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INJUSTICE MANAGEMENT OF ADAT LAND: LEARN FROM MARANFENFEN IN ARU

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Abstract

The issue of Adat (customary) land management carried out by the government as a ruler of indigenous peoples in the world is not a new thing to be discussed. Many phenomena of Adat land management deviate from human rights. This problem occurs because indigenous peoples still lack knowledge about laws and rights to Adat land. The State has strong control to regulate and take rights over all forms of natural wealth in Indonesia, including land because it is stated in the UUD NKRI 1945, Article 33 point 3 "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This paper aims to discuss injustice in Adat land management as the rights of the indigenous peoples in Marafenfen, Aru Islands, Maluku province, which the government seized through one of the government agencies in the field of national defense (TNI-AL). This issue proves that the rights of indigenous peoples to Adat lands are still unfair, especially in Indonesia.

Kata kunci:
Tanah adat, Penanganan ketidakadilan, Masyarakat adat, Regulasi, Marafenfen

Abstrak

Persoalan pengelolaan tanah adat yang dilakukan oleh pemerintah sebagai penguasa masyarakat adat di dunia bukanlah hal baru untuk diperbincangkan. Banyak fenomena pengelolaan tanah adat yang menyimpang dari hak asasi manusia. Masalah ini terjadi karena masyarakat adat masih minim pengetahuan tentang hukum dan hak atas tanah Adat. Negara mempunyai kuasa yang kuat untuk mengatur dan mengambil hak atas segala bentuk kekayaan alam yang ada di Indonesia, termasuk tanah karena tercantum dalam UUD NKRI Tahun 1945, Pasal 33 angka 3 *"bumi dan air serta kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan digunakan untuk sebesar-besarnya kemakmuran rakyat."* Tulisan ini bertujuan untuk membahas ketidakadilan dalam pengelolaan tanah Adat sebagai hak masyarakat adat di Marafenfen, Kepulauan Aru, Provinsi Maluku, yang dirampas pemerintah melalui salah satu lembaga pemerintah di bidang pertahanan negara (TNI-AL). Persoalan ini membuktikan bahwa hak-hak masyarakat adat atas tanah adat masih tidak adil, khususnya di Indonesia.

Introduction

Injustice management of customary land to this day is still a severe problem for the people of Indonesia at the grassroots level. Indigenous peoples are a group of rural people with little higher education, so they have limitations in understanding their rights as indigenous peoples. Customary land ownership in Indonesia is an absolute right owned by indigenous peoples. However, it is often usurped by the state (represented by several state apparatus agencies) to make government programs or related agencies successful, contrary to the dynamics of the life of indigenous peoples in the place in question. Indigenous peoples are the same as people in general in an area. Namely, they have the right to survive and lead a life based on natural rights explained by Thomas Aquinas. These natural rights are divided into two primary forms: rational, which refers to the individual human rights themselves, and social, which refers to the rights of groups or relations between individuals in a society (Sumaryono, 2006). Unfortunately, in reality, the dynamics of people's lives in Indonesia, there are still many customary land issues that need to be appropriately handled. Thus, resulting in deviations in the welfare of society.

The issue of customary land in Indonesia has been researched and written about by several researchers. De Schutter (2010) conducted research and explained that humans always compete for land and manage various forms of natural resources that exist on the land for the needs of human life in the long term and sustainability. However, competition to acquire and manage land is a problem in various parts of the world. Several forms of contestation about land management occur worldwide (Ansoms et al., 2014), especially in Indonesia, such as contestation of land management between individuals, individuals with groups, and groups with groups. These studies explain that issues regarding customary land worldwide, including in Indonesia are based on regulatory issues. However, these studies still need to provide solutions to the problems that occur. In addition, there is still a need for contributions of knowledge from legal science and advocacy to indigenous peoples in the East, especially in Southwest Maluku, regarding customary land management, making it increasingly difficult for the community to fight for their rights as indigenous peoples.

The issue of customary land in Southwest Maluku is not the only issue of management of customary land in Maluku, which has been ignored and ultimately belongs to the government. There are still many cases that have been ignored and may not be disclosed or not won by the indigenous peoples. Therefore, this paper aims to add to the contribution of research on the knowledge of the people of Maluku about customary land rights that should belong to indigenous peoples. In particular, this paper answers three questions: (1) What is the process of injustice management towards customary land that occurred in Marafenfen, Aru Islands, and Southwest Maluku? (2) What factors influence the dysfunction of customary land in Marafenfen, and how does injustice management impact the Marafenfen indigenous people? (3) How do customary land regulations in Indonesia affect customary land issues in Marafenfen? These three questions will be packaged in results and discussion.

Injustice in managing customary lands in Indonesia, especially in Marafenfen Maluku, has gone through a long process. This process is motivated by the interests of groups with authority in land management throughout Indonesia. Accordingly, three arguments can be put forward. First, injustice in the arrangement of customary land is motivated by a lack of

extensive knowledge about customary land regulations in Indonesia by indigenous peoples. Second, injustice in the arrangement of customary land is manifested by stakeholders' interests within the scope of government. Third, customary land regulations in Indonesia need to be reinterpreted and even changed according to the needs of indigenous peoples in Indonesia.

Method

The title and introduction clearly describe that this paper will examine the unfair management of customary land as an object material. Customary land is understood as part of the community rights in Indonesia, which is used for the benefit and welfare of indigenous peoples. This study uses a qualitative literature study from the Marafenfen case in Ambon, Maluku, Indonesia. Through several stages, namely, observations were made online by tracing news related to this matter. The author loads and selects various forms of information according to the topic to fulfill the data collection process. Second, the data collection process is carried out by reviewing data and information from the internet (including national journals).

Third, the writer performs data analysis after data collection and information selection. Data analysis was carried out in two forms of analysis. (1) Interpretive analysis will examine and interpret the results of literature searches and news information. (2) Content analysis aims to reveal the meaning of visual images found through online media and some data obtained through online literature. These two forms of analysis are used to dig deeper into the forms of injustice towards customary land in Marafenfen. This statement allows the author to transparently present new things that are not realized by the public and other academics.

Result

Problematic Rights to Land for Indonesian Indigenous People

Injustice to the interests of indigenous peoples in the management and ownership of customary lands is still a problem in many parts of the world. Indonesia has 17,499 islands with a total area of around 7.81 million km2. Of the total area, 3.25 million km2 is the ocean and 2.55 million km2 is the Exclusive Economic Zone (Pratama, 2020). In addition, the land owned in Indonesia as a center of human activity and natural resource content is 2.01 million km2. From the existing land area, it is known that the total population of Indonesia is 273,879,750 people (Kementrian Dalam Negeri Indonesia, 2022). When viewed through agrarian studies, the number of complaints submitted to Komnas HAM experienced a significant increase from 2018 to April 2019, it was recorded that there were 196 cases of agrarian conflicts that occurred in various regions in Indonesia. In the last five years, public complaints to this commission show that agrarian conflicts are a fundamental problem and require urgent resolution. The conflict area reached 2,713,369 hectares, it was recorded that 42.3% or 48.8 million villagers were in forest areas which included customary forests (Hilmy, 2020).

Indonesia's development priorities in the post-Soeharto era established several forms of regulations to protect the rights of indigenous peoples, in fact they weakened these rights. These laws are: the Basic Agrarian Law, the Forestry Law, and the Plantation Law, and relate to the use of land for development purposes and also affect the autonomy of indigenous peoples. Although very important, this Law has a detrimental effect on the lives of indigenous peoples (Buana, 2020). Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). The UUPA is actually intended to act as a lex generalis (basic law) for further regulation of its material objects (Nugroho, 2018), namely the earth, water and natural resources contained therein as mandated by Article 33 Point 3 of the UUD 1945 which states that "*the*

earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

Indonesia has many indigenous groups which spread throughout Indonesia. They are spread in many places, but the most wonderful place is in the forest. That is why they are more suited to the task of protecting the forest and using it for their survival. Other branches of the state apparatus recognized traditional environmental knowledge. Unfortunately, they do not concede much on the issue of *Adat* (customary) land or customary forest rights by indigenous people in Indonesia. The meaning of indigenous to Indonesian people is not relevant to the meaning of indigenous people in the west. According to Sarwono Kusumaatmadja as Minister of state for environment in Indonesia in the Kabinet Pembangunan IV from 1993th until 1998th, in an NGO forum on Indigenous people and *Adat* (customary) land rights, he informed activists in that forum that Indonesia is a country of Indigenous people, run, and governed by and for indigenous people. Therefore he argued, that the term indigenous as used in the west is inappropriate for Indonesia (Li, 2000). On the other hand, the relevant term for indigenous people in Indonesia is vulnerable population groups. The world religion paradigm of the society in Indonesia includes indigenous people who depend on natural resources as well as the urban poor and sometimes call them as primitive (Maarif, 2019) That is why people in Indonesia have to conserve their minds to the indigenous religion paradigm to maintain respect for the human rights of indigenous people and everything about their live. Therefore, people in Indonesia must preserve their thoughts on the paradigm of customary religion to maintain respect for the human rights of indigenous peoples and everything about their lives. The religious paradigm of indigenous peoples understands the concept of religion beyond what humans imagine (Pabbajah, 2020). Indigenous peoples show that the relationship between humans and the cosmic brings humans to understand further the meaning of nature which is not only an object for needs but beyond it. Nature is used as a subject related to culture and the supernatural. Humans must be able to manage nature so that it is mutually beneficial, not vice versa, namely mutually harming and exploiting.

The resistance of indigenous peoples to maintain customary lands in Indonesia is colored by different experiences between indigenous communities. Some of them won because they fought small companies that wanted to control most of their customary lands. Like the Pandumaan-Sipituhut Indigenous Peoples Resistance with PT. TPL is a paper/pulp company in Toba Regency, Samosir, North Sumatra (Sinurat, 2019). On the other hand, the Association for Community-Based Legal Reform and Ecology (Himpunan Pembaruan Hukum dan Ekologi Berbasis Masyarakat: HUMA) noted that 326 natural resource conflicts occurred in Indonesia and as many as 176,337 people were indigenous peoples who fought for and defended the management of natural resources in their customary lands (Hilmy, 2020).

Chronology Marafenfen *Adat* Land's Grabbing:

Marafenfen is a village in West Southeast Maluku in Aru Regency (Kabupaten Kepulauan Aru) more specifically in South Aru. Marafenfen has the big forest as a gift to them to do everything like customs and conserve the forest. Local people or the indigenous law community in Marafenfen consider the forest in Marafenfen is more than anything to them. They believe that the forest is the place of life sources, it is also the place of a wonderful world where all of the creatures live there, and it is the place to survive their life and help them to complete their necessities. That is why local people want to keep that and utilize it as heaven to them. The best part of nature that helps the local people in Marafenfen is called the customary forest. Marafenfen people believe that local forests located on indigenous people's lands are the rights of indigenous peoples to be able to manage them. Indigenous peoples have the right to use existing forests to fulfill their needs, and this is guaranteed by the state in state rules and regulations. Unfortunately, they have less power to get and less knowledge about the dynamics

of law in their own country. But their goal to keep the forest will be a bad way. It is because the state represented by TNI (Tentara Nasional Indonesia) wants to get it and conserve it with their ways which are very contrary to the welfare of the local community in Marafenfen. They even oppose state regulations that allow indigenous peoples to have rights to customary lands in Marafenfen.

The Problems between the indigenous law community with TNI-AL disturbed the indigenous people in Marafenfen, even though the Reformation era showed that local people had the policy to keep their environment. For indigenous peoples in Marafenfen, the presence of the TNI-AL destroys their forests. The forest should be the right of indigenous peoples to manage and preserve. However, they were disappointed by the government because the local government stated that the forest belonged to the state and because of this, indigenous peoples no longer had the right to manage the forest. Finally, the TNI-AL, which was the government's representative, built an airport that destroyed many parts of the forest, including expelling various endemic animals and birds that originally lived there. This conflict over the lands of the Marafenfen indigenous peoples has been going on for some decades, starting in January 1992 when the TNI-AL officials claimed that there had been community land acquisition in Marafenfen Village for the construction of the Aru TNI-AL Airport. The Marafenfen Indigenous People feel that their land has been taken by force so that the lives of residents who depend on the forest are disturbed (Arh, 2021).

Figure 1. Notification Board of TNI
Source: mogabay.com

The Association of Indonesian Customary Law Teachers or *Asosiasi Pengajar Hukum Adat* (APHA) delivered the final note of the 2021 trip. In this discussion, APHA Indonesia highlighted cases of *Adat* (customary) land disputes and the Draft Law on Customary Law Society (RUU MHA). Laksanto as the leader of this group elaborates that indigenous (Sumaryono, 2006) peoples demanding their Ulayat (region) rights which have been owned and managed for generations have to deal with local governments, businessmen, and even the TNI as the apparatus of the country (Sutiawan, 2021) The land in the Marafenfen dispute case belonging to the indigenous peoples of Marafenfen Village in the Aru Islands, Maluku, which was confiscated by one of the TNI-AL, covers an area of 689 hectares (Arh, 2021).

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Discussion

Land grabbing by TNI-AL

The incident of confiscation of customary land rights in Marafenfen attracted public attention and became one of the hot topics in Maluku from November to December 2021. This problem is a complicated problem that has occurred since 1922. The grabbing of *Adat* land (customary land) by the state, in this case, the TNI has attracted the attention of the community. As previously explained, this problem occurred because the TNI-AL wanted to build a special TNI-AL airport and build a TNI-AL building. According to data obtained from several social media reports, the indigenous people in Marafenfen feel that their rights have been taken away since 1991. As reported by Kompas (21/11/2021), one of the members of the Marafenfen indigenous community, Oca Dalegoy said that according to them, the TNI- The Navy confiscated customary lands in Marafenfen. This phenomenon began when leaders and members of the Indonesian Navy 1991 came to the village of Marafenfen and negotiated customary land to be given to them. They are considered to be manipulating community support data which states that the Marafenfen customary land has been given to the TNI-AL and belongs to the TNI-AL. According to community recognition, the existing residents stated that some of the residents who signed the endorsement as many as 100 people were people who were no longer in Marafenfen. In addition, some of them were still children in 1991 (Pratiwi, 2021). A few days later, the TNI-AL came with the State Land Agency to measure and install customary land stakes. This is allowed because the knowledge of indigenous peoples is still lacking. Over time, the TNI-AL built an airport and cleared around 628 hectares of land for development on customary land, namely the Marafenfen forest. Therefore, the indigenous people of Marafenfen reported this case as an act of expropriation of customary land by the state from the hands of indigenous peoples.

TNI-AL as the defendants in the case of customary land grabbing that occurred in Marafenfen considers that their party is not guilty in this matter. Some of the evidence submitted to the court is stated as an important part that supports their existence. For the TNI-AL, it has done everything in accordance with government directives. They have proof of land certificate and they are entitled to the land. For the TNI-AL, the Marafenfen indigenous people have no right to accuse their actions of violating the law, because they act according to the law. At the same time, customary lands taken for development for the TNI-AL were judged not to be based on the social sense of human necessity. The TNI-AL will build an airport and various special buildings for the TNI-AL, this does not take into account the balance of the ecosystem and the prosperity needs of the Marafenfen indigenous people who manage land for their daily needs and conserve various types of animals in the Marafenfen forest.

Due to the proof of the land certificate submitted by the TNI-AL, the Marafenfen forest is considered state land owned by the TNI-AL. Sometimes in the next period, the development that occurs will disturb the lives of indigenous peoples as well as animals and various types of traditional plants which are always guarded by the indigenous people of Marafenfen. Because of this, the Marafenfen indigenous people who witnessed the judge's decision as a whole were very disappointed. They vent their disappointment by crying. In addition, they carried out several anarchic actions that harmed state facilities. Rukka Sambolinggi, Secretary-General of the Alliance of Indigenous Peoples of the Archipelago (AMAN), said the judges' decision showed that the legal and judicial system in Indonesia was unable to provide justice to the Marafenfen Indigenous People. The verdict, he said, has not been able to see the truths that go beyond texts, letters, and official documents (Belseran, 2021). The result of the trial between the Marafenfen community and the TNI-AL regarding the grabbing of *Adat* (customary) land

was won by the TNI-AL by the judge. The judge considered that in this case, the TNI-AL had strong evidence with a land certificate. In addition, the indigenous peoples who brought witnesses and other evidence regarding data manipulation by the TNI-AL were rejected by the panel of judges at the district court of Aru Regency, Maluku. The issue of customary land ownership rights that were confiscated by the state that occurred in Marafenfen, Maluku proves that indigenous environmental injustice still occurs for indigenous peoples and their environment in Indonesia.

Rethinking Legal Framework of *Adat* Land:

The injustice management of *Adat* (customary) land issue in Marafenfen is motivated by a law that is more in favor of state officials. The government as a state regulator feels authorized to take people's rights and rely on the power of legal knowledge (Pabbajah et al., 2020). They know that indigenous peoples do not have a high level of knowledge on legal matters. In this case, the law is used as an excuse as an enforcer of justice who will defend social and natural life. But what happened to the authorities was hurting the community and nature itself. The environment in Indonesia, especially customary lands and state lands has been regulated in the legislation. The purpose of the legislation is to support the sustainability of government and community life. This has happened several years ago, the development of laws governing the lives of indigenous peoples and their rights to customary territories has been regulated by the government. International frameworks on the rights of Indigenous people are extremely broad and there are relatively few conventions and declarations that relate specifically to the implementation of governance structures for Indigenous Land Management or ILM (Boag, 2016). Boag (2016) also stated that Indigenous Land Management (ILM) promotes environmental justice by protecting and fulfilling of human rights through legal empowerment of people. This statement is at the root of the growth of laws and regulations regarding customary land management in Indonesia.

Undang-Undang Number 5 of 1960 concerning Agrarian Principles explains that indigenous peoples' ownership of Ulayat lands existed before Indonesia's independence. For this reason, the state is obliged to protect indigenous peoples as long as it is still recognized, is still alive, some institutions and communities and institutions overshadow them to manage or cultivate the land they own (Saija et al., 2020). In the past few years, there are two documents prepared to confirm that the ecological soundness of traditional knowledge is increasingly accepted by some parts of Indonesia's ruling regime (Juhansar et al., 2021). The first is about the biodiversity action plan for Indonesia. The second document more highlights the existence of indigenous environmental knowledge (Li, 2000). According to Bappenas, Indonesia's forest has many advantages for people, but it is more helpful if handled by the right people. Many of the diverse cultures among indigenous groups in Kalimantan, Sulawesi, Irian Jaya, dan Maluku have a special affinity with the forest. Knowledge about ecology and sustainable use of the forest is generated and is very useful today in terms of biodiversity management. For instance, at least 6.000 indigenous plants and animal species are used daily by Indonesians for food, medicine, dyes, and many other purposes (Bappenas, in Li, 2000). But on the other hand, the state is still half-hearted in providing opportunities for indigenous peoples to maintain and manage forests that are considered as their home and paradise.

The existence of Indigenous Law Community by the basic arrangements mandated by the Constitution NRI 1945 (UUD Negara Republik Indonesia Tahun 1945). The basic essence with recognition of the existence of Indigenous Law Community must be a guarantee of protection for them and their rights which must also be recognized as an integral part of the existence and the development of the customary law community itself (Sedubun, V., 2020). The Constitutional Court (MAKAMAH KONSTITUSI) accepts and hears requests for judicial review against Law Number 41 of 1999. Considerations are given by the Constitutional Court

in its Decision The Constitutional Court of the Republic of Indonesia. (Putusan Mahkamah Konstitusi) Number 35/PUU-X/2012 broadly speaking states that chapter 18B verse (2) and chapter 28I verse (3) of the NRI Constitution 1945 (UUD 1945) has given recognition and protection of the existence of customary forests in unity with the customary rights area of a customary law community.

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and appropriate for community development and the principles of the Unitary State of the Republic of Indonesia (NKRI), which are regulated by law." (UUD NKRI Tahun 1945, Chapter 18B, Verse 2). This verse, clearly explains that the Indonesian government confesses and respects the leader at the village level, as well as living groups of indigenous peoples in various regions in Indonesia. Any rights such as Ulayat rights (customary territories) are also guaranteed by the state. Therefore, all of the customary activities done by indigenous people and their rights are guaranteed by the government. This is the consequence of the recognition of customary law as living law that has been going on since long ago and continues to this day. Therefore, placing customary forests as a part of the state forest is a disregard for the rights of indigenous peoples (Sedubun, V., 2020).

The development of regulations for indigenous people in Indonesia moves from time to time. According to Murray, in ancient times, there were two official documents prepared in the past few years ago. Those documents confirm that the ecological soundness of traditional knowledge is increasingly accepted by some parts of Indonesia's ruling regime (Li, 2000). Although the state has guaranteed the existence of regulations regarding *Adat* (customary) land rights for indigenous peoples (Pabbajah, 2021). However, the sanctions given to those who confiscate land rights have not yet been implemented. This has resulted in a lot of oppression of indigenous peoples who struggle to defend their customary lands. One of the factors that must be improved is knowledge of the law.

Various forms of law made by the state to overcome the problem of customary land in Indonesia are not always obeyed by the state itself. The state must consider the welfare and prosperity of the people for the sustainability of life in the future, as an effort to empower resources, both natural resources and human resources (Widyatmoko et al., 2020). Various forms of law that have been made are based on the interests of the state and society. However, in practice, applicable regulations and laws are made based on religious understanding. Regulations concerning humans fulfilling the needs of life both nationally and socially by considering the rights of fellow human beings contained in human rights are a bias by religious activities. Religious communities play an important role in the dynamics of the state, especially in Indonesia. In its journey, Indonesia recognized 6 religions constitutionally. On the other hand, Indonesia also recognizes and appreciates religious activities, including religious rituals performed by indigenous peoples.

Customary land as a place for rituals of indigenous peoples is part of the customary identity of indigenous peoples. As a property that supports the sustainability of customs and is a customary identity, it should be guaranteed by the state to continue to be given to indigenous peoples as a form of appreciation for beliefs and human rights. Even though in practice, most of the Marafenfen people who have embraced world religions think that their customary customs and rituals are not religion, the right to maintain customary land as their traditional identity and ancestral religion must still be given to the Marafenefen community. The legal framework in the Indonesian legal framework regarding customary land and customary community ownership rights must be re-examined. The government and various high courts must look fairly at the goals of the state and must be able to distinguish between the common interests and the interests of certain parties. The government and district courts must also be able to consider justice objectively, but not based on the paradigm of world religion and overriding the paradigm of indigenous religions.

TNI-AL as part of a country that has won trials on land disputes has a very different goal from the indigenous religious paradigm. TNI-AL is trying to convince them to manage land-based on rationality, not sociality. The TNI-AL highly upholds the paradigm of world religion based on the interests of the state which according to him will have a good impact on humans. Without thinking that the management of 689 hectares of land for the benefit of the state is a form of environmental exploitation. This will have an impact on forest destruction and will also impact the poverty and underdevelopment of indigenous peoples.

Conclussion

The issue of injustice in the customary environment in Marafenfen proves several things. First, in some conditions, the State and Society create conflicts that harm many parties. The problem of Indonesia as a law state cannot guarantee the welfare of the indigenous peoples in Marafenfen. This is because the state favors the interests of the state and subordinates the interests of indigenous peoples with weak legal knowledge. The state aims to create prosperity for all citizens through its resources. However, in some conditions, the state is silent when it sees the cries and sorrows of the people and prioritizes the interests of several parties. Meanwhile, laws have been made to support the rights of indigenous peoples and the customary environment, but for some purposes, the state deviates from the laws made.

Marafenfen is one example of many cases of injustice in customary land management in Indonesia, especially in Maluku. The case and the chronology of this case show that customary law communities cannot manage customary land, even though the land is for the prosperity of all Indonesian people. The injustice of customary land management in Marafenfen proves that customary land is the religious identity of indigenous peoples. However, most people in Indonesia still maintain the paradigm of world religion as the basis for human activities, including enforcing laws and regulations in the state. Because of this, the government does not prioritize the interests of indigenous peoples. This problem conducts that humans (government in this case) must consider others' (society) human rights and how to meet needs based on social sense, not just rational reason. That is why the community must consider the indigenous religious paradigm as an alternative way to oppose the world religious paradigm.

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