

Notary Authority in Providing Legal Consultation Outside Of Notary Deeds: In Compliance With The Code Of Ethics And Social Responsibility Of Notaries

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Abstract

This research examines the role of notaries in providing legal counseling and legal consultation as a manifestation of the social responsibility of the legal profession. Using normative juridical research methods with descriptive analytical approaches that rely on secondary data and literature study techniques, this research finds that notaries have a strategic role in creating legal awareness in society through legal counseling that is collective, preventive, and educative, as well as legal consultation that is individual and curative. However, the research results show that there is normative ambiguity regarding notaries' authority in providing legal consultation, where formally notaries are only authorized to provide legal counseling in the context of deed preparation, but in practice they often provide legal consultation free of charge as a form of social responsibility. This research concludes that clearer and more definitive regulations are needed to provide legal certainty regarding the limits of notaries' authority in providing legal consultation, so as to strengthen the position of notaries as public servants in the field of law without violating professional ethics.

Keywords

Notary, legal consultation, notarial deed.

Introduction

The legal profession is a field that is closely related to the social life of society. Individuals who work in this profession must have in-depth knowledge, especially in their specific fields, and be able to meet the legal needs of society independently. One example of a legal profession is a Notary, who has an important role in making authentic deeds and providing testimony to certain legal events.

The presence of an authentic deed is an important and sensitive thing in people's lives for the sake of proof. A deed or also called a deed is "a writing that is deliberately made to be used as evidence."¹ In addition, the definition of an authentic deed as regulated in Article 1868 of the Civil Code is "a deed in a form determined by law, made by or before authorized public officials at the place where the deed is made."² The source of the birth of an authentic deed is not from the law, but because it is made by or before a Public Official.³

In making an agreement between two or more parties, it is better to state it in the form of a deed to guarantee the implementation of the agreement. The deed can be an authentic deed and a private deed. An authentic deed is "a deed made by and/or before an authorized official." While a private deed is "a deed made by the parties alone without the intervention of an authorized official." For deeds in the realm of civil law, the official authorized to make an authentic deed is a Notary.

A Notary is "a public official who has the authority to make authentic deeds related to all stipulations, agreements and/or actions required by laws and/or the will of those who have an interest to be stated in an authentic deed." A notary deed that is made properly has perfect evidentiary power.

As a public official, a Notary is obliged to understand and comply with all provisions of applicable laws and regulations. This is something that is absolute considering that the position of Notary is a position of trust in the law enforcement process, besides that, Notaries must always behave and act in accordance with the Notary Code of Ethics.

The existence of a notary code of ethics is regulated by the notary professional organization, in this case the Indonesian Notary Association (INI) as the sole forum where Indonesian notaries gather.⁴ According to the changes to the Notary Code of Ethics held at the Special Congress of the Indonesian Notary Association in Banten from May 29-30, 2015,

¹ Ellise T. Sulastini dan Aditya Wahyu, *Pertanggungjawaban Notaris Terhadap Akta yang Berindikasi Pidana*, (Bandung: Refika Aditama, 2011), hal. 20

² Indonesia, (KUH Perdata) Kitab Undang-Undang Hukum Perdata, Pasal 1868

³ *Ibid*

⁴ Syamsir, Elita Rahmi, Yetniwati, "Prospek Cyber Notary sebagai Media Penyimpanan Pendukung menuju Profesionalisme Notaris", *Recital Review*, Volume 1 Nomor 2, Tahun 2019, hal. 138

it is stated that the Notary Code of Ethics is defined as a decision of the Indonesian Notary Association and/or determined and supervised by the Indonesian Notary Association. The rule applies to every member of the Indonesian Notary Association and all those who serve as notaries as well as Temporary Notary Officials and substitute Notaries are also included in this rule.

Notary as a position is defined in Article 1 Paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary (Notary Position Law), which was later amended to become Law Number 2 of 2014 concerning the Position of Notary (hereinafter referred to as the Notary Position Law), which states that: "A notary is a public official who has the authority to make authentic deeds and other authorities as referred to in this law."⁵ The enactment of the Notary Law has given birth to a legal development in the world of notaries today. A notary in carrying out his work must demonstrate an objective attitude. This objectivity includes impartiality towards anyone, especially in the context of making deeds that will be handled by him.⁶

The profession of Notary is a position that is trusted and obtained through the Notary Law. Notaries are required to provide clarity on the deeds they issue, which can provide legal clarity and have competitiveness in proving authenticity in accordance with the methods and requirements for making deeds in line with legal regulations through actual facts that occur, in its implementation, citizens have fairly uniform knowledge regarding the law. Therefore, before issuing a deed, Notaries are required to initially disseminate legal information that is in line with the needs of the relevant parties.⁷

The Notary Law regulates the authorities, obligations and prohibitions that must be complied with by Notaries in carrying out their position. The authority of a notary in carrying out his/her position is contained in Article 15 Paragraph (1) of the Notary Law which reads: "A notary is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law. The Notary Law and the Notary Code of Ethics of 2015 also do not regulate the imposition of sanctions

⁵ Indonesia, (Undang-Undang Jabatan Notaris), Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang – Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, Pasal 1 Ayat (1)

⁶ Freddy Haris, dkk, *Notaris Indonesia*, (Jakarta: PT. Lintas Cetak Djaja, 2017), hal. 28

⁷ Ranggapandu Cindarputera, Mohamad Fajri Mekka Putra, "Kewenangan Notaris Dalam Persoalan Penyuluhan Hukum Dan Mediasi" *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Volume 6 Nomor 3 Juli, 2022, hal. 10190

if the notary does not exercise his/her authority to provide legal consultation or provide legal consultation that is not related to the deed he/she made. Therefore, further explanation is needed regarding the provision of legal consultation outside of the deed by a notary based on the Notary Law and the Notary Code of Ethics.

Based on this, the researcher will conduct research covering the authority of a Notary based on the Notary Law and the Notary Code of Ethics; namely based on the Notary Law, Article 15 paragraph (1) states that a Notary has the authority to make an authentic Deed regarding all acts, agreements and determinations required by statutory regulations and/or desired by the interested party to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide a grosse, copy and extract of the Deed, all of which as long as the making of the Deed is not also assigned or excluded to another official or other person determined by law. In addition to the authority as referred to in paragraph (1), a Notary also has the authority to validate signatures and determine the certainty of the date of private letters by registering them in a special book, record private letters by registering them in a special book, make copies of the original private letters in the form of copies containing descriptions as written and described in the letter in question, validate the suitability of photocopies with the original letter, provide legal advice in connection with the making of Deeds, make Deeds relating to land; or make Deeds of auction minutes. In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other authority as regulated in statutory regulations.

Forms of legal counseling or consultation carried out by a Notary, namely: The legal counseling referred to is the provision of in-depth legal information regarding deeds carried out by a Notary as long as the provision of said legal information is in accordance with the applicable legal corridor.⁸ Notaries must provide legal counseling in the form of the rights and obligations of the parties themselves, each party must be equal/balanced and if there is a party who feels disadvantaged because during the counseling the legal aspects to fulfill the principle of proportionality were not explained, then the parties can report to the Regional Supervisory Council.⁹

In general, Notaries provide free legal consultations to every client who comes to their office. This applies to various aspects of law, including civil inheritance law, Islamic inheritance law, and other inheritance laws. In inheritance law, many clients ask about the

⁸ Boy Nurdin & Stephanie Lorenza, "Peran dan Tanggung Jawab Notaris dalam Memberikan Penyuluhan Hukum kepada Calon Klien Terkait Pembuatan Akta (Contoh Kasus: Putusan Nomor 200/Pdt.G/PN.JKT.SEL)", *Jurnal Ilmiah Ilmu Hukum*, Vol. 16 No. 2, 2018, hal. 265

⁹ Fitria Yesi, Tesis "Peran Notaris Dalam Memberikan Penyuluhan Hukum Untuk Memenuhi Asas Proporsionalitas Dalam Akta Para Pihak (*Partij Acten*)", Magister Kenotariatan, Universitas Islam Indonesia, 2023, hal. 73

arrangement of fair inheritance distribution for all heirs, both male and female. Clients who do not have sufficient funds often also ask questions about disputes regarding inheritance assets controlled by individuals or groups of heirs, which results in injustice for other groups in obtaining inheritance assets. Notaries, in providing legal services in the form of consultations, can also offer legal solutions to resolve inheritance disputes and provide guidance on the distribution of inheritance assets in accordance with the applicable legal principles in each type of inheritance law.¹⁰

Notary's authority in providing legal consultation outside of deeds. Notaries are allowed to provide legal consultation outside of making deeds, but legal consultation that can be provided by Notaries covers various fields of law, such as civil law, criminal law, commercial law, land law, and family law. This study focuses on three main problems related to the authority of notaries in providing legal consultation outside the context of making deeds. First, how is the authority of notaries based on the perspective of the Law and the Code of Ethics that apply as the normative framework of the profession. Second, to what extent can the limitations of legal counseling regulated in Article 15 paragraph (2) letter e of the Notary Law be interpreted in notarial practice. Third, can the legal counseling mandated by law be expanded in meaning to include legal consultation outside of deeds as a form of implementation of the notary's social responsibility. This problem formulation aims to examine the formal legal aspects, limitations of authority, and ethical-social dimensions in the practice of legal consultation by notaries.

Methods

This study uses a normative legal research method with a descriptive analytical nature and a qualitative approach to examine legal problems through an in-depth analysis of positive law and applicable legal norms. The data used are secondary data as the main data in the form of laws and regulations, books, journals, and related research results, which are supported by primary data through interviews with Notaries as supporting data. Data collection techniques are focused on literature studies through analysis of relevant legal documents, with data analysis using a descriptive qualitative approach and deductive drawing of conclusions to obtain a comprehensive understanding of the issues being studied.

Result, Discussion and Analysis

Notary's Authority Based on the Perspective of Law and Code of Ethics

¹⁰ Rusdianto Salim, *Dasar Hukum Kewenangan Notaris dalam UUJN No. 30 Tahun 2014 dan KUH Perdata*, (Jakarta: Sinar Grafika, 2010), hal. 16

In the implementation of the authority of a Notary according to the Notary Law, it is to make all authentic deeds related to all acts, agreements and provisions required by laws and regulations or parties who have an interest to be included in an authentic deed. The authority of a Notary in carrying out his work is required to be in accordance with the authority of a Notary as in Article 15 of the Notary Law. The regulations in Article 15 Paragraph (1) of the Notary Law emphasize that one of the authorities of a Notary is to make deeds in general with limitations as long as they are not excluded for other officials as determined by the Law, namely:

1. Concerning deeds that must be made or authorized to make authentic deeds regarding all actions, agreements, and provisions required by a legal rule or desired by the person concerned;
2. Concerning the legal subject (person or legal entity) for whose benefit the deed is made or desired by the person concerned;
3. Authorized regarding the place where the deed is made, this is in accordance with the domicile and area of office of the Notary;
4. Concerning the time of making the deed, in this case the Notary must guarantee the certainty of the time to meet the parties listed in the deed.¹¹

If we relate Hans Kelsen's theory of responsibility to Notaries, then Notaries are legally responsible for all actions taken, where the actions are actions that are contrary to laws and regulations. Notaries as public officials who are authorized to make deeds, have responsibility in making their deeds. The responsibilities of Notaries are divided into several types, as follows:

1. Responsibilities of Notaries based on the Notary Law

The responsibility of a Notary is related to the actions of a Notary in carrying out the authority and obligations of a Notary. The responsibility of a Notary arises because there are obligations and authorities that have been given to him, these obligations and authorities are legally and bindingly effective when the Notary takes the Notary's oath of office..

Based on the Notary Law, the responsibilities of a notary include: Bertindak profesional;

- a. Maintaining the authenticity of the deeds made, this relates to the preparation, reading and signing of the deeds (at the beginning and end of the deed);

¹¹ Indonesia, (Undang-Undang Jabatan Notaris) Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, LN Nomor 3, TLN Nomor 5491, Penjelasan Pasal 15 Ayat (1)

- b. Storing and maintaining all deeds made as part of the notary protocol;
- c. Providing legal services or services in connection with the making of deeds, especially to people who are unable to do so for free;
- d. Providing, showing or notifying the contents of the deed, grosse deed, copy of the deed or excerpt of the deed, to people who are directly interested in the deed, heirs or people who obtain rights;
- e. Being responsible for every deed made in accordance with what has been agreed upon and desired by the parties.

2. Notary's Civil Liability

Based on civil law, a Notary in carrying out his duties, namely making a deed, if it causes a loss and the Notary dies, then the loss can be imposed on his heirs and cannot be imposed on other Notaries in the Notary Civil Association. This explains that the Notary's responsibility lies with the Notary who makes the deed. The party who is harmed by the deed made by the Notary can file a lawsuit for compensation to his heirs through the court..

3. Criminal Responsibility

A notary is criminally liable if a notary carries out a legal act prohibited by statutory provisions or the notary makes a mistake or an unlawful act either intentionally or negligently resulting in losses to another party. The criminal provisions in question are criminal acts committed by a notary in his capacity as a public official authorized to make deeds, not in the context of an individual as a citizen in general..

Criminal provisions are not regulated in the Notary Law. The law only regulates sanctions for violations committed by notaries against the UUJN, and sanctions against deeds made by notaries.

4. Responsibilities based on the Notary Code of Ethics

The responsibility of a Notary in carrying out his/her obligations must pay attention to his/her obligations as the maker of the deed, the obligations referred to in the Notary Code of Ethics are regarding the attitudes, behavior, actions or actions that must be carried out by members of the association or other people who hold and carry out the position of Notary, in order to maintain and preserve the image and authority of the notary institution and uphold the dignity and honor of the position of Notary..

Limitations of Legal Consultation Regulated in Article 15 of the Notary Law

Legal consultation is carried out before the Notary drafts a deed. When the prospective client asks for a deed to be made, a Notary is required to provide an explanation,

understanding and opinion about the circumstances of each party. The consultation must refer to the real conditions of the party and the Notary is prohibited from siding with one party. If the party/client is a lay person who does not know the law, the Notary is required to use language that is easily understood by the client in order to obtain the clearest possible information about the legal position of the party concerned..¹²

Legal consultation is given at the Notary's office when the deed is made and the person appearing asks for the deed to be made. When making the deed, the Notary will ask the person appearing about the legal facts to then consider whether the person appearing can have a deed made. Communication between the Notary and the person appearing is very necessary to be carried out in depth with the aim that the Notary can make the right deed in accordance with the legal position of the persons appearing..¹³

Legal consultation is carried out at the Notary's office with the aim of providing a sense of security and comfort to the parties that they will gain an understanding related to the position and understanding in making a deed. The parties will receive a guarantee that the deed made is in accordance with the actual reality, and in accordance with applicable law. The more a deed is in accordance with the rules of law, the more certain it is that no party will be harmed..¹⁴

Legal consultation should be carried out face to face with the presence of the parties concerned to make the deed. The important thing is that the parties and the Notary can communicate interactively by asking each other questions and answering further questions about anything that the parties and the Notary do not yet understand. The better the communication between all parties, the more perfect the deed that is made and reflects justice. A fair and perfect deed is very beneficial for the Notary because the Notary can avoid responsibility for making the wrong deed..¹⁵

In order for the parties to receive professional and best service, the parties have the right to obtain the clearest possible understanding regarding the deed made. The parties are allowed to ask questions, interrupt, request further explanations, and can also submit questions to the Notary. The Notary has an obligation to answer, provide explanations and explain to the parties as clearly as possible as long as the questions are in accordance with applicable regulations. Meanwhile, the second form is legal consultation followed by the making of a deed. In this form, the parties who have received legal consultation from the Notary decide to proceed to the next stage, namely the stage of making the deed. When

¹² *Ibid*, hal. 42

¹³ *Ibid*, hal. 42

¹⁴ *Ibid*, hal. 43

¹⁵ *Ibid*, hal. 43

providing consultation, a Notary is required to explain honestly and fairly regarding the conditions and legal situations of the parties. In addition, the Notary must adhere to applicable laws, so that there are no violations of statutory regulations in making the deed..¹⁶

Based on the matters explained above regarding the ambiguity of norms due to the unclear meaning of the provision of legal counseling by a Notary in connection with the making of a deed. In the explanation of Article 15 Paragraph (2) letter e which states that the Notary Law is "quite clear" it should be changed to:

1. Legal counseling as referred to in this article is all forms of providing information, statements, explanations, suggestions, input, advice and explanations given to individuals and/or legal entities appearing before a Notary regarding the position of the person appearing, legal acts, legal consequences, legal sanctions, and legal consequences received by the persons appearing as a result of the deed to be made. Each form of counseling is given before the authentic deed is made by the Notary and before the signing of the deed. In addition, the definition of legal counseling in this article is to provide an explanation regarding the provision of advice and input to the person appearing regarding what deeds should be made;

2. When providing legal counseling related to the making of a deed, the Notary is prohibited from providing counseling related to deeds made by other Notaries, providing legal counseling outside the interests of making notarial deeds, and providing legal counseling to parties to make agreements that are not in accordance with applicable laws and regulations, as well as providing other legal counseling that is not in accordance with the authority of the Notary as regulated in this Law or other Laws.¹⁷

Notaries have limitations in providing legal advice to their clients which must be adhered to and upheld in accordance with the provisions contained in the Notary Law and the Notary Code of Ethics, namely::

1. Notaries only provide legal counseling related to the deeds to be made;
2. Notaries only provide legal counseling for deeds that are the authority of the Notary, and not the authority of other officials or bodies according to the law;

¹⁶ *Ibid*, hal. 44

¹⁷ *Ibid*, hal. 45-46

3. Notaries who provide legal counseling must be based on applicable laws and regulations;
4. Notaries who provide legal counseling must be based on Pancasila, applicable laws, the code of ethics and the Notary's oath of office;
5. Notaries who provide legal counseling must prioritize the dignity of Notaries, the honor of the profession and professional behavior;
6. Legal counseling must be provided by Notaries continuously to increase knowledge about law so that their knowledge is always honed and updated according to the times;
7. Legal counseling provided by Notaries must be in line with religious norms, morality, politeness, values in society and uphold ethics and morals;
8. Legal counseling provided by a Notary must be based on an honest attitude, avoiding prioritizing money over justice and truth and not distinguishing between ranks, positions, groups of the parties;
9. Legal counseling provided by a Notary must be based on a sense of responsibility and impartiality;
10. Counseling provided by a Notary is free of charge;
11. Legal counseling provided by a Notary must be given seriously so that the parties can obtain the fairest goodness and justice..¹⁸

Legal Consultation Outside the Deed That Is Permitted to be Carried Out by a Notary

As explained above, there are 2 (two) forms of legal consultation conducted by a Notary, namely legal consultation followed by the making of a deed and legal consultation not followed by the making of a deed. First, namely legal consultation conducted by a Notary followed by the making of a deed. The making of the deed in question is an authentic deed that is within the competence or authority of a Notary. There are 2 (two) forms of types of authentic deeds made by a Notary, namely a deed made by a Notary and a deed made before a Notary. Deeds Made by (door) a Notary or Deed of Relas or Minutes of Meeting, namely the Notary writes or records all things that are seen or heard directly by the Notary which are carried out by the parties, for example a deed of minutes/minutes of the GMS of a limited liability company, deed of recording of the budel, and others. While the deed Made Before (ten overstaan) a Notary or Deed of Parties or Deed Partij is a deed made before a Notary at the request of the parties. For this matter, the Notary is obliged to listen to the statements or statements of the parties which are stated or explained by the parties themselves before

¹⁸ Ananda Pradhitya Tenggara, *Op.Cit*, hal. 39

the Notary. In a party deed, the Notary states or formulates the statements or wishes of the parties into the Notarial deed, for example a credit agreement.¹⁹

The authority of a Notary's deed is clearly regulated in Article 15 Paragraph (1) of the Notary Law which states that a Notary has the authority to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the making of the deed is not also assigned or excluded to another official or other person determined by law. Based on this, a Notary is required to provide legal consultation regarding deeds that are within his authority and position. Second, legal consultation that is not followed by the making of a deed, namely the Notary has the authority to be able to provide or not be able to provide legal consultation to the parties. Notary's considerations for providing legal consultation to the parties, namely on the condition that the legal consultation is still within the scope of the Notary's authority as regulated in the applicable laws and regulations or the legal consultation does not violate the Notary Law and the Notary Code of Ethics. For example, if someone asks a Notary to be given legal consultation or legal advice regarding a Notarial deed made by another Notary, then in this case the Notary must be able to reject the request and desire of the person, by means of the Notary being able to provide an explanation to the person that the Notary does not have the authority to assess or comment on Notarial deeds from fellow Notaries..

Based on this, a Notary can only help the person by providing advice so that the person can ask for help from a more authorized party, such as a lawyer. In addition, if someone asks a Notary to be given advice or legal advice in making a deed that is not the Notary's authority, such as making a birth certificate or marriage certificate, then the Notary in this case can provide advice to the person concerned to ask for help from an authorized official for that, namely the Civil Registry Office Employee.²⁰

Legal consultations provided by a Notary must be based on confidence in the field of expertise and within the limits of his/her abilities. Legal expertise in his/her field must be in accordance with applicable laws and regulations. These regulations are guidelines for what a Notary may and may not do in making a deed. This is one of the factors that distinguishes

¹⁹ Ghansam Anand, "Jenis-Jenis Akta yang Dibuat oleh Notaris", <https://www.hukumonline.com/klinik/a/jenis-jenis-akta-notaris-cl1996/>, (diakses pada 21 Oktober 2024).

²⁰ David Santosa, Thesis "Peran dan Wewenang Notaris Dalam Memberikan Penyuluhan Hukum Ditinjau Dari Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris dan Kode Etik Notaris", (Jakarta: Pascasarjana Magister Kenotariatan, Fakultas Hukum, Universitas Indonesia, 2013), hal. 63-64

the work of a Notary from the work of other legal practitioners. The position of a Notary as an honorable position and having a very important role in society certainly requires anyone who holds the position to have qualified qualities both in terms of knowledge and leadership.²¹

As stated above, legal consultation by a Notary may only be in accordance with his/her authority, and if he/she violates it, the Notary will receive sanctions or punishment. This can also happen if the Notary makes a mistake that is detrimental to others. Mistakes made while carrying out official duties and those mistakes cause losses to the person appearing or others. It can be said simply that every legitimate authority, whether derived from law or from an agreement, can give rise to responsibility for the person carrying out the task or obligation.

Conclusion

This study concludes that the authority of a Notary in the Indonesian legal system is clearly regulated in Article 15 of the UUJN, which includes the making of authentic deeds and legal counseling related to the making of deeds. Legal counseling is different from legal consultation, where counseling is collective, educational and preventive in nature which is limited to the context of making deeds, while legal consultation is individual and curative in nature which can go beyond the context of deeds but must remain within the legal corridor and professional ethics. Although legal consultation outside of deeds can be carried out as a form of social responsibility, this practice requires strict supervision and a clearer legal basis. Therefore, it is recommended that INI and the Ministry of Law and Human Rights increase socialization and training, the government prepare more detailed implementing regulations related to the limitations of legal consultation in Article 15 paragraph (2) letter e of the UUJN, and make special regulations for the practice of legal consultation by Notaries outside of deeds to prevent overlapping authority with other professions and ensure professional legal services in accordance with applicable provisions.

²¹ Ferdiansyah Putra dan Ghansham Anand, "Perlindungan Hukum Terhadap Para Pihak Yang Dirugikan Atas Penyuluhan Hukum Oleh Notaris", *Jurnal Komunikasi Hukum*, Volume 4 Nomor 2 Agustus 2018, hal. 31

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