar/kepala keluarga untuk ditanami tanaman jenis varietas local dan dikelilingi oleh sekat bakar sebagai pencegah penularan api ke wilayah sekelilingnya.

Kata Kunci: Yuridis, Lahan, Hutan, Lingkungan

1. Introduction

Indonesia is a country known as the "lungs of the world" because of its location on the equator and tropical climate, making biodiversity thrive and develop well. Various types of plants are found in Indonesia and have an important role in producing oxygen which is needed by all living things including humans. Such beneficial biodiversity plays an important role for the development of ecosystems and the environmental balance of all living things.

The environment in a theoretical perspective is seen as an absolute part of human life, inseparable from human life itself (Siahaan, 2009).

According to Michael Allaby, the environment is "the physical, chemical and biotic conditions surrounding and organism" (physical, chemical environment, surrounding community conditions and living organisms). In the legal dictionary, the environment is defined as, "the totality of psychological,

economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value at property and which also effect the quality of peoples lives" (the whole physical environment, economic, cultural, artistic and social environment as well as several surrounding factors that influence the value of ownership and the quality of people's lives) (Champbell, 1991).

Land clearing is something that is often done by the community with various purposes. Land clearing is carried out for industrial development, utilization of existing natural resources to use for development and other purposes. Clearing land is an easy thing to do, the availability of tools and other supporting facilities facilitates the land clearing process.

The utilization of Indonesia's natural resources is reflected in the formulation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." In the context of controlling and managing forest resources, Article 4 paragraph (1) of Law no. 41 of 1999 concerning Forestry states: "All forests within the territory of the Republic of Indonesia, including the natural wealth contained therein, are controlled by the state for the greatest prosperity of the people. Forests as a source of Indonesia's natural wealth at the highest level are controlled by the state as an organization of the power of all the people, and are used to achieve the greatest possible prosperity of the people in the sense of nationality, prosperity and independence in Indonesian society and the rule of law. (Rahmat & Fadli, 2016)

Land clearing can be done in various ways, starting from using heavy equipment, logging with machines or by burning the land. Clearing new land must of course pay attention to the sustainability of living things around it and its impact on the environment.

Opening new land by burning land is a method that is considered very efficient and requires not too much capital. But clearing land by burning land has a huge impact on the environment. The most dangerous impact arising from the burning of land is air pollution in the form of the emergence of smog that covers several areas close to the hotspots of land burning.

This study analyzes the juridical approach to clearing new land by burning forests and how it impacts the environment. Analysis by referring to the provisions of Article 22 number 24 of Law Number 11 of 2020 concerning Job Creation, changes from Law Number 32 of 2009 Article 69 paragraph (1) letter H which reads "Everyone is prohibited from clearing land by burning". In addition to confirming the existence of these regulations, the Government

provides protection to the public by issuing Government Regulation Number 4 of 2001 concerning Control of Environmental Damage and/or Pollution Relating to Forest and/or Land Fires Article 11, "Everyone is prohibited from carrying out forest burning activities and/or land". However, in practice, we often encounter the general public or companies burning land for commercial or other purposes.

2. Method

The method is basically a tool used to achieve something. The method can be interpreted as a way to achieve the goal. Methodology is the process of principles and procedures that we use to approach problems and seek answers (Halawa et al., 2019).

The research method in this research is normative legal research, namely library law research (Soerjono Soekanto & Mamudji, 2003). Because it makes library materials the main focus. In this normative legal research, the author conducts research on legal systematics and legal principles based on certain fields of legal system, by first identifying the legal principles that have been formulated in certain laws. (Soerjono Soekanto & Mamudji, 2003)

In the normative concept, law is a good norm that is identified with justice that must be realized (*ius constituendum*) or a norm that has been realized as an explicit order and that has been positively formulated (*ius constitutum*) to guarantee its certainty, and also in the form of norms that is a product of a judge (judgements) when the judge decides on a case by taking into account the realization of benefits and benefits for the litigants (Ashshofa, n.d.).

The type of data used in this research is secondary data by reviewing and collecting data through library research. The primary legal materials used are statutory regulations such as the Job Creation Law, the Environmental Protection and Management Law, the Forestry Law, the Plantation Law and other regulations. The secondary legal material used is in the form of literature related to the object studied. Legal materials obtained through literature study and analyzed descriptively qualitatively.

3. Result and Discussion

The environment is part of the integrity of human life. So that the environment must be seen as one of the components of the ecosystem that has value to be respected, valued, and not hurt, the environment has value in itself. This integrity causes every human behavior to affect the surrounding environment. Positive behavior can cause the environment to remain sustainable and negative behavior can cause the environment to be damaged. This integrity also causes humans to have a responsibility to behave well with

the life around them. Damage to nature results from an anthropocentric human perspective, viewing that humans are the center of the universe. So that nature is seen as an object that can be exploited only to satisfy human desires (Harahap, 2015).

According to Kusnadi Hardjasoemantri, an event that befalls a subsystem is actually the resultant of various influences that surround it. Changes that occur in one of the subsystems will affect the condition of the other subsystems (Kusnadi Hardjasoemantri, 2002).

Humane management of nature is a social issue that is quite hotly debated. In western countries, the issue of natural preservation has emerged since the 1960s (Gorz, 2002). There, the ecological balance began to be widely discussed (Susilo, 2003).

Sociologically, the relationship between the individual and society brings us to the problems of the social environment. Meanwhile, the individual's relationship with the natural environment leads us to the problems of the natural environment. The relationship between the social environment and the natural environment will give birth to environmental problems. Environmental issues are issues that concern human life and the future. Thus humane management of the environment is an ecological requirement for the future of life on this earth (Susilo, 2003).

Environmental problems are natural problems, namely events that occur as part of natural processes. This natural process occurs without causing significant consequences for the environmental system itself and can be recovered later naturally (homeostasis). However, now environmental problems can no longer be said to be purely natural problems, because humans provide a very significant variable causal factor for environmental events. It is undeniable that environmental problems that arise and develop because of the human factor are much bigger and more complicated than the natural factor itself. Humans with their various dimensions, especially with the mobility factor of growth, reason with all the developments in its cultural aspects, as well as the factors of the process of time or age that change human character and views, are factors that are more appropriately related to environmental problems. And environmental management issues can be considered as one of the main causes of natural disasters in Indonesia. The estuary of all environmental problems is development that is carried out without regard to environmental balance factors which in turn will cause environmental damage and pollution (Herlina, 2015).

The ecosystem protection movement is one of the movements that liberates humans from the threat of their slavery in the form of self-made

"environmental hazards" (Kusnadi Hardjasoemantri, 2002). One of the strong and powerful tools in protecting the environment is the law that regulates environmental protection (Munadjat, 1980).

At the national level, every legal system for sustainable development needs to stipulate: the application of the precautionary principle and the application of the best technology. In addition, there needs to be a means for laws and measures to be effectively enforced and sanctions for those who break them. Enforcement agencies should also specify damages recovery or mitigation. Its elements include: laws that are severe enough to deter non-compliance, a system of liability that establishes compensation, the ability to require that damaged ecosystems be restored to the extent possible and that penalties be imposed when damage is incurred for which recovery is not possible, establishing liability immediate and direct responsibility (strict liability) in the event of an accident involving hazardous materials, the requirement that insurance or other financial provisions be held to guarantee adequate and prompt compensation, giving rights to community groups to sue in court and administrative procedures, and make agencies responsible for implementing and enforcing environmental laws accountable for their activities (Kusnadi Hardjasoemantri, 2002).

Environmental protection and management based on Article 1 point 2 of Law no. 32 of 2009 is a systematic and integrated effort made to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. As explained in this Law, preventive efforts in the context of controlling environmental impacts need to be carried out by making maximum use of monitoring and licensing instruments. (Widayati, 2015)

One of the concrete instruments for environmental management is a permit. Permit in a broad sense (permit) is an agreement from the authorities based on laws or government regulations, to under certain circumstances deviate from the provisions of the prohibition of legislation (Hadjon, 1993). According to the opinion above, the legal meaning that can be found in permission is permission to do something that should be prohibited (Hadjon, 1993).

Permits are government tools that are preventive juridical in nature and are used as administrative instruments to control people's behavior. Therefore, the nature of a permit is preventive, because in the permit instrument, it cannot be separated from the orders and obligations that must be obeyed by the permit holder. In addition, the permission function is repressive. Permits can function as instruments to address environmental problems caused by human

activities that are inherent in the basis of permits. That is, a business that obtains a permit for environmental management is burdened with the obligation to deal with pollution or environmental damage arising from its business activities (Siahaan, 2009).

Licensing is a form of government decision in state administrative law. As a government decision, a permit is a government legal action based on public authority which allows or permits according to law for a person or legal entity to carry out an activity (Djatmiati, n.d.). Licensing instruments are needed by the government to strengthen government authority. This action is carried out through the issuance of state administrative decisions.

In addition to the preventive efforts made, there are repressive efforts to overcome environmental pollution and damage that have already occurred. Repressive efforts are in the form of effective, consistent and consistent law enforcement against environmental pollution and damage that has already occurred. Explanation of Law no. 32 of 2009 also states that in this regard, it is necessary to develop a legal system for environmental protection and management that is clear, firm and comprehensive in order to guarantee legal certainty as the basis for the protection and management of natural resources and other development activities (Widayati, 2015) .

Efforts to overcome environmental damage are also regulated in laws and regulations. In particular, the policy regarding opening new land by burning forests is regulated in several regulations, including:

1. The Criminal Code, with the following provisions:

Article 187 of the Criminal Code states, "Anyone who intentionally causes a fire, explosion or flood is threatened with:

- (1) by imprisonment for a maximum of twelve years, if due to the aforementioned act a general danger for goods arises;
- (2) by imprisonment for a maximum of fifteen years, if because of the aforementioned act a danger to the life of another person arises;
- (3) by imprisonment for life or for a specified period of twenty years at the most, if because of the above-mentioned act a danger arises for the lives of other people and results in the death of the person.

As well as the provisions in Article 189 of the Criminal Code:

"Anyone who, at the time there is or is about to start a fire, with deliberate intent and unlawfully conceals or renders fire extinguishing tools or equipment useless or in any way obstructs or hinders the work of extinguishing a fire, shall be punished by a maximum imprisonment of seven years".

2. Law Number 11 of 2020 Concerning Job Creation, with the provisions in Article 22 number 24

3. Law Number 32 of 2009 concerning Environmental Protection and Management

Article 69 paragraph (1) letter h and paragraph (2), "Everyone is prohibited:.... (h) Doing land clearing by burning..". This provision provides an exception for people who clear land by taking into account the local wisdom of their respective regions. The local wisdom in question is burning land with a maximum land area of 2 ha/head of family for planting local varieties of plants and surrounded by firebreaks to prevent the spread of fire to the surrounding area.

Article 108 which reads "Anyone who commits land burning as referred to in Article 69 paragraph (1) letter h, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp. 3,000,000. 000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah)"

Article 116 which reads:

(1) If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on: a. business entity; and/or b. the person giving the order to commit the crime or the person acting as the activity leader in the crime.

(2) If the environmental crime as referred to in paragraph (1) is committed by a person based on a work relationship or based on another relationship acting within the scope of the business entity's work, criminal sanctions are imposed on the giver of the order or the leader in the said crime without regard to the criminal act. The crime was committed individually or jointly.

4. Law Number 41 of 1999 concerning Forestry, the ban on burning forests is also prohibited in Article 50 paragraph (2) letter b of Law Number 41 of 1999 concerning Forestry as amended by Article 36 paragraph 17 of the Job Creation Law, as well as in Article 36 paragraph 19 of the Job Creation Law which amended Article 78 paragraph (3) and (4) the Forestry Law reads "Any person who deliberately sets fire to a forest is punishable by a maximum imprisonment of 15 years and a maximum fine of Rp. 7.5 billion. If a forest fire is caused by negligence, it is punishable by a maximum imprisonment of 5 years and a maximum fine of Rp. 3.5 M" .

5. Law Number 39 of 2014 concerning Plantations, in Article 56 paragraph (1) contains a prohibition on clearing land by burning.

then Article 108 which reads "Every plantation business actor who clears and/or clears land by burning is punished with a maximum imprisonment of 10 years and a maximum fine of Rp. 10 M".

and Article 113 paragraph (1), "If the act is committed by a corporation, in addition to the management being punished, the corporation is also punished with a maximum fine plus 1/3 of the criminal fine".

paragraph (2) "if the act is committed by an official as an ordered person or a person who because of his position has authority in the plantation sector, the official shall be punished with a criminal penalty as described above plus 1/3".

6. Regulation of the Minister of Environment Number 10 of 2010 concerning Mechanisms for Prevention of Pollution and/or Environmental Damage Related to Forest and/or Land Fires.

Forest as one part of the environment, is an ecosystem unit in the form of expanses of land containing biological natural resources dominated by trees in their natural environment, one cannot be separated from one another (Republic of Indonesia Law Number 41 of 1999 concerning Forestry Article 1 paragraph (2)). The forest area continues to decrease every year because the forest is converted into plantation land. Clearing land for plantations (land clearing) by companies is mostly done by means of open burning of forests in order to reduce production costs. This is of course very worrying, because land clearing by burning can have a negative effect on the surrounding environment which causes air pollution in the form of the spread of smog in the area around the land fire area and also damages the ecosystem in the original environment.

Forest fires are a serious problem in Indonesia because they cause quite heavy impacts and damage to the environment, especially the surroundings. Forest fires are burning where the fire spreads freely and consumes natural fuel such as litter (organic waste in the form of piles of dry leaves, twigs and other plant debris on the dry forest floor), grass, twigs or standing branches of dead trees. , logs, tree stumps, weeds, shrubs, leaves and trees. (Tampongangoy et al., 2020)

The prohibition on clearing land by burning is regulated in Article 69 paragraph (1) letter h UUPPLH, while in paragraph (2) it stipulates that the provisions of Article 69 paragraph (1) letter h must pay serious attention to local wisdom in their respective areas. Thus, the prohibition in Article 69 paragraph (1) letter h is not absolute but can be excluded with restrictions. The limitation referred to is contained in the elucidation of Article 69 paragraph (2) namely local wisdom in the form of burning land with a maximum land area of 2 hectares per head of family for planting local varieties of plants and

surrounded by firebreaks to prevent the spread of fire to the surrounding area. However, further details regarding firebreaks are not regulated or explained in UUPPLH, so it cannot be guaranteed that land burning can be controlled with firebreaks. Even though firebreaks have the potential to prevent fire from spreading to surrounding areas, firebreaks cannot prevent smoke from burning the land, so that haze still has the potential to occur. The provisions of article 69 paragraph (2) UUPPLH provide an opening to clear forest land by burning to parties who are actually prohibited from using this method but take advantage of local wisdom. In the Riau region, forest fires that lead to smog are even carried out by corporations (Erdiansyah, S.H., 2015).

The effectiveness of the implementation of related laws and regulations, in society is still not running effectively. This is because land clearing still occurs by burning land intentionally or covertly by reason of natural phenomena due to the dry season.

Forest fires in Indonesia cannot be separated from the poor patterns of land and forest allotment policies in this country. Routine forest fires for the past decade are not solely due to changes in the ecological chain. However, it is influenced by the intentional element of large-scale plantation business actors in land clearing. This also includes the negligence of industrial business actors, as well as the process of issuing permits for controlling areas that are out of control (Erdiansyah, S.H., 2015).

In this case President Soesilo Bambang Yudhoyono at that time issued a Moratorium in the form of Presidential Instruction No. 10 of 2011 concerning Postponing the Granting of New Permits and Improving the Management of Premier Natural Forests and Peatlands to control land burning in peatland areas and by President Jokowi has been extended. However, it is felt that this moratorium still has weaknesses because the legal instruments used are still not strong because they only tie into or are related internal government institutions. In order to have strong legal force, this Presidential Instruction should be converted into a Presidential Regulation so that it has binding legal force and has a strong legal basis.

Forest and land fires are a disaster that has been going on for years, even forest fires in Indonesia occur almost every year. One of the direct impacts of forest and land fires is air pollution which does not only affect Indonesia but often causes transboundary haze pollution to neighboring countries, such as Malaysia and Singapore.

In the event that there are indications of smoke haze from forest land clearing activities as stipulated in Article 69 paragraph (2) which causes other countries to suffer losses or human rights violations in other countries, the

principle of international law is "sic utere tuo ut alienum non laedes" which means a country it is not permissible to carry out or give permission for an activity that has the potential to disrupt or have an adverse impact on other countries³³ can be applied to Indonesia (Wardana, 2012).

Article 21 of the 1972 Stockholm Declaration is the basis for state responsibility that must be given in terms of causing injury to other countries. "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction" (Apriyani, 2018).

There are several legal theories related to liability for environmental pollution and damage due to forest and land fires. It is hoped that these legal theories can serve as a reference in preventing and reducing various damages and environmental pollution. Among these theories are (Edorita, n.d.):

- a) Sustainable Development Principle, The five main principles of sustainable and environmentally sound development are: intergenerational equity, intragenerational equity, precautionary principle, biodiversity protection principle, internalization of environmental costs and incentive mechanisms.
- b) Forest Principles, The Forest Principles established at the Earth Summit in Rio De Janeiro in 1992 laid down fifteen (15) principles of sustainable and ecologically sound management and utilization of forests. Based on these principles, the International Tropical Timber Organization requires its members to implement sustainable forest management, which is defined as: "Sustainable forest management is the process of managing forest to achieve one or more clearly specified objectives of management with regard to the production of a continuous flow of desired forest products and services without undue reduction of its inherent values and future productivity and without undue unwanted effects on the physical and social environment".
- c) Maximum Sustainable Harvest, Maximum Sustainable Harvest is a principle that requires the state not to allow the use of its forests to exceed the ability of forests to regenerate.
- d) Preventive Action (Precautionary Action). Three things to consider in determining the precautionary principle that need to be taken and applied are;

- (1) The threat of environmental damage is very serious and irreversible.
- (2) Uncertainty scientific evidence (scientific uncertainty).
- (3) Efforts to prevent environmental damage include prevention efforts up to coast effectiveness

In general, the impacts arising from forest fires are very broad, including ecological damage, decreased diversity of biological resources and their ecosystems, and decreased air quality. The impact of fire involves various aspects, both physical and non-physical, directly, and indirectly in various fields and sectors, on a local, national, regional, and global scale. Some of them can be mentioned, among others, on the health aspect, decreasing the quality of the environment (land fertility, biodiversity, air pollution, etc.). The main global problem faced is the warming of the earth's temperature, while on a regional and national scale it is more focused on the impact of climate change (Mukono, 1997).

In an article entitled Transboundary Haze Pollution in the Perspective of International Environmental Law, Akbar Kurnia Putra stated that the haze from forest fires will impact all aspects of life, including (Apryani, 2018):

- From a social, cultural, and economic perspective, the haze has the potential to cause loss of livelihood for the surrounding community because the haze disrupts community activities, offices and schools have the potential to be closed. Public health will also be affected because the haze has the potential to cause acute respiratory infections (ARI), pneumonia and eye irritation.
- From an ecological perspective, the haze has the potential to cause environmental damage, including the loss of species due to forest fires and increasing global warming.
- From the aspect of transportation and tourism, the haze has the potential to disrupt air transportation and cause tourism to decline because people who will go for tours or who will travel to these places have the potential to be canceled due to the haze conditions

Efforts to minimize the impact of land clearing by burning forests have been carried out. Asian countries that are members of ASEAN put forward reformulations regarding land clearing policies through the Zero Burning Policy.

Zero Burning Policy or land clearing policy without burning is a policy that prohibits open burning but still allows some forms of controlled burning. This policy is known in the Asean Agreement on Transboundary Haze Pollution (AATHP). This policy has been implemented by Indonesia in 2009, especially in Article 69 paragraph (1) letter h and Article 69 paragraph (2) of the P2LH Law,

even though Indonesia has not ratified the agreement. The AATHP entered into force officially (enter into force) on 25 November 2003 but was only ratified by Indonesia into law in 2014 through Law Number 26 of 2014 concerning Ratification of the Asean Agreement On Transboundary Haze Pollution (Asean Agreement on Transboundary Haze Pollution). Limit). In Article 9 regarding prevention it is emphasized that: (Rahmat & Fadli, 2016)

Each party shall undertake measures to prevent and control activities related to land and/or forest fires that may lead to transboundary haze pollution, which include: Developing and implementing legislative and other regulatory measures, as well as programs and strategies to promote zero burning policy to dealing with land and/or forest fires resulting in transboundary haze pollution;

Each Party is required to take measures to prevent and control activities related to land and/or forest fires that may result in transboundary haze pollution, including: developing and implementing legislative acts and other regulations, as well as programs and strategies to promote land clearing policies without burning in connection with land and/or forest fires that result in transboundary haze pollution.

AATHP, which has been ratified through Law Number 26 of 2014 concerning Ratification of the Asean Agreement on Transboundary Haze Pollution, requires each of its members to take action in order to prevent and control activities related to land or forest fires, including developing and implementing other legislative measures. This is what the Government can use in order to update regulations according to national conditions in order to prevent transboundary haze pollution. It is important to know that uncontrolled forest fires can occur intentionally or unintentionally. In the past burning forest was a practical method of clearing land, practiced by traditional or shifting cultivators. However, due to the low cost, the practice of burning forests has been widely adopted by forestry and plantation companies. (Rahmat & Fadli, 2016)

4. Conclusion

The practice of clearing new land by burning forest is something that is expressly prohibited by law. This is regulated in Article 69 paragraph (1) of Law no. 32 of 2009 concerning Environmental Protection and Management. However, this policy has exceptions for people who clear land with due observance of local wisdom in their respective areas with a maximum land area of 2 hectares/head of family for planting local varieties of plants and surrounded by firebreaks to prevent fire from spreading to the surrounding

areas. The impact of clearing land using the forest burning method can be seen from several aspects, namely: (a) From a social, cultural and economic aspect, the haze has the potential to cause loss of livelihood for the surrounding community because the haze disrupts community activities, offices and schools has the potential to closed. (b) From an ecological perspective, the haze has the potential to cause environmental damage including the loss of species due to forest fires and increasing global warming, (c) From the transportation and tourism aspect, the haze has the potential to disrupt air transportation and cause tourism to decline because people will go for tours. or those who are going to travel to these places have the potential to be canceled due to smog conditions. ASEAN in this case issued a zero burning policy and Indonesia has ratified it in the form of Law Number 26 of 2014 concerning Ratification of the Asean Agreement on Transboundary Haze Pollution requiring each of its members to take action in order to prevent and control activities related to land or forest fires including in developing and implementing other legislative acts.

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