



Legal Consequences of Betel Marriage Settlement During the Covid-19 Pandemic

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Abstract: This study aims to determine the legal consequences of betel marriage settlement during the Covid-19 pandemic. The type of research used is sociological juridical and this study uses a descriptive research approach and qualitative data analysis techniques. The results of this study show that the legal consequences of an unrecorded marriage can cause the marriage to be invalid in the eyes of positive Indonesian law, but according to religion and public belief that the marriage is valid as long as it meets the conditions and legal pillars of a marriage itself. As for the settlement, there are two things, namely the application for a marriage and remarriage hearing. However, the bad factor is that if the marriage partner has obtained a child, then in civil law the child does not have a nasab with the father but only has a nasab with a mother and her family.

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1. Introduction

One of the initial frameworks for obtaining legal guarantees in a marriage is to tell it to the competent authority. This applies not only to people who are Muslims but also to those who are Christians, Catholics, Hindus, and Buddhists. As stated in Law No. 22 of 1946 jo. Law No. 32 of 1954 concerning Registration of Marriages, Talak and Reference (Explanation of Article 1) also in Law No. 1 of 1974 concerning marriage Article 2 Paragraph 2, which is strengthened by Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law Articles 5 and 6.¹

A valid marriage is a registered marriage, Law Number 1 of 1974 as amended by Law No. 16 of 2019 concerning Marriage according to Article 2 Paragraph 2 states that each marriage is recorded according to the applicable laws and regulations. Marriage registration serves as a very important piece of valid written evidence to bring domestic matters to justice in religious courts. Religious Courts have the duty and authority to resolve all issues and disputes including in the field of marriage.² In addition, it is also for the administrative affairs of the husband and wife and their children. Usually, marriages that are not registered are only carried out by an ustadz or community leader as a penghulu or are carried out based on customs only. These unregistered marriages are then not reported to the competent authorities, namely KUA (Office of Religious Affairs for Muslims) or KCS (Civil Registry Office for non-Muslims) for recording. However, an important note is that the provisions of regulations related to marriage are aimed at all religions, except for regulations derived from their respective religions. So that the Indonesian state is not religious, but also not a secular state, as the state is obliged to protect and foster all religious believers without discrimination.³ The existence of existing regulatory regulations provides equal rights for every citizen.⁴

Marriages are registered with the state-appointed registrar (government) official. The government is obliged to record, and as valid proof of marriage ties a marriage certificate is given. The marriage certificate aims to regulate the legal relationship of each to be legal husband and wife. Thus, marriage law and marriage certificates are legal events that are protected by law and have valid legal consequences. The institution of marriage registrars in Indonesia is divided into 2 (two) groups, based on Islam and non-Islamic religions. The arrangement has juridical consequences, that the registration of marriages is a necessity of the implementation of legal acts in the form of marriage. This is also reinforced by the provisions in Article 5 Paragraph (1) of the Compilation of Islamic Law Book I on Marriage Law which states that to ensure marital order for the

¹ AJ.N.D Anderson, *Hukum Islam di Dunia Modern* (Yogyakarta: Tiara Wacana, 1994), 46

² Nur Mohamad Kasim and Indra Saputra Daud, "Application of The Concept of Maslahah by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts," *Jambura Law Review*. 4, No. 1 (2022): 38-52., 129

³ Sri Nanang Meiska Kamba dan Nuvazria Achir, "The Function Of Sharia-Based Regional Regulations On Education And Social Services In The Regions," *Jambura Law Review*. 3, No. Special Issue (2021): 1-17., 4

⁴ Abdul Hamid Tome, "Dynamics of Village Head Election Arrangements," *Jambura Law Review*. 3, No. Spesial Issue (2021): 96-116., 101

Islamic community every marriage must be recorded. However, marriages performed without marriage registration are still considered valid religiously and religiously but are considered legally invalid. This is one of the juridical consequences (consequences) of not registering marriages. Meanwhile, in the context of Islamic marriage law, it is considered valid if the conditions and pillars have been met. This is what causes the rise of serial marriage in Indonesia.⁵

We all know that from 2019 to 2022 it is still hit by the Covid-19 pandemic, which is one of the causes of marriages not being recorded in the KUA, because the contract is only carried out by ustadz or figures from the family itself. Policies in 2019 and 2020 require all communities to avoid physical contact with others as much as possible so that when the policy is issued someone performs the marriage without being noticed by the KUA so that the marriage can be referred to as a serial marriage or the marriage is not recorded at the religious affairs office. The policy referred to by the author is the Instruction of the Minister of Home Affairs No. 54 of 2021 concerning PPKM which instructs all Governors to be able to optimize the handling of the spread of Covid 19. Furthermore, in the fourth part of the policy, for wedding receptions and celebrations (community) a maximum of 50% (fifty percent) of the capacity or a maximum of 50 (fifty) people, and there are no food dishes on the spot with the implementation of health protocols regulated by the Regional Government.⁶ Policies are very important to take, as they can be a strong legal umbrella for local governments to protect.⁷

The COVID-19 virus is transmitted and spread very easily. Due to this pandemic, not a few prospective married couples want to hold their marriage. However, because they are afraid to invite many people, it is not uncommon for them to want to stay married even if they marry Siri. Siri Marriage or Siri Marriage is now the best solution for them because the marriage is carried out secretly without inviting many people so that the transmission of the COVID-19 virus does not become more widespread.

As in Gorontalo itself, there is a habit where when doing weddings and celebrations will invite many people from several walks of life to participate to enliven the wedding party itself. Therefore, even with this policy, the community continues to carry out the wedding, especially the marriage contract even though it is not attended by the KUA. Reporting to several media, several marriages were forced to be disbanded by the police because they violated the provisions of the PKM. As is the case in the North Gorontalo region where the wedding celebration was forcibly dissolved by the police.⁸

Based on data obtained from one of the communities in Sipatana Village, it is said that many couples get married without reporting to the local KUA, where it is known that

⁵ "Pasal 5 Ayat (1) Kompilasi Hukum Islam Buku I Tentang Hukum Perkawina"

⁶ "Bagian Keempat Intruksi Mendagri No. 54 Tahun 2021 Tentang PPK"

⁷ Novendri Mohamad Nggilu, Lisnawaty Wadju Badu, and Suwitno Yutye Imran, "Legal Protection Bonda And Bulango Languange : In Reality And Prospect," *Jambura Law Review*. 3, No. 1 (2020): 19-36., 32

⁸ "Http://Portal.Gorutkab.Go.Id/, Di Akses 16 Juli 2022, Pukul 17:58 Wita,"

in 2020 there are 5 couples.⁹ Likewise, the data obtained from KUA itself in big data do not have it, but many people register for marriages but after being asked for the conditions of marriage as stipulated in the circular cannot be met by them. With the COVID-19 pandemic, in addition to couples not reporting to KUA, some hold marriages online from outside one area to another. As a result, many cases of marriages are not legally recorded or in other words, serial marriages. Compared to before covid 19 almost all married couples always register their marriages in KUA, there is even one couple where the bride-to-be is underage, but we always provide solutions for them as if they had to attend the trial.¹⁰ The policy referred to by the author is Circular Number: P-001/DJ. III/Hk.007/07/2021 concerning Technical Guidelines for Marriage Services at the Office of Religious Affairs (KUA) of the District for the Implementation of Emergency Community Activity Restrictions (PPKM), wherein the regulation is stated that the marriage contract process is only attended by a maximum of 6 people and the bride and groom must be swabbed with antigen and the bride and groom must sign a statement letter that can comply with health protocols. These various requirements, cannot be met by the bride-to-be couple, so they ¹¹choose to get married without being registered with KUA.

2. Method

The type of research used is sociological juridical, which is a type of research based on norms or laws and regulations examining the process of working or interacting with the law in society. This study uses a descriptive research approach and qualitative data analysis techniques.

3. Legal Consequences of Betel Marriage Settlement During the Covid-19 Pandemic

The main purpose of marriage is to establish a lasting and fulfilling relationship between husband and wife to have more children. Remembering that marriage is human nature's need for procreation to develop and find peace in life and to develop and cultivate human affection. Their compatibility will allow them to participate fully in the world of love and unity.¹² Human resources have a central position in the success of a goal.¹³

One of the most important frameworks in a marriage is the legality of a bond carried out by a married couple as referring to Article 2 Paragraphs 1 and 2 of Law No. 16 of

⁹ "The results of the interview with Mr. Usman Pulumuduyo as a community in Sipatana Village, Duhiadaa District, Gorontalo Regency, April 8, 2022, at 15:30 WITA,"

¹⁰ "The results of the interview with Lalan Jaelani as the Head of KUA Duhiadaa District, April 7, 2022, at 09:00 WITA,"

¹¹ "Points 7,8,10 and 11 of the provisions of circular Number: P-001/DJ. III/HK.007/07/2021 concerning Technical Guidelines for Marriage Services at the Office of Religious Affairs (Kua) District During the Implementation of Emergency Community Activity Restrictions (PPKM),"

¹² Sayyid Mujtaba Musavi Lari., *Psikologi Islam; Membangun Kembali Moral Generasi Muda* (Jakarta: Pustaka Hidayah, 1993)., 15

¹³ "Hasil Wawancara Bersama EH Sebagai Pelaku Nikah Siri Di Desa Sipatana, Kamis, 20 Oktober 2022,"

2019 concerning Marriage. The point is that couples who want to perform marriages should register them with the authorized agency. This is to avoid problems caused by a marriage that is illegal or does not have clear legal certainty. Marriage registration is not only done by Muslims but is also mandatory for those who are non-Muslims. As stated in a law that applies, among others, related to marriage registration, laws related to marriage and strengthened again with the Compilation of Islamic Law.

Marriage registration is not included in the legal requirements of a marriage, therefore the community considers that this is very unimportant for a married couple who wants to perform a marriage. As one of the perpetrators of the marriage said:¹⁴

"At first I thought that marriage registration is not important, but over time it is very important to us, for example, the management of our documents as is the case with family cards, identity cards, and other important documents."

It can be clearly understood that marriage registration is very important to be legalized by the competent authority. So that the problems that arise will not occur in families who have just held their marriage. The assumption is that marriage registration is not important in the community because it is not a pillar or a condition of marriage. So that some couples carry out their marriages only based on conditions and harmony as determined by religion, but not based on the provisions of applicable laws and regulations. Therefore, marriage is indeed valid in the eyes of religion, but it must meet the legal requirements of marriage itself. As for the legal requirement of a marriage, the prospective husband and wife must have a clear identity and certainly not the mahram of the two, guardian, ijab Kabul, and dowry.

Generally, a marriage is a legal act, which will give birth to a bond between a man and a woman who will later have rights and obligations that must be fulfilled. From these legal acts arises a legal consequence for both. Based on what is the statement of the Head of KUA that:¹⁵¹⁶

"There are many legal consequences, for example, the family cannot take care of their important documents as is the case with the family card, which must be proven by a marriage book if they are married and there are many other legal consequences both on the wife, husband and children and even on the inheritance"

Marriages that are not recorded or in other words serial marriages are marriages that are only carried out under religious provisions but not by applicable legal procedures. Therefore, serial marriage is invalid according to the marriage law because it is not under Article 2 Paragraph 1 of Law No. 16 of 2019 concerning Marriage related to

¹⁴ "The results of an interview with EH as the perpetrator of Siri's marriage in Sipatana Village, Thursday, October 20, 2022."

¹⁵ Ahmad Rofiq., *Islamic Law in Indonesia* (Jakarta: Raja Grafindo Persada, 2003)., 22

¹⁶ "The results of the interview with Lalan Jaelani as the Head of KUA Duhiadaa District, April 7, 2022, at 09:00 WITA."

marriage where it is said that every marriage is recorded as per the applicable laws and regulations. The above statement is under what is said by KUA where it is said that:¹⁷

"Obviously under the marriage law, the series is invalid because it does not meet the requirements as stated in the marriage law where every marriage must be recorded based on the applicable regulations"

The laws and regulations that have been made by the government are only for the common good, meaning that all forms of legal actions in the State of Indonesia have been regulated and have certain restrictions that should be obeyed by all levels of society. The absolute condition of state sovereignty is the existence of a society that obeys the constitution and its government.¹⁸ Similarly, a marriage as previously explained is that it is a legal act and has legal consequences. So it can be concluded that serial marriage is not valid in the eyes of Indonesian positive law but is valid in the eyes of religious law with a record that it must meet the requirements and the validity of a marriage. The requirements for the validity of marriage according to the Marriage Law are contained in Article 2 Paragraphs (1) and (2) namely:¹⁹

1. Marriage is valid if it is carried out according to the laws of each religion and belief.
2. Each marriage is recorded according to the prevailing laws and regulations.

1.) Consequences of Siri's Marriage Law

The general legal consequences described above, the following are the legal consequences caused to individuals,

a. Consequences On The Wife

Siri marriages are generally not recognized by the state, because they do not have an authentic certificate in this case a marriage certificate. Because in the provisions of laws and regulations both in the marriage law and the compilation of Islamic law, it is recommended that each marriage must be recorded in the relevant agency (Article 2 of the Marriage Law). Similarly, as stated in the KHI that (1) Fulfilling the provisions of article 5, every marriage must be performed before and under the supervision of the Registrar of Marriages. (2) Marriages performed outside the supervision of the Registrar of Marriages have no legal force. According to KUA that:²⁰

¹⁷ "The results of the interview with Lalan Jaelani as the Head of KUA Duhiadaa District, April 7, 2022, at 09:00 WITA."

¹⁸ Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects," *Jambura Law Review*. 3, No. 01 (2021): 55–71., 69

¹⁹ Andi Tahir Hamid., *Some New Things About Religious Justice and Its Fields* (Jakarta: Sinar Grafika, 2005)., 18

²⁰ "The results of the interview with Lalan Jaelani as the Head of KUA Duhiadaa District, April 7, 2022, at 09:00 WITA."

"yes the result could be that the husband will not provide a living because there is no obligation for him so on which is described in the Compilation of Islamic Law"

According to the author basically, the state does not recognize the wife in the marriage as the legal wife. Because it does not have physical evidence of a marriage certificate, which means that even if the marriage is religiously and religiously valid if the husband chooses to avoid responsibility, he will most likely fail to recognize the wife as his wife. In addition, if a serial marriage is carried out, then the marriage does not have legal certainty, making it vulnerable to various domestic violence problems because the husband will act irrationally and hurt his wife's feelings to fulfill his obligations as a husband and father to children. born into a marriage.

b. Consequences on children

Marriage outside of marriage is generally the same as legalizing cohabitation outside of marriage, so this is very detrimental to the individuals involved (especially women), especially if there are already children born. The child born only has a legal relationship with his mother because he does not have a legal relationship with his father, this is under article 43 of Law No. 16/2019 on the amendment of Law No. 1/1974 related to marriage, where it is explained that children born outside of marriage only have nasab with their mother and mother's family.²¹

So according to the author that young children born to the marriage partner of the RI do not have a father when viewed from the perspective of positive law. In addition, according to Ali Uraidhi, there is no proof of marriage, so interests such as obtaining an Identity Card (KTP), Family Card (KK), Passport, Child Birth Certificate, or anything political such as the right to vote or run in general elections cannot be revoked. All this is due to the absence of a marriage certificate or marriage book required to make an ID card, family card, or passport.²²

Siri marriage is certainly a violation of the law if only the government can be more assertive, then the perpetrators of Siri marriage can be subject to legal sanctions. Legal problems in serial marriages occur on the part of women and children. As a religiously valid wife, she cannot claim the right to inheritance in the event of a divorce, the right to the complaint in the event of domestic violence, or the right to legal protection if left without a message. The position of the husband, who is not touched by the law, creates a wide space for the occurrence of domestic violence committed by the husband against the wife. This violence is commonly found in the form of physical, psychic, economic, and sexual violence. The issue of legal protection is a constitutional right of every

²¹ "Article 43 of Law No. 16 of 2019 concerning Marriage,"

²² Ali Uraidy., *Pekawinan Siri Dan Akibat Hukumnya Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974*, 2012., 990

citizen, that is, it is guaranteed by the constitution. The state is firmly obliged to strive to fulfill the rights of every citizen.²³

2.) Marriage Settlement Siri

Everyone wants to get justice because everyone does not want to be a victim of injustice for any reason even though they have violated the rules. Quoting as said by Suwitno Yutye Imran Justice serves as a guideline to distinguish between just and unjust acts the elements of the aspect of justice can be contained in the substance.²⁴ Related to marriage is certainly a noble pledge and an inner born bond between a man and a woman that forms a happy family based on the one true Godhead. Because of legal marriage, the state exists through the government to be able to provide a way for those who can legalize their marriage, including in two ways, namely:

a. Itsbat Marriage

Itsbat nikah is the confirmation or establishment of marriage. Marriage is used in marriages that were once invalid in the eyes of positive law to be valid in the eyes of positive law. The point is that with the existence of a marriage certificate the spouse who has performed the marriage can apply to the religious court to obtain the determination and confirmation of the marriage so that the marriage has a permanent and clear legal force. By upholding rights and obligations, marriage also offers child protection solutions. The establishment of this nation was carried out, among others, to advance the general welfare and educate the nation's life under the opening paragraph of the 1945 Constitution. The implied meanings of the words "general welfare" and "educating the life of the nation" are heavily influenced by the thinking of the child. To educate the people of the country, in particular through the educational process, where the study room usually contains children of all ages.²⁵ Furthermore, those who have the right to determine the marriage certificate are religious courts under the auspices of the Supreme Court of the Republic of Indonesia and those who are entitled to marriage are husband and wife.²⁶

b. Remarriage

Remarriage is carried out not because the first marriage is invalid but rather to be able to supplement the previous shortcomings. If the previous marriage was carried out in secret or other words carried out in series, then this remarriage is

²³ Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations," *Jambura Law Review*. 3, No. 02 (2021): 365-77., 375

²⁴ Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments," *Jambura Law Review*. 3, No. 2 (2021): 395-410., 398.

²⁵ Hikmah Maros and Sarah Juniar, "Isbat Nikah Dalam Hukum Islam Dan Perundang-Undangan Di Indonesia," *Pranata Hukum* 8, No. 2 (2013): 1-23., 139.

²⁶ Armalina, Ardiana Hidayah. Dasar Pertimbangan Hakim Dalam Penetapan Perkara Itsbat Nikah. *Jurnal Solusi*. 18 No. 1 (2020): 20-32., 25

still carried out under religion but is also adjusted to the provisions of the applicable laws and regulations. As is the case with the marriage, it must be known and attended by the relevant agencies, namely employees of the office of religious affairs. An important note on this point is that the child who was previously born before remarriage will be an out-of-wedlock child or have only a nasab with his mother and no civil relationship with his father. This is under Article 43 of the Marriage Law and 100 KHI states that a child born outside of a valid marriage (according to positive law) only has a nasab / civil relationship with his mother and his mother's family, so the attempt to remarry becomes meaningless for the benefit of the legal status of the child unless no child has been born before remarriage.²⁷ Based on what is the statement of the Head of KUA that:²⁸

"Remarriage can be done, but with a note that if the couple already has children, the child is still an out-of-wedlock child, and of course, the remarriage is valid in the eyes of religion and positive law"

If you look at the Constitutional Court's decision on judicial review related to the marriage law, especially in Article 43 Paragraph (1), where the applicant's application is granted by the judge. But with a record as long as it can be proved by science and technology, besides it can be proved that the child is related by blood to his father. Research is of the view that in the Constitutional Court ruling, it can be seen that as long as parents and children can prove with authentic documents the status of their children, then legally and referring to the Constitutional Court ruling, children born from Siri marriage will have a nasab relationship with the mother with the man who is the father. The development of digitalization of information and communication technology in the form of social media exposes the public to a new reality, namely the mortal world that is visible from the screen of devices/gadgets but synchronized with real-world life.²⁹ It is precisely in the development of this increasingly advanced technology that it is required to develop oneself.³⁰

As a matter of consideration, cases related to remarriage occurred in Batudaa Pantai District where the KUA carried out remarriage for those who performed

²⁷ Khairani and Cut Nanda Maya Sari, "Pengulangan Nikah Menurut Perspektif Hukum Islam (Studi Kasus Di Kua Kecamatan Kota Kualasimpang)," *Jurnal Hukum Keluarga Dan Hukum Islam* 1, No. 2 (2017): 397-415., 404

²⁸ "The results of the interview with Lalan Jaelani as the Head of KUA Duhiadaa District, April 7, 2022, at 09:00 WITA."

²⁹ Moh. Rusdiyanto U. Puluhulawa dan Riski Husain, "Body Shaming through Social Media as a Digital Crime in the Era of Disruption," *Jambura Law Review*. 3, No. 01 (2021): 112-23., 117

³⁰ Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination of The Legal Protection of Right-Holders To," *Jambura Law Review*. 2, No. 01 (2020): 65-82., 67

serial marriages. As the data obtained from one of the societies who is also my colleague says:³¹

"In September KUA cooperated with the relevant agencies in this case the religious court carried out the remarriage and examined witness witnesses at the time the marriage was carried out, the number of couples who were remarried amounted to 252 Couples who came from several villages in Batudaa Pantai District"

The application of the above two points is part of the form of legal protection for those who perform marriages granted by the state. Legal protection is very necessary because it seeks to integrate various needs in the association so that there is no clash between needs and one can enjoy all the rights granted by law.³² The benefits are not to become clashes in social and state life.³³ The existence of complete assistance and protection as a form of fulfillment of constitutional rights for every citizen under the legal objectives of assistance.³⁴ Because of its essence, the constitution is a conception of the state that is the basis and limitation of the constellation of the state administration system.³⁵

It is understood that marriage registration is very important to do, even though marriage is only done religiously, but what must be thought about is various forms of needs in the future and therefore the issue of void marriage registration does not affect the validity of a marriage that has been carried out according to Islamic law because it only concerns administrative matters. It's just that if the marriage is not legally recognized, the husband and wife do not have official documents showing that their marriage is legal. By law, the government does not recognize marriage as a result. The marriage is thus not protected by law and is even considered to have never existed because it has no legal force (has no legal force).

4. Conclusion

The legal consequences of an unrecorded marriage can cause the marriage to be invalid in the eyes of Indonesian positive law, but according to religion and public belief that the marriage is valid as long as it meets the conditions and legal pillars rather than the marriage itself. As for the settlement, there are two things, namely the application for a

³¹ "The results of the interview via telephone with Mr. Hamzah as a resident of the Batudaa Pantai community, October 25, 2022,"

³² Jufryanto Puluhalawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site / Japanese Cargo Wreck Abstract Laut Mempunyai Makna Besar Bagi Indonesia , Sebagaimana Dijelaskan Shanti Dwi Kartika Bahwasannya : " Laut Se," *Jurnal Reformasi Hukum*. 24, No. 2 (2020): 189-208., 197

³³ Iusiana Tijow, "Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah," *Jurnal Legalitas*. 3, No. 2 (2003): 79-90., 80.

³⁴ Julius Mandjo, *Op. Cit.*, 370"

³⁵ Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution," *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

marriage and remarriage hearing. However, the bad factor is that if the marriage partner has obtained a child, then in civil law the child does not have a nasab with the father but only has a nasab with a mother and her family.

The government must play an active role in terms of socializing related to the impact caused by Siri marriage and for related agencies, it must provide good solutions for the community as a serial marriage actor in terms of taking care of the administration of their families.

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