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Development of Classic Legal Theory in Indonesia

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ABSTRACT: Indonesia as a rule of law country, of course, is very very interested in these legal theories so that they can be applied in efforts to foster and establish or develop national law that cannot be removed from the living cultural values and soul of the Indonesian nation, the purpose of this research is to find out the development of legal theory which is the central point of substance quality in each phase of the development of legal theory and which legal theory is influential and suitable for adoption for the development of national law in the future. This type of research, this type of research, this paper is normative research in which the method or steps used to obtain data originate from the data collection used in this research is to collect data documents, as well as legal literature books. Some of these data documents include; article-articles or news from the mass media related to the legal phenomena that are the subject of discussion. The results of the analysis obtained are classical legal theory, showing that the quality of substance which is the central point of legal theory in each phase of its development, basically pivots on one thing, namely "human relations and law". This means that the more the basis of a theory shifts to the "regulation" factor, the legal theory responds to law as a closed formal legalistic unit. Conversely, the more it shifts to the "human" factor, the more open the theory of law is and touches the social mosaic of humanity.

KEYWORDS: Legal Theory Study, Indonesia.

I. INTRODUCTION

1. Background of the Problem

Legal theories that emerged against a background in accordance with the development phase, are then appreciated in the life of society and the state. Not only for the orderly implementation of development, but also for the development and development of the law itself. Indonesia as a rule of law country, of course, has a very high interest in these legal theories so that they can be applied in the effort to foster and establish or develop national law that cannot be removed from the living cultural values and soul of the Indonesian nation.

This legal theory is also a theoretical study in the field of law science whose form is in the form of a whole statement that is interrelated with the conceptual system of rules and decisions that are born from the law itself.

Several legal theories exist and develop in society, one of which is:

Classical Law Theory

This theory is a legal concept originating from religiosity, nature and customs of a society that has existed and has been in effect since the start of a community's life until now. The principle of this theory says that law is a set of moral norms and social norms that function as a guide, as a control and is a measure of human behavior whose orientation is the safety of life both in this world and in the hereafter. This classical legal theory consists of three parts, namely:

1. Religious law

This legal theory originates from the creator for all mankind which is eternal and applies universally. This theory places law as a unit of stability and dynamics concerning the life of the afterlife which accommodates a state of affairs, both normal and emergency. The concept of this theory is oriented not only to worldly life but more to the afterlife.

2. Greco-Roman law

This theory says that law comes from gods, so as far as it can be said that law is the greatest gift for maintaining order and peace in humans as individuals in a community group. This theory says that law and religion are an inseparable unit in the sense that prophets, priests, ministers, churches and kings are sources of law, legislators, law executors, as well as instruments for enforcing the law itself.

Aristotle said that law is an embodiment of reason and free from lust, so we can indirectly say that law is a form of peace order based on justice which orders people to restrain themselves and leave dispute resolution to judges. So that even without law, justice can be obtained, both distributive justice and corrective justice.

3. Natural law

The theory of natural law says that the basis of law is nature and the essence of nature lies in reason but the highest and most important reason is God so that the legal order is eternal and applies universally. The law that comes from nature is the most ideal guide for the development and implementation of law and is full of moral values that do not separate das sein from das sollen. (Das Sein is considered as a real situation, while Das Sollen is called a rule of law that explains expected conditions).

The method for finding the perfect law according to this theory must contain absolute principles, namely human rights as individual creatures. According to Thomas Aquinas, world law must be governed by the order of reason and must have godhood so that God is the highest law, and to achieve distributive and commutative justice, the law made must contain 4 elements, namely:

- Lex aeterna, namely law that originates from God and its purpose is to regulate the life of the universe.
- Lex naturals, namely that law must contain and contain instincts for survival, family, and knowledge of God, which are then developed in social life.
- Lex divina, namely the law is a form of elaboration of lex aeterna contained in the old and new agreements (the old and new testament books).• Lex humana, namely laws made by humans as a form of embodiment and application of the three elements mentioned above.

From the description above, classical legal theory stipulates law as a rule originating from God or Gods so that the application of the law is not only focused on achieving peace in the world, but also on aspects of the hereafter. Because remembering that the law comes from God, it can be ascertained that the law is certain and complete because the essential truth is sourced from God.

From the background of the problems described above, the formulation of the problems that can be raised:

1. What is the central point of substance quality in each phase of the development of legal theory?
2. What legal theory is influential and suitable for adoption for the development of national law in the future?

Research/Writing Methods.

The research conducted on this resume is in the form of a Qualitative Descriptive Research**.** Descriptive research is research conducted with the main objective of providing an objective description of a situation (research of reality itself), while Qualitative is based more on collecting qualitative data, which is presented in the form of verbal words, not in the form of numbers.

The data collection method used in this research is to collect data documents, as well as legal literature books. Some of these data documents include; articles or news from the mass media related to the legal phenomena that are the subject of discussion. Which is to enrich the author's knowledge and insight in conducting research and data analysis.

II. DISCUSSION

Definition and Tasks of Legal Theory

Legal theory is seen as an independent discipline with a specific object of study, in contrast to general legal teachings and legal philosophy. Legal theory as a continuation of general legal teachings has an independent disciplinary object, a place between legal dogmatics on the one hand and legal philosophy on the other. Just like today's common law teachings, legal theory is at least seen by most people as a value-free a-normative science. This is exactly what distinguishes Legal Theory and General Legal Teachings and Legal Dogmatics. (Jan Gijssels – Mark van Hoeke, 2000:51)

Legal theory can be called a continuation of efforts to study positive law, at least in that order we reconstruct the presence of legal theory clearly. (Satjipto Rahardjo, 2004:253)

According to J.J.H. Bruggink, (J.J.H. Bruggink, 2000:159-160) that legal theory is a whole statement that is interrelated with regard to the conceptual system of legal rules and legal decisions, and the system is for the most part passive. This definition has a double meaning, namely it can mean a product, that is, all interrelated statements that are the result of theoretical activities in the field of law. In the sense of process, namely theoretical activities about law or theoretical research activities in the field of law itself.

Legal theory (legal theory) can also be interpreted as a science or legal discipline which, in an interdisciplinary and external perspective, critically analyzes various aspects of legal phenomena, both individually and as a whole, both in theoretical conception and in practical embodiment, with the aim of gaining an understanding which is better and provides the clearest possible explanation regarding legal material presented and juridical activities in social reality. (Bernard Arief Sidharta, 2000:122)

Essentially legal theory is interdisciplinary, this means that legal theory will in a large degree use research results from various disciplines that study law; Legal History, Legal Logic, Legal Anthropology, Legal Sociology, Legal Psychology and the like. (Otje Salman and Anthon F. Susanto, 2008:59) Thus a typical legal theory is that it plays an integrating role, both with respect to the relationship between these disciplines one to another, as well as with regard to the integration of research results from these disciplines. -this discipline with elements of Legal Dogmatics and Legal Philosophy.

According to Walfgang Friedman, that all systematic thinking on legal theory is related to philosophy on the one hand, and political theory on the other hand. (Wolfgang Friedmann, 1990:1)

Legal theory must have a place, because as we know, jurists, both as legislators and as judges, both as ordinary citizens and as experts, consciously or not, are always guided by the principles they adhere to. and which contains elements of legal theory

originating from philosophical teachings and political theory. With Radbruch's formulation, the task of legal theory is to make values clear

the value of law and its postulates so that the foundations of the deepest philosophy. (Wolfgang Friedmann, 1990:2) Legal theory preoccupies itself with a tri task, namely

1. Provide an analysis of the meaning of law and about other notions that are relevant in this connection,
2. Occupy oneself with the relationship between law and logic, and
3. Provide a scientific philosophy of science and a teaching method for the practice of law. (Meuwissen DHM, 2007:31)

The Central Point of Quality of Legal Theory in Each Developmental Phase

The legal theory that has emerged from century to century and from generation to generation, not only shows the cosmological color and spirit of the era, but also creates a shift in perspective (central point) in accordance with the changing times. Therefore, besides we meet classical thinkers, medieval thinkers, modern thinkers, and contemporary thinkers, at the same time we also meet the natural law generation, rationalism generation, historicism generation, positivism generation, socio-anthropological generation, realism, and other generations after it. (Bernard L. Tanya et al, 2006: 13) Several legal theories according to the development phase will be described below, in order to find a central point (starting point) chronologically according to the era, namely:

1. Legal Theory of the Classical Age

When humans experience the nakedness of the universe which is controlled by "the logic of survival" and the moral order has not become the main reference for life (in ancient times), they organize their lives according to strong and weak currents. Justice is not determined by the ownership of the weak, but on the ability to survive based on the strengths that each person has. This then became the core legal theory of what the Ionian philosophers did. Because its basis is the struggle for survival, this theory is "heroic mind", which refers to Homer's poem about Ilias and Odyssea, where the gods are told to live in struggle. So law according to the theory of Ionian philosophers is seen as an order of power. (Bernard L. Tanya et al, 2006:16)

The strategy changes when the challenge faced is the will of the gods (in the form of logos) to become a power that absorbs humans, so he organizes his life according to that logical logic. Humans build a legal order according to the nomos order which provides guidance on a just life. Thus emerged a legal theory about the order of justice and morals as the core of law. For the sophists, law is a clear and reliable rule of life (order of logos and nomos) according to a just and peaceful life. (Bernard L. Tanya et al, 2006:23-45) Still in the struggles of ancient times, a line of philosophers emerged later

Athena, like Socrates, with a theory of law based on the view that law is a policy order. Furthermore, law is an objective order to achieve general policy and justice

By taking this from the teachings of Socrates' policy, Plato's theory emerges which views law as a means of justice. Strictly speaking Plato's legal theory in reality is: 1. Law is the best order to deal with the world of phenomena which are full of situations of injustice;

2. Legal regulations must be compiled in a book so that legal confusion does not arise;
3. Every law should be preceded by a preamble about the motive and purpose of the law;
4. The task of the law is to guide the citizens through the law to a righteous and perfect life; and
5. People who break the law must be punished.

In the philosophical construction of rational moral beings, Aristotle formulates a theory of law. Law is seen as a human influence on rational moral values, so it must be fair. Legal justice is synonymous with general justice. Justice is marked by a good relationship between one another, not prioritizing oneself, but also not prioritizing other parties, as well as equality. Here it is very clear what became the basis of Aristotle's theory, namely "ethical social feeling". So the law is seen as an ethical social sense.

Epicurus believes that law is needed to regulate the interests of individuals peacefully. The task of law in this context is as an instrument of order and security for individuals who live together. Because the law governs the fate of individuals, their actions must be based on the consent of those individuals. This is where the embryo of the social contract theory came from. So here the theory of Epicurus, law is seen as the interests of individuals.

From the explanation above, it can be said that the theorizing of law that emerged in classical times (ancient times) starting from the Ionian philosophers, the Sophists, the ranks of the Athenian philosophers (Socrates and Aristotle), to Epicurus, were equally colored by a religious atmosphere, but had a way of thinking. different. The Ionian philosophers are characterized as heroic minded, which are based on the principle of survival, while the Sophists are characterized as visionary minded which refer to logos and nomos enlightenment. The Athenian philosopher is characterized as rational minded which refers to the rational arrangement of the polis. Meanwhile, Epicurus was more theoretically minded in relation to the separation of polis order and individual order.

2. Medieval Legal Theory

As seen in the thoughts of Augustine and Thomas Aquinas, the order of human life (including the theory of law) is placed within the framework of "love and live in peace". This is the answer to divine intervention in human life. Sutan Augustine's legal theory states that law is a peaceful way of life. The community of love is very important for a republic. In fact, among the values valued by the community has the value of justice. By adding the aspect of identifying with God as an important aspect of justice, Augustine gives the weight of righteousness to justice. Justice becomes a quality that includes righteousness, which ultimately leads people to

a pious/honorable life in the eyes of God and others. (Bernard L. Tanya et al., 2006:46-48).

The theory of Thomas Aquinas, views the law as part of the divine order. Similar to Augustine, Aquinas also based his theory of law in the moral context of Christianity. Law is needed to uphold moral life in the world, Aquinus distinguished law that comes from revelation and law that is reached by human reason alone. The law found from revelation is called positive divine law (ius divinum posititium). Laws that are known based on the activities of the mind, include; (1) natural law (ius naturale), (2) national law (ius gentium), and (3) positive human law (ius positivum humanum) (Theo Huijbers, 1982:39). In this regard, laws originating from the activities of the mind also contain elements of eternal rules (lex aeterna) which are inherent in the nature of God. So the configuration of the legal order according to Aquinas starts from (1) lex aeterna, namely God's law and will, (2) lex naturalis, namely general principles (natural law), (3) lex debina, namely God's law in the scriptures, and (4) lex humane, namely man-made laws that are in accordance with natural laws. (Bernard L. Tanya et al, 2006:49-50)

3. Renaissance Era Legal Theory

Modern legal theory places the autonomous natural man as the starting point of the theory. In contrast to classical legal theory with all-moral thinking, and medieval legal theory with all-God thinking. Law is no longer primarily seen in the shadows of nature and religion, but merely as a human order that struggles with its experience as a worldly human being. Even so, as philosophers, modern thinkers, especially in the Renaissance era, were still influenced by metaphysical cosmology, while still acknowledging natural law, but not making it their main concern. Philosophers, among others, Jean Bodin, Hugo Grotius, Thomas Hobes, with legal theories put forward with a central point (Have a focus of attention) on positive law (man-made laws through the state). This is because the forces facing humans today are, (1) worldly humans who individually uphold unlimited freedom; (2) the existence of a nation-state under the rule of (strong) kings. So legal theory as a human order is constructed in such a context. (L. Tanya et al, 2006:53).

According to Jean Bodin, that law is an order from a sovereign ruler against the background of a new political order, namely the emergence of nation states under the rule of powerful kings, Bodin put the theory of law in the context of the doctrine of sovereignty. In the logic of the doctrine of sovereignty. In the logic of the doctrine of sovereignty that he initiated, law is seen as a king's order and this order becomes a general rule that applies to the people and general issues. All traditions and customary laws will only become valid with the order of the sovereign who stipulates them.

Thomas Habbes, saw law as a basic need for individual security. In the midst of wild people who like to prey on each other, law is an important tool for creating a safe and peaceful society. Without laws enforced by strong rulers, individuals will destroy each other (homo homonilupus). So the law is a conscious human choice to secure each other's lives against attacks by others. In order for law to be effective, it needs strong law enforcers, namely rulers who have great power. For Hobbes, as for Bodin, the specificity of natural law served as a guide for kings in "issuing orders". The king's absolute power is solely needed to uphold the law so that individual citizens are safe from interference by other individuals. So according to Hobbes, the law is a security order.

4. Legal Theory of the Aufklarnug Era

The shift in strategy occurred again, when reason or human reason became the main force in the aufklarnug era. Here the challenge is no longer humans who only uphold rights and freedoms based on innate instincts. Humans are individuals who are rational and literate in the good ways of living together. Therefore, it is imperative that his basic rights as a rational human being who knows what is good and what is bad for him are fully guaranteed, including by the state. So there emerged the theory of law as an order for the protection of basic human rights. Law must be a rational and objective product that is inter-subjective (not according to the tastes of certain people). The law must reflect the aspirations of the people who are ordered, not the wishes of the ruling government. This seems clear in the thinking of several major figures of this era, including John Locke, Montesquieu, Rousseau, and Kant. Locke with the central point of his thinking on the defense of the rights of citizens against the ruling government. Montesquieu, famous for his cheek and balances through his Tria Politics. Rousseau by favoring humans as legal subjects. Meanwhile, Immanuel Kant proclaimed the function of law to develop a moral life together. (L. Tanya et al, 2006: 3-4).

Immanuel Kant put forward a more explicit view of law as a protector of the human rights and freedoms of its citizens. For Kant, humans are rational beings and free will. The state is tasked with upholding the rights and freedoms of its citizens. Prosperity and happiness of the people is the goal of the state and law. Hence the right -

Basic human rights cannot be violated by authorities. Even the implementation of these basic rights should not be hindered by the state. So it can be said that Kant's legal theory views the law as a product of practical reason. L. Tanya et al, 2006:63).

Montesquieu's theory of law views law as a physical environment. He emphasized that in a form of government, a system of law must be found more than can be found. Because actually the legal system is the result of the complexity of various empirical factors in human life. Meanwhile, Rosseau views that law is a general ethical will. Legal theory is built with the view that law belongs to the public and therefore is objective in nature. The basic essence of law is a form of "volunte".

generale". So law is a form of will and public interest (central individual group) that lives regularly in the country's political system. (L. Tanya et al, 2006:71)

Jeremy Buntham, with the theory of utilitarian individualism, departs from the idea that nature has placed mankind under the rule of two rulers, namely "joy" and "sad". Law as an order of living together, must be directed to support the "king of joy", and at the same time curb the "king of sorrow" in other words, the law must be based on benefits for human happiness. So the law is seen as a supporter of happiness. Only with sufficient freedom and will can the individual achieve maximum happiness.

5. 19th Century Legal Theory

The new theory of law in the 19th century, marked by the development of the industrial revolution and scientific achievements in the empirical sciences, gave birth to the episteme of positivism as the cosmos of this era. All phenomena of life including legal phenomena are viewed scientifically in the light of the empirical sciences. Positivism and empiricism became a force that hit humans. So law becomes the object of empirical study in legal theory, namely, among others, Karl Marx, Von Savigny, Jhering, Durkheim, Austin, and Bierling.

Karl Marx's theory states that the law is in the interests of the wealthy. The main issue in law, according to Marx, is not justice. Due to the fact that the law serves the interests of the haves. It is nothing more than a tool of the rulers and tools of the exploiters who use it according to their interests. Law is one of the ideological elements of class, and therefore becomes a trigger for conflict. In fact, it is a factor that causes alienation.

Savigny's theory views law as the soul of the people. According to Savigny, there is an organic relationship between law and the character of a nation. The law is just a reflection of the vokgeist. Therefore, customary law that grows and develops in the womb of the Volkgeist must be seen as the true law of life. The true law was not made. He must be found. Legislation is only important so long as it is declarative in nature to that true law.

Jhering, introduced the theory of fit of purpose, as an answer. Matching goals, or more precisely, matching these goals can be sought through law, commerce, society, and the state. Apart from that, actually the result of the unification of interests for the same goal, namely benefit. It is in these institutions that a person discovers a relation between his goals and the interests of others. Here, the law has a dual function. On the one hand, the task of guaranteeing individual freedom is to achieve his goals, namely pursuing benefits and avoiding losses. On the other hand, the law bears the task of coordinating individual goals and interests so that they are harmoniously related to the interests of others. So Jhering's theory views law as a fusion of interests.

Emile Dorkhim's theory views law as social morality. Law is an expression of social solidarity that develops in a society. Law is a reflection of solidarity. Community social solidarity is determined by the division of labor system. Solidarity type (organization
and mechanisms) determine the face of the law, namely the face of the law which has the character of taking action and the character of restoring law. Both of these legal characters have the same goal, namely to maintain social integrity. (L. Tanya et al, 2006:79-97)

LEGAL THEORY AND ITS IMPLICATIONS IN THE DEVELOPMENT OF NATIONAL LAW

Legal theory, it cannot be denied that it plays such a large role in ushering in the development of legal science according to the times, and in order to color legal practice, namely the formation of law, and the application of law in the life of society, nation and state.

Legal theory with its seriousness has shown the world how the glitter of its broad influence has changed the mindset and perspective of the development of law as a whole. In its several accelerations, it has also dissolved deadlocks and neutralized the turmoil that previously disrupted and thwarted legal progress in development aspects in the last few decades. (Herman Bakir, 2005:225).

In the context of fostering and developing/development of law in Indonesia, based on social reality, and the cultural situation in Indonesia, as well as the real needs of the Indonesian people, Mochtar Kusumaatmadja, (Mochtar Kusumaatmadja, 1976:5) formulates a theoretical basis or framework for fostering national law as a theory of development law, by accommodating the views on law from Eugen Ehrlih and Roscoe Pound's legal theory with Northerop cultural philosophy and Laswell-Mc's "policy oriented" approach. Dougle and process it into a legal conception that views law as a reform, as well as a means to ensure order and legal certainty in society.

In order to provide a theoretical foundation in the role of law as a means of reforming society as well as the development of a national legal system that will be able to carry out that role, Mochtar Kusumaatmadja proposed a conception of law that not only is the whole of the principles and rules that regulate human life in society, but also covers the institutions and processes that create the application of those rules in reality. (Mochtar Kusumaatmadja, 1986:11)

With this conception of law, it appears that law is a system composed of three components (subsystems), namely:

1. Principles and legal methods,
2. Legal institutions, and
3. The process of embodiment of law.

The legal conception and legal structure (legal component) mentioned above are in line with what Friedman expressed in Ibnu Elmi A.S. Pelu et al, (Ibni Elmi A.S. Pelu, 2007:167) that a legal system has three components/elements, namely;

1. legal substance,
2. legal structure, and
3. legal culture.

In relation to the development and development of national law, the elements (components) of the law should be considered in a balanced manner. The concept of law as a tool of social engineering (law as a tool of social engineering) from Rascoe Pound,

was first introduced in Indonesia by Mochtar Kusumaatmadja, on the grounds that the utilization of law as a means to engineer society according to government (executive) policy scenarios is really needed by the state -developing countries, far exceed the needs felt by advanced industrial countries that have been established. (Soetandyo Wignyosoebroto, 1995:231)

The theorization of Indonesian law should be able to provide a true picture of Indonesian law. This means that legal theorization is able to build the concept of Indonesian law based on various data or contents of Indonesia itself. Such a theorization should be able to show what one wants, where the orientation is going, as well as the social, political and other concepts and doctrines that we have. In the current context, the Indonesian nation has been able to accumulate a lot of wealth like that, such as the insight of the whole human being, the principles of benefit, kinship, a balanced life and so on. Indonesian legal science should be able to build Indonesian legal theory as a configuration of what, how, and where the purpose of Indonesian law is. (Khudzaitah Dimyati, 2005:31-32)

In the formation of laws and regulations, the process of realizing the values contained in legal ideals into legal norms depends on the level of awareness and appreciation of these values by the legislators of laws and regulations. In the absence of awareness of these values, a discrepancy can occur between the legal ideals and the legal norms that are made. Therefore, in Indonesia, which has the legal ideals of "Pancasila" (Ibnu Elmi AS Pelu et al, 2007: 169).

At the same time as the fundamental norms of the state, the regulations that are about to be made should be colored and flow the values contained in Pancasila (the ideals of Indonesian law). This condition is also in line with Von Savigny's legal theory, that law is the soul of the people or law is a reflection of the volgeist, namely the nature or character of a nation. Laws that are in accordance with the volgeist (soul of the people) in Indonesia can be applied in every law in legislation, as well as customary law.

In relation to the formation of legislation, Han Kelsen's theory about law is normative, because Grundnoorm, and Jeremy Bentham's legal theory about law as a supporter of happiness is very relevant to adoption in Indonesia. Although it still needs to be debated, for example, Kelsen's theory regarding what Grundnoorm meant in Indonesia, whether the Constitution or Pancasila. But at least in making laws and regulations in Indonesia both according to the order set out in the MPRS Decree No. XX of 1966 which was later replaced by Law Number 10 of 2004, where in Article 7 it is stated that the order or form of Indonesian laws and regulations is (from top to bottom) has a hierarchical, after the Constitution, are:

1) Laws/Government Regulations Substitute for Laws,
2) Government Regulations,
3) Presidential Regulation,
4) District Regulations and so on.

So here there is compatibility with Kelsen's theory of grunduorm and stufenbeau's theory. Meanwhile, Jeremy Bentham's theory in this regard, its relevance in Indonesia is that every law that is made or that will be implemented can always provide benefits, namely for the happiness and welfare of the community. This fits perfectly with the type of "welfare" state for Indonesia which is implicitly stated in the preamble of the 1945 Constitution.

Such is the appreciation of legal theory if we associate it with the applicable law in Indonesia. This means that there are quite a number of legal theories that can be adopted as described above and of course there are still many that can be adopted that still need to be explored, for the benefit of fostering and developing/developing law in Indonesia. In this case, of course, it is in accordance with the conditions, culture and real needs of the Indonesian people in accordance with their development.

III. COLLECTIONS AND SUGGESTIONS

From the description above, it can be concluded that the development of legal theory in its historical trajectory, starting from classical legal theory, shows that the quality of substance which is the central point of legal theory at each phase of its development, basically pivots on one thing, namely "human relations and law". . This means that the more the basis of a theory shifts to the "regulation" factor, the legal theory responds to law as a closed formal legalistic unit. Conversely, the more it shifts to the "human" factor, the more open the theory of law is and touches the social mosaic of humanity.

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